

AMENDED AGENDA

CITY AND COUNTY OF SWANSEA

NOTICE OF MEETING

You are invited to attend a Meeting of the

PLANNING COMMITTEE

At: Committee Room 3A, Guildhall, Swansea

On: Tuesday, 13 October 2015

Time: 2.00 pm

AGENDA

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|-----------|--|------------------|
| 1 | Apologies for Absence. | |
| 2 | Disclosures of Personal and Prejudicial Interest. | 1 - 2 |
| 3 | Minutes.
To approve and sign as a correct record the Minutes of the Planning Committee meeting held on 8 September 2015. | 3 - 9 |
| 4 | Items for Deferral / Withdrawal. | |
| 5 | Determination of Planning Applications under the Town and Country Planning Act 1990. | 10 - 245 |
| 5a | Land to the West of Parc Y Bont off Trinity Place, Pontarddulais, Swansea. | 246 - 268 |
| 6 | Draft Fabian Way Innovation Corridor Masterplan Framework. | 269 - 330 |
| 7 | Welsh Government Consultation - Secondary Legislation: Statutory Consultees/Design and Access Statements/Houses in Multiple Occupation. | 331 - 344 |
| 8 | Application No.2731(S) - Application to Register Land Known as Castle Acre Green, Norton, Swansea as a Town or Village Green. | 345 - 450 |
| 9 | Application to Register Land Known as the Recreation Ground, Oystermouth Road, Swansea as a Town or Village Green. (For Information) | 451 - 453 |

Date of Next Meeting.

Tuesday 10 November - 2pm.



Patrick Arran
Head of Legal, Democratic Services & Procurement
Tuesday, 6 October 2015
Contact: Democratic Services - 01792 636923

PLANNING COMMITTEE (12)

Labour Councillors: 8

David W Cole	Paulette B Smith
Ann M Cook	Des W W Thomas
Erika T Kirchner	Mark Thomas
Paul Lloyd (Chair)	T Mike White

Liberal Democrat Councillors: 2

Mary H Jones	Cheryl L Philpott
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Independent Councillors: 1

Ioan M Richard	
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Conservative Councillor: 1

Anthony C S Colburn	
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Note: Quorum for this Committee is 6 Councillors

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

Officers

Financial Interests

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

CITY AND COUNTY OF SWANSEA

MINUTES OF THE PLANNING COMMITTEE

HELD AT COMMITTEE ROOM 3A, GUILDHALL, SWANSEA ON
TUESDAY, 8 SEPTEMBER 2015 AT 2.00 PM

PRESENT: P Lloyd (Chair) Presided

Councillor(s)	Councillor(s)	Councillor(s)
A C S Colburn	M H Jones	I M Richard
D W Cole	E T Kirchner	D W W Thomas
A M Cook	C L Philpott	T M White

ALSO PRESENT:

Councillors CR Doyle, PM Matthews, RA Clay & UC Clay – Llansamlet Ward Members

53 **APOLOGIES FOR ABSENCE.**

Apologies for absence were received from Councillors PB Smith and M Thomas.

54 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTEREST.**

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

Councillor DW Cole – Minute No.57 – Personal - Planning Application No. 2015/1171 - this is a similar to a possible application that may come up in the near future in my ward, and did not vote on the application.

Councillor DWW Thomas – Minute No.57 – Personal - Planning Application No. 2015/1171 – as Deputy Cabinet Member for Education.

55 **MINUTES.**

RESOLVED that the Minutes of the Planning Committee meeting held on 11 August 2015 be approved as correct record.

56 **ITEMS FOR DEFERRAL / WITHDRAWAL.**

None.

57 **DETERMINATION OF PLANNING APPLICATIONS UNDER THE TOWN AND COUNTRY PLANNING ACT 1990.**

The Head of Economic Regeneration and Planning submitted a series of planning applications.

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) Application No.2015/0393 – Land to the South of Heol Dulais, Birchgrove.

Sarah Edwards(agent) addressed the Committee.

Councillor R A Clay (Llansamlet Ward Member) addressed the Committee and outlined the questions and concerns of the Local Members regarding the amended scheme.

The Committee were informed of the following updates:

Response to Consultations

A further re-consultation exercise was undertaken on 17th August 2015, 85 neighbours were consulted. ONE late letter of objection has been received which indicates flooding has occurred in the area and asks Committee to postpone any decision on further development of the site until all of the drainage issues have been rectified

Confirmation has been received that the monies required by the Section 106 agreement attached to planning permission 2013/1114 has been received by the Council. Consequently, there is no longer a requirement for the applicant to enter into a Section 106 agreement on this application.

The recommendation should therefore be amended to read :

APPROVE subject to the conditions contained in the report and the following amendments:

Condition 1 be amended to read:

1. The development shall be carried out in accordance with the following approved plans and documents: Morden – MR-WD16 Rev. J, 1104 Unit - 1104-V2, Chedworth – CD-WD10 Rev M, Hanbury - HB-WD16 Rev P, Hatfield – HT-WD16 Rev P, Rufford - RF-WD16 Rev P, Roseberry – RS-WD16 Rev S, Souter - SU-WD16 Rev R, Garages - SGD-01 received 27th February 2015. Carriageway narrowing at Heol Cledwyn - SK022 received 28th July 2015. Planning Layout - PL-01B Rev. C received 5th August 2015. Landscaping strategy LS-01 Rev. A, Boundary Enclosures

Layout - BE-01, External Works Layout - EW-01 Rev. A,
Materials Layout - MAT-01 received 13th August 2015.
Site location plan SLP-01 Rev. A received 14th August 2015.
Engineering Layout 202-004 Rev. M, Engineering Layout
202-005 Rev. N, Engineering Layout 202-005 Rev. M received
28th August 2015. Clayton Corner CCA-WD10 Rev.
G received 7th September 2015

Condition 2 be amended to read:

2. The remedial measures to treat the mine workings identified in the Supplementary Site Investigation Report dated June 2013 and any subsequent amendments to those measures made in consultation with the Coal Authority, shall be implemented prior to the development of any house plots within the zone of influence of any mine workings on the site. A verification report shall be submitted to the Local Planning Authority within two months of the completion of the remedial works.

Condition 16

Notwithstanding the details indicated on the approved plans, prior to the occupation of any dwelling hereby approved a detailed scheme for landscaping the site, including a timescale for completion of the works, shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall follow the principles of the landscaping scheme approved under planning permission 2013/1114 (Drawing Nos. 821.01/01 Rev A and 821.01/02 Rev A). The approved scheme shall be carried out in accordance with the approved details. Any trees or shrubs planted in accordance with this condition which are removed, die or become seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

Add the following conditions:

Open Space

19. Prior to the occupation of any residential unit hereby approved, the following information relating to the provision of open space at the site shall be submitted to and approved in writing by Local Planning Authority

- a plan defining the open space areas,
- details, including a timescale, of the provision, management and maintenance of the areas of open space.

The open space as approved shall be laid out and planted in accordance with the approved timescale and landscaping scheme and shall be managed and maintained as approved at all times.

Road and Footpaths

20. Prior to the occupation of any residential unit hereby approved, the

following information relating to the provision of roads and footpaths at the site shall be submitted to and approved in writing by the Local Planning Authority:

- a specification, including a timescale, for the
- construction of the roads and footpaths
- details of the management and maintenance of the
- roads and footpaths

The roads and footpaths within the development shall be constructed and maintained in accordance with the approved details at all times.

Land Contamination

21. The land contamination remediation scheme for the site shall be carried out in accordance with the details indicated within the Site Investigation Report 10903/RB/11 dated September 2011 and the Supplementary Site Investigation report 10903/VA/13 dated June 2013 prior to the occupation of any residential unit hereby approved.

Reason: In the interests of health and safety.

22. Prior to the occupation of any residential unit hereby approved, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation strategy shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring to demonstrate that the site remediation criteria have been met.

Reason : In the interests of health and safety.

23. Any topsoil (natural or manufactured, subsoil, aggregate (other than virgin quarry stone) or recycled aggregate material to be imported onto the site shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved in writing by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the Welsh Local Government Association guidance '*Requirements for the Chemical Testing of Imported Materials for Various End Uses*'.

Subject to written approval of the above, sampling of the material received at the development site to verify that

the imported soil is free from contamination shall be undertaken in accordance with the approved scheme.

Reason : In the interests of health and safety.

The application was approved subject to the amended conditions outlined above.

(#) (Item 2) Application No.2015/1171 – YGG Lonlas, Walters Road, Llansamlet.

Councillor R A Clay (Llansamlet Ward Member) addressed the Committee and outlined the concerns of the Local Members particularly around the parking problems associated with the current and proposed new school.

The Committee were informed of the following updates:

The Legal Officer has advised that condition 12 does not appear to satisfy the Circular tests for planning conditions. The TRO process sits outwith the planning process. There is nothing preventing the Highway Authority making a TRO which will be subject to the statutory process that allows for representations to be made. If the TRO was successfully opposed then it is unlikely that the LPA would seek to enforce a condition that is desirable rather than a material requirement necessary to make the development acceptable in planning terms – particularly as the TRO process involves elements beyond a developer's control. Further, the Highways consultation response identifies an existing problem at the junction. It has not stated that the development (a *replacement* of the existing school) would exacerbate the existing problem – which is already within the Highways Authority's ambit to remedy. Remove condition 12 and re-number conditions 13-19 accordingly.

Following receipt of further comments from Pollution Control, the following conditions should be added:

19) Prior to the commencement of development, a remediation strategy options appraisal, to include all measures to be taken to reduce the environmental and human health risks identified in the submitted Phase 1 and Phase 2 Geo-Environmental and Geotechnical assessments to an acceptable level, in a managed and documented manner, to best practice and current technical guidance, shall be submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological

systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

20) The development hereby permitted shall not be occupied until the measures approved in the scheme in condition 19 above have been implemented and a suitable validation/ verification report has been submitted to and approved in writing by the Local Planning Authority unless written consent is given to any variation.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

The application was approved subject to the additional conditions outlined above.

(#) (Item 4) Application No.2015/1107 – Plots E2 and E3a, Langdon Road, Swansea Docks.

Sarah Edwards(agent) addressed the Committee.

A visual presentation was provided.

The Committee were informed of the following updates:
Condition 1 to be amended to read:

The development shall be carried out in accordance with the following approved plans and documents: [Site Location Plan PL-02, Apartment Floor & Elevations -24023 APT- A-01, Apartment Floor & Elevations -24023 APT- A-02, Apartment Floor & Elevations -24023 APT- B-01, Apartment Floor & Elevations -24023 APT- C-01, Sample House Type Elevation HT-00, , Design and Access Statement, Transport Statement - (Plans received 23 May, 2015);

Street Scene - 24023 -SS-01 rev. A, Landscaping Layout 24023 PL-06 rev. B, (amended plans received 23 June, 2015);

House types plans and elevations HT-548 type 01 rev. A, HT-548 type 02 rev. B, HT-739 type 01 rev. B, HT-739 type 2 rev. B, HT-739 type 03 rev. B, HT-739 type 04 rev. B, HT-739 type 05 rev. A, HT-739 type 06, HT-739 type 07, HT-739 type 08, HT-911 type 01 rev. B, HT-B type 01 rev. C, HT-B type 02 rev. C, HT-B type 03 rev. C, HT-B type 41 rev. A, - (Amended Plans received 27 Aug. 2015);

Site Layout 24023 PL-03 Rev. G, Preliminary Ground Floor Plan
- House type B - Amended plans received 28 Aug. 2015]

Materials Plan -24023 PL-04 rev. F, Site Sections 24023 SE-01
Rev. A, Bin Stores 22 -24023 rev. B, Engineering Layout rev. H
10059 -001 - (Amended plans received 28 August, 2015).

Amend Condition 17 –

.....approved in writing by the Local Planning Authority prior to
the commencement...

Amend Condition 18 –

.....has been submitted to (delete by the applicant) and
approved.....

The application was approved subject to the amended
conditions outlined above.

- (2) the undermentioned planning applications **BE DEFERRED** for
the reasons indicated below:

**(Item 3) Application No. 2011/0758 – Land to the West of
Parc Y Bont, off Trinity Place, Pontarddulais.**

Reason

To request an updated flood consequences assessment and for
re-negotiation of the design and layout of the scheme in the light
of current adopted SPG. Members did not consider that the
previous resolution to approve 32 dwellings on the application
site was sufficient grounds to allow this development.

58 **PROPOSED REVOCATION OF 10 NO. TREE PRESERVATION ORDERS.**

The Head of Economic Regeneration & Planning presented a report which outlined
consideration of the revocation of a number of Tree Preservation Orders for the
reasons outlined in the report.

RESOLVED that

(1) the following Tree Preservation Orders be revoked : -
TPOs 46, 56, 57, 63, 74, 75, 87, 90, 148 & 347.

(2) the Council's practice and review currently being undertaken in relation to Tree
Preservation Orders be referred to the Scrutiny Programme Committee for
discussion.

The meeting ended at 3.22 pm

CHAIR

Agenda Item 5

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: 13TH OCTOBER 2015

Bay Area Development, Conservation & Design Manager Ryan Thomas - 635731	Area 1 Team Leader: Ian Davies - 635714	Area 2 Team Leader: Chris Healey - 637424
Castle Landore Mayals Oystermouth St Thomas Sketty Uplands West Cross	Bonymaen Clydach Cockett Cwmbwrla Gorseinon Llangyfelach Llansamlet Mawr Morrison Mynyddbach Penderry Penllergaer Penyrheol Pontarddulais Townhill	Bishopston 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.



CONTENTS

ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
1	2015/1498	<p>The Boat Yard, adjacent to Fishmarket Quay, Trawler Road, Maritime Quarter, Swansea SA1 1UP</p> <p>Construction of a four / three storey block containing 50 residential apartments (Class C3) and 1 no. ground floor retail unit (Class A1) with associated undercroft car parking (outline - including details of access, appearance, layout and scale)</p>	APPROVE
2	2014/1906	<p>31 Hebron Road and land opposite 59-63 Hebron Road, Clydach, Swansea SA6 5EJ</p> <p>Change of use of public house (Class A3) to an 8 bed care home (Class C2), demolition of part of building at land opposite 59-63 Hebron Road and creation of separate car parking area to be used in association with the care home</p>	APPROVE
3	2013/1405	<p>Former Castle Cinema, Worcester Place, Swansea, SA1 1JQ</p> <p>Substantial demolition of the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a part 5 / part 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 67 student study bedrooms within 13 cluster flats (application for Listed Building Consent)</p>	REFUSE
4	2013/1403	<p>Former Castle Cinema, Worcester Place, Swansea, SA1 1JQ</p> <p>Substantial demolition of the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a part 5 / part 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 67 student study bedrooms within 13 cluster flats</p>	REFUSE

ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
5	2008/0912	Former Walters Yard, Pontlliw, Swansea Construction of 67 dwellings with associated access, roads, parking, open space and demolition of existing buildings.	APPROVE
6	2015/0217	81 Gower Road, Sketty, Swansea, SA2 9BH Redevelopment of the site to form 45 retirement living apartments for the elderly with associated communal facilities, car parking, landscaping and additional pavement to Gower Road frontage. (Amended plans and additional information received) (amended description)	APPROVE
7	2013/1522	Swansea Gors TEC site Heol y Gors Cockett Swansea SA1 6SB Residential development for up to 73 dwellings (outline)	APPROVE
8	2014/1189	Land at Upper Bank, Pentrechwyth, Swansea, SA1 7DB Residential development with construction of new vehicular access off Nantong Way (outline) - Section 73 application to vary condition 21 (Foul sewerage connection) and removal of conditions 16 (Footway improvements to Nantong Way) and 24 (Oil Interceptor) of planning permission 2006/1902 granted 16th July 2012.	APPROVE
9	2015/1222	Penyfro, Penuel, Llanmorlais, Swansea SA4 3UQ Replacement dwelling house	APPROVE

PLANNING COMMITTEE – 13TH OCTOBER 2015

ITEM 1

APPLICATION NO.

2015/1498

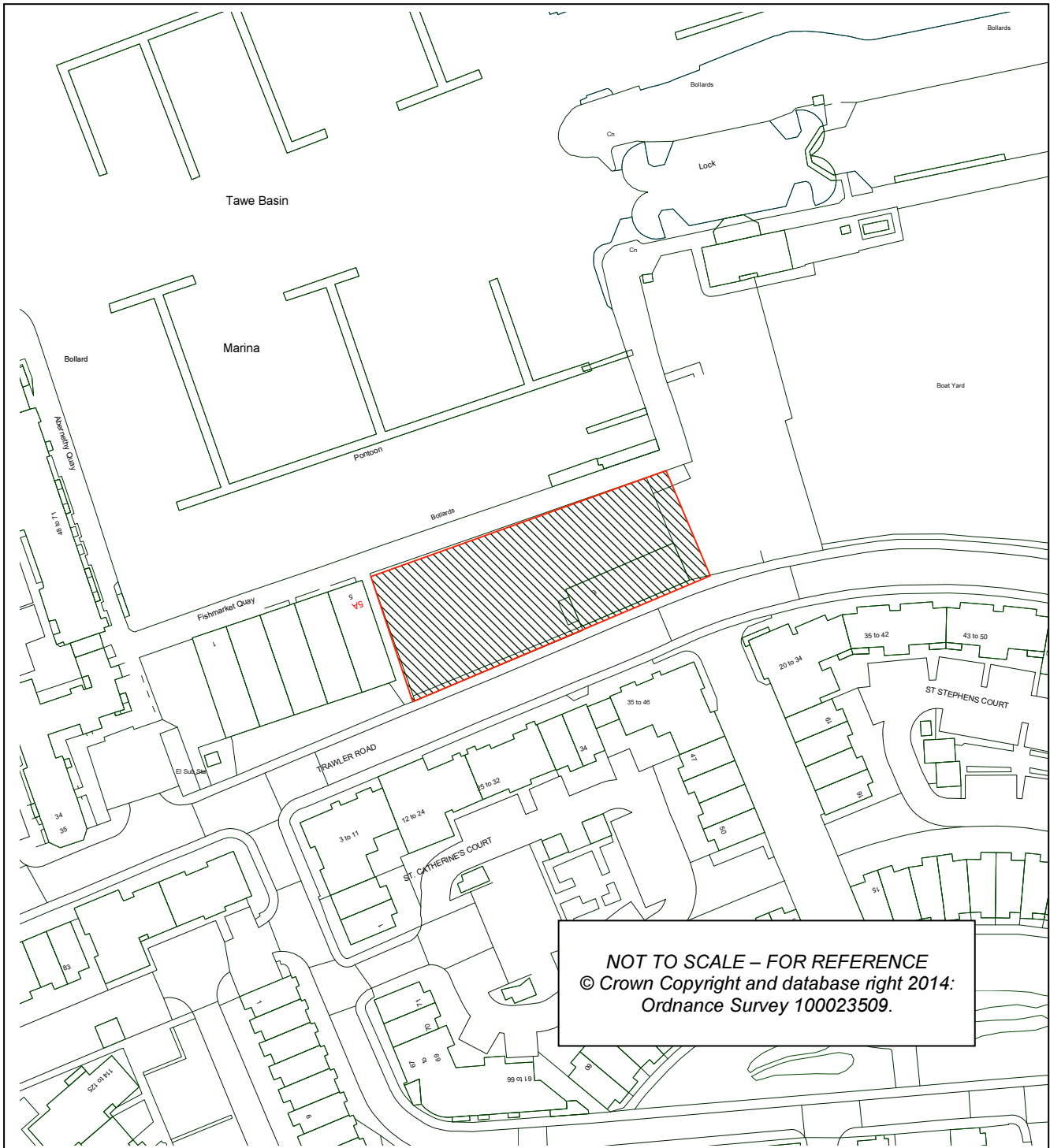
WARD:

Castle

Location: The Boat Yard, adjacent to Fishmarket Quay, Trawler Road, Maritime Quarter, Swansea SA1 1UP

Proposal: Construction of a four / three storey block containing 50 residential apartments (Class C3) and 1 no. ground floor retail unit (Class A1) with associated undercroft car parking (outline - including details of access, appearance, layout and scale)

Applicant: Waterstone Homes Ltd



BACKGROUND INFORMATION

RELEVANT PLANNING POLICIES

Swansea Unitary Development Plan

Policy EV1	New development shall accord with a defined set of criteria of good design.
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.
Policy EV3	Accessibility criteria for new development.
Policy EV4	Creating a quality public realm
Policy EV34	Development proposals will only be permitted where they would not pose a significant risk to the quality of controlled waters.
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.
Policy HC1	Housing site allocated for development
Policy HC2	Proposals for housing developments within the urban area will be supported where the site has been previously developed or is not covered by conflicting plans policies or proposals.
Policy HC3	In areas where a demonstrable lack of affordable housing exists, the Council will seek to negotiate the inclusion of an appropriate element of affordable housing on sites which are suitable in locational / accessibility terms and where this is not ruled out by exceptional development costs.
Policy AS1	New developments (including housing) should be located in areas that are currently highly accessible by a range of transport modes, in particular public transport, walking and cycling
Policy AS2	Design and layout of access to new developments should allow for the safe, efficient and non intrusive movement of vehicles
Policy AS6	Parking provision to serve developments will be assessed against adopted maximum parking standards to ensure appropriate levels of parking

ITEM 1 (CONT'D)

APPLICATION NO.

2015/1498

Planning Policy Wales (PPW) (July, 2014 7th Edition)

With regard to housing, PPW seeks to ensure that previously developed land is used in preference to Greenfield sites; is well designed; meets national standards for the sustainability of new homes and makes a significant contribution to promoting community regeneration.

Technical Advice Note (TAN) 2: Planning and Affordable Housing (2006)

Technical Advice Note (TAN) 11: Noise 1997

Technical Advice Note (TAN) 12: Design (2014)

Technical Advice Note (TAN) 15: Development and Flood Risk (2004)

RELEVANT PLANNING HISTORY

2012/1226 Construction of a four / three storey block containing 50 residential apartments (Class C3) and 1 no. ground floor retail unit (Class A1) with associated undercroft car parking (outline - including details of access, appearance, layout and scale)

Refused 3 July, 2014 for the following reasons:

1. The introduction of a residential use in close proximity to existing business uses would be detrimental to the residential amenity that future residents of the proposed development could reasonably expect to enjoy by virtue of the noise, smells and air pollution generated by the existing business operations. The proposal is therefore contrary to Policies EV2, EV40, HC2 and CC1 of the City and County of Swansea Unitary Development Plan (2008).
2. The introduction of a residential use within close proximity to existing business activities, namely the marina boatyard (including the boat hoist operation) and commercial fish market would likely result in nuisance complaints from future occupiers of the proposed residential apartments, which in turn could unduly impact on the operations of those existing businesses, which are of strategic importance to the City and County of Swansea and its adopted vision to make Swansea a vibrant, attractive and distinctive 21st century Waterfront City which capitalises on its waterfront location. The proposal is therefore contrary to Policies EV2, EV40, HC2 and CC1 of the City and County of Swansea Unitary Development Plan (2008).
3. The proposed development fails to provide any off-street car parking for visitors to the development which will lead to an increase in parking on the adjoining highway network to the detriment of highway safety. The proposal is therefore contrary to Policies EV1, EV3, AS6 and CC1 of the City and County of Swansea Unitary Development Plan (2008).

RESPONSE TO CONSULTATIONS

PETITION OF OBJECTION

The application was advertised on site and in the local press and the neighbouring properties in St Catherine Court and the original objectors to planning application 2012/1226 were consulted individually. A PETITION OF OBJECTION containing a total of 79 signatures and 26 LETTERS OF OBJECTION have been received making the following points:

1. The previous proposal (Ref:2012/1226) was rejected in 2014. The details have not changed since then and this new application should be refused.
2. The planning application will endanger the fishmarket as it could be closed down due to complaints being likely to be made by the occupiers of the proposed flats due to the nature of the business.
3. The fishmarket takes its local catch from the trawlers whilst the flats can be built anywhere.
4. The tidal lagoon will increase boat use and shell fish farming in Swansea Bay and the boatyard should be retained for these uses.
5. The Planning Committee previously rejected an identical application because odour from the Fish Market and Council Marina careening bays could affect potential residents who in turn could complain and close the Fish Market and the careening operation.
6. The main source of odour is the vent used for smoking fish, which is located 3 metres above ground level. Smoking fish is undertaken overnight and through part of the day. This is not monitored in the consultant's report.
7. The Fish Market opens at 05.30 for early deliveries, which is a time when fish odour can be more intense due to the movements in and out of the building. This was not monitored.
8. Fish odour from the bins can be more intense over a weekend when the Fish Market has cleared shelves for closure over the weekend. Then consultant would have known to survey this source had they consulted residents prior to undertaking the surveys.
9. Odour from the careening bay can be strong when boats are cleaned on lift-out. This was not surveyed.
10. There have been complaints about the Fish Market and local residents who are not downwind consider that odour can be a problem.
11. The table 'Effectiveness of Odour Pathway' does not identify the main source of odour and is far too simplistic in assessing wind direction.
12. Only wind speed was provided. No mention of 'gust' speed, which can create additional turbulence.

PLANNING COMMITTEE – 13TH OCTOBER 2015

ITEM 1 (CONT'D)

APPLICATION NO.

2015/1498

13. The consultant argues that the main source of odour is at ground level, well below the level of the flats. This is clearly not the case as the vent for smoking fish is 3 metres above ground level and as warm air rises, it will effectively be at the same level as the windows of the flats.
14. The consultant did not consult local residents and failed to understand the problem.
15. The proposed properties have balconies with French doors. The likelihood of odour entering these properties is high.
16. There was strong objection to the previous application on the basis that light levels in the existing properties that overlook the Boat Yard would be substantially and unfairly reduced by the proposed Boat Yard development. The Planning Committee understood and supported this concern.
17. The 'Daylighting Analysis Report' confirms the worst fears of the residents and objectors. The predicted reduction in all aspects of light is worse than feared and could materially affect the health of residents.
18. The consultant analyses three parameters for assessing light but only considers a limited number of properties.
19. The Building Research Establishment (BRE) document Site Layout Planning for Daylight and Sunlight: A Good Practice Guide describes how to assess light in building. It recommends the maximum impact a new building should have on existing properties' diffuse light as measured by 'view of the sky'. The BRE recommends a maximum reduction of no more than 20%. The report clearly indicates that 25% of the measurements will be in the order of an 80% reduction.
20. This level of reduction far exceeds the maximum recommended by the BRE and is totally unacceptable. The potential impact can clearly be seen when standing inside one of the properties opposite the development.
21. The BRE again recommend that new development should not reduce existing sunlight hours by more than 20%. In this case, 44% of rooms are shown to exceed the recommended 20% with the maximum being an 88% reduction. This is clearly unacceptable.
22. The Average Daylight Factor (ADF) is a measure of the total light within a room. British Standard 8206-2 Code of Practice for Daylighting recommends an ADF of between 5% for well daylit space and 2% for a partially daylit space. It also recommends minimum figures of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms.
23. Many of these properties will be starved of light by the new development, probably having to use artificial light throughout the day. The consultant argues that the properties that are already below the minimum standard should be ignored despite the fact that their existing light levels will be reduced by up to 60%.
24. The data in the Daylighting Report fully supports the objection to the site and the Planning Committees' decision to refuse permission. The consultant's conclusion that people already with poor light levels can be starved of light and ignored cannot be given any credibility.

PLANNING COMMITTEE – 13TH OCTOBER 2015

ITEM 1 (CONT'D)

APPLICATION NO.

2015/1498

25. This is the second full noise report for a building on the Boat Yard site. The survey data in the noise report supports the data from the previous report and confirms that the Boat Yard is within a noisy environment where complaints are likely. This is despite the fact that the one noise meter was shielded from the Marina boat yard activity by the existing boat shed.
26. The report data shows that the existing night noise falls under Noise Exposure Category C of TAN 11 which states "Planning permission should not normally be granted". Daytime noise falls on the border of C and B "Planning permission should not be granted" and "Noise should be taken into account". The report states that noise levels fall within NEC B but this does not appear to be supported by the facts.
27. The report also confirms that there is high maximum noise in the early hours of the morning.
28. There has been no change from the last application. The new noise report confirms this in stating in 1.3.3 stating "*the calculations indicate that due to the relatively high ambient noise levels it*". The report suggests that the building will have a high level of noise insulation to ensure noise levels indoors meet the required levels in BS8233.
29. This is a totally pointless exercise when the flats have Juliette balcony doors and opening windows. Many people find it difficult to sleep with windows closed. On hot summer days, trickle vents would be totally inadequate. Windows and French doors would be opened. Many residents lean out of French doors to smoke.
30. The wheelchair apartments on the ground floor have direct access to the promenade adjacent to the boatlift and will be subject to noise pollution. They will not be isolated from noise nuisance as claimed in the revised technical report.
31. Noise is already at a level that would cause complaints. Activity in the Marina Boatyard and hence noise levels are likely to increase when Marina activity increases on completion of the Tidal Lagoon. Further boatyard capacity will be required to service the boating activities in the Tidal Lagoon. The Boat Yard area is the only suitable area to meet this need. The chimes of St Mary's Church have been curtailed by a new nearby development. The operations in the Marina Boatyard and the Fish Market will be seriously at risk of closure or at risk of being curtailed, if permission is granted.
32. There would be additional traffic along Trawler Road.
33. The Transport report is deficient and the Swansea Parking Standards SPG prohibits this application.
34. The Parking SPG requires 60 spaces and 10 visitor spaces and visitor parking should be within the development not relying on public parking. The application is deficient of 25 spaces.
35. Sustainability points cannot be relied upon.

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36. There is no evidence of low car use.
37. There is no specific parking or loading spaces for the retail shop.
38. Spaces 41 – 49 are only accessible through a working boatyard and are unsafe to use.
39. Inadequate provision is made for disabled parking.
40. The Transport report indicates there are 202 unrestricted parking spaces within walking distance of the site. Some of these are in private ownership.
41. Limiting available parking will impact on local businesses contrary to policy EC3.
42. There are only 46 unrestricted public parking spaces within a quarter of a mile of the site.
43. The closure of the boatyard has caused inconvenience to boat owners via a loss of winter boat storage.
44. If the boat hoist is removed the marina will close.
45. There is no demand for further retail units in the marina.

Maritime Quarter Resident's Association Objection

Summary

The Planning Committee were correct in virtually unanimously refusing the previous application (2012/1226) for the Boat Yard and this was confirmed when the Applicant withdrew the appeal knowing it could not be successful.

The Environmental Health Officer of The City and County of Swansea, was also proved correct in his original report recommending the refusal of the previous planning application.

The reason for refusal of the previous application was that noise, smells and air pollution generated by existing businesses would result in nuisance complaints from future occupiers. This would then unduly impact on local businesses including the Marina Boatyard and Fishmarket resulting in the operations being curtailed or stopped. This is not a theoretical concern as, in similar circumstances, complainants from a nearby new development have curtailed the chimes of St Mary's church.

Objections were made and concern expressed about the impact of the proposal by reducing light on the existing homes on Trawler Road. The reduction of the light on the existing properties is as important as the reasons for refusal as the impact is appalling.

The building in this application is identical to the previous application and should be refused, as the Applicant has not offered even one argument in the supporting documents to justify a change in your decision to refuse the last application.

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Odour – There is no reason to change the original reason for refusal.

The consultant's report on odour does not monitor the main source of odour and is technically incorrect in other aspects and should be withdrawn.

Noise – There is no reason to change the original reason for refusal.

The noise report confirms the findings of the previous noise report that the Boat Yard is a noisy environment and the night time noise levels fall within Noise Exposure Category C of TAN 11 which states: "*Planning permission should not normally be granted.*" Daytime noise levels are on the border of Category C of TAN 11.

The consultant argues in his report that the assessment should be made using a British Standard for internal noise and describes how the development should be constructed to meet the requirements BS 8233. The proposed development includes Juliette balconies and opening windows and could never meet the requirements of BS8233. A total redesign will be required if the developer seriously wishes to meet the requirements of BS8233.

Residents in this development will experience high noise levels and will have a right to complain. This puts the operation of the Marina Boat Yard and the Fish Market at serious risk.

Daylighting Analysis– There is no reason to change the original reason for refusal.

The report titled Daylighting Analysis is intended to support the application but actually confirms the worst fears of the residents affected and the objectors. The consultant analyses three parameters for a limited number of properties. The results are worse than feared and will adversely affect the health of existing residents.

For the first parameter, View of The Sky, the Building Research Establishment (BRE) recommends a reduction of no more than 20%. The report shows that 25% of the measurements will be in the order of 80% reduction.

The second parameter assessed is Access To Direct Sunlight. The BRE again recommend that new development should not reduce existing sunlight hours by more than 20%. 44% of rooms are shown to exceed the recommended 20% with the maximum being an 88% reduction.

The third parameter is Average Daylight Factor (ADF), which is a measure of the light within a room. British Standard 8206-2 Code of Practice for Daylighting recommends an ADF of between 5% and 2%. It also recommends minimum figures. The consultant has chosen the minimum rather than recommended figures to make the assessment. Many of the properties already do not meet the recommended minimum standards. These properties will be starved of light by the new development probably having to use artificial light throughout the day. The consultant argues that the properties that are already below the minimum standard should be ignored despite the fact that their existing light levels will be reduced by up to 60%. Any reasonable person cannot accept an argument that people who are already starved of light should be ignored. Such a reduction is an attack on their human rights. The use of additional energy for light is in conflict with your 'Green' and 'Sustainability' policies

Parking – There is no reason to change the original reason for refusal.

The proposed parking does not meet the minimum requirements of City and County of Swansea Parking Standards when visitor parking, disabled visitor parking and parking for the shops is included. The application suggests that all parking within 500m, as the crow flies, should be included in parking provision.

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This is just silly as any sensible person understands that people do not park over 500 metres away when visiting properties; particularly the disabled. The existing, serious, parking problems around the Tower confirm this. The applicant could have been less mercenary and curtailed the number of flats to ensure sufficient parking or built underground parking, as was used in the original marina development.

The previous application was refused by a virtually unanimous decision of the Planning Committee. There is nothing whatsoever in the reports accompanying the resubmission of the same development that justifies changing the decision to refuse the application.

Cllr Fiona Gordon - I wish to object to the above application on the following grounds. Please note that I am objecting as a Councillor for Castle ward and also as a resident of the Maritime quarter, living near the site. Many of these issues affect residents living near me, and local businesses.

The proposed development - 50 apartments, retail unit and underground parking, in a small space between two businesses - will adversely affect the surrounding residents and businesses, as well as being an inappropriate and unpleasant environment for residents of the new proposed accommodation.

Firstly, the health and wellbeing of the residents living in Courts with properties that back onto Trawler Road opposite the boatyard will be adversely impacted due to the substantial reduction in light. With reference to the Daylight analysis report, the BRE document on Daylight recommends that a new development should not reduce the daylight for existing properties by more than 20%, yet it goes on to show how this development reduces some properties' daylight by up to 88%. How can this be acceptable? The report goes on somehow to conclude that this is not important, not significant and cannot be avoided. I would disagree with this assumption, and would insist that this development would indeed cause darker living conditions for current residents.

This area is currently one which supports a popular and successful maritime industry. The proposed development would be extremely close to the fishmarket, which processes locally caught fish every day. If these properties were to be built this close to it, the environment would be very unpleasant for residents, with smoking of fish going on every night, and noisy working conditions in the early hours. In addition, the boatyard on the other side of the proposed development services boats during the day, using chemicals and water spray to clean boats. It would seem obvious that there would be complaints due to noise and odour, and this could lead to the businesses being threatened. These businesses have been developed here as it is the perfect place for them, and it would be a terrible shame for the area if they were to be closed because of housing that has been shoe-horned into an inappropriate space after many years of quality commercial success. People expect maritime businesses in a maritime area.

I refer to 2.6 of the Odour assessment report: "the planning system should perform an environmental role to minimise pollution. To prevent unacceptable risks from air pollution, planning decisions should ensure that new development is appropriate for its location." Clearly here the new development is not in an inappropriate place, and should not be pursued.

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There is inadequate parking for residents and visitors. There is no disabled visitor parking or parking for commercial vehicles visiting the shop. This will exacerbate the existing problem where visitor parking spaces and private parking spaces within the Swansea Point development are being used by people looking to park in the marina. The proposal is short of 25 spaces according to recommendations for numbers of parking spaces, plus there is not enough disabled parking, despite some of the flats said to be accessible. Furthermore, some of the parking spaces are only accessible via the working boatyard, through areas where boats are sprayed and cleaned. This will create further problems which already exist in the marina.

Please consider these objections along with others from residents, the Maritime Quarter Residents' Association and fellow councillors.

Cllr Sybil Crouch - I wish to object to this application which is identical to the one overwhelmingly rejected by Planning Committee just over 12 months ago in July 2014

Three main reasons were given for rejection:

- the introduction of a residential use in close proximity to existing business uses would have detrimental impact on the future residents of the units due to smell, noise and air pollution generated from the adjacent marina businesses.
- That such impact would generate pollution complaints which CCS would be obliged to act upon , thereby threatening the future of businesses of "strategic importance.
- Contrary to a range of policies no visitor parking was provided within the curtilage of the development.

This current application fails absolutely to resolve any of the three reasons for the previous refusal.

Indeed this application is worse than the previous one in that it fails to make any acknowledgement or offer any mitigation at all for the impact of smells and noise on the residents of the development. (In 2014 the applicant had proposed gagging orders to stop residents complaining about odour & noise with an alternative being that residents would not be able to open the windows).

The impact of these factors is simply ignored in this application and offers Technical Assessments of Noise, Odour, Daylight & Transport (incl. Parking) which at best obscure the facts and at worst could be seen to be deliberately misleading.

For example, the Odour Assessment completely ignores the fish smoking operation – despite this issue being raised by numerous respondents when the application was considered in 2014.

The Noise Assessment is seriously deficient on a number of counts and also ignores the fact that residents will open their windows.

The Daylighting Analysis which looks at the potential impact of the 4 storey building on the apartments directly opposite is seriously flawed in the manner in which the figures are presented. These give the impression that the decrease in light to a number of apartments is less than 20% (BRE standard) whereas in fact there is a relative reduction of up to **88%**, with many properties suffering a relative decrease in their light levels of **40%+**.

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Finally, the Transport Assessment proposes that there is a considerable amount of available visitor parking in other locations around the area. This is simply untrue. In their comment on this application, South Wales Police Designing Out Crime Officer states, "There is a total lack of parking in this area... ". In any case the Council's own Parking Standard states that visitor parking **must** be included in the curtilage of new residential developments.

Planning Committee cannot in my view rely on any of the Technical Assessments, all of which are flawed, deficient or misleading.

The application should be refused by committee for the following reasons:

- The development is in close proximity to businesses which are of strategic importance. These business could be lost as a result of inevitable pollution complaints from residents of the development.
The proposal is therefore contrary to Policies EV2, EV40, HC2 and CC1 of the UDP
- The residents of the development would themselves suffer loss of amenity due to smells and noise from the adjacent maritime businesses.
The proposal is contrary to Policies EV2, EV40, HC2 & CC1 as above.
- The development will have a highly negative impact on the health and wellbeing of the residents of the existing apartments in Trawler Rd who will suffer a significant decrease in access to daylight.
- The development fails to offer any off street parking for visitors contrary to Policies EV1, EV3, AS6 & CC1.

Peter Black AM – I note that this application is very similar to application 2012/1226 about which I voiced objection in my letter to the Authority dated 8th July 2013. In the intervening two years there has been no material change that persuades me that this is anything other than a wildly inappropriate site for a residential development, sandwiched as it is between two pre-existing businesses whose legitimate operations will have a deleterious, and ongoing effect upon potential residents. Nothing I have read from the erstwhile developer gives any sort of reassurance that were this block of flats to be built, the residents would not face negative noise, traffic, and other environmental factors on a daily basis.

In my previous letter I said, *inter alia*:

The close juxtaposition of a working boatyard and a fish-market makes the site a poor choice for residential housing. The boatyard operations include the careening of boats which is done using high pressure hose, thus producing an aerosol effect which will include barnacle and other debris from boat hulls. In addition, the boats are removed and returned to the water using a boat hoist that will operate within five metres of the boundary wall of the proposed development. In addition, there will be other noise nuisance, and vehicle movements associated with boat maintenance, including the regular delivery and removal of boats on large low-loaders.

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Nothing in the new application has changed my view. Whilst mention is made of the boat hoist operations by the developer, that is the least of the difficulties that residents will face daily. The careening of boats, noise nuisance, and the movement of heavy goods vehicles, including low-loaders, will continue as before.

Turning to the operation of Swansea Fish Market, it remains the case that the legitimate operation of the business will of necessity cause unavoidable nuisance to everybody living in the proposed development. As I said in my letter of July 2013:

The fish market begins operation at 0400, and is visited extensively by delivery vehicles loading and unloading from that time, and by customers coming to purchase product. This is in addition to the normal noise levels made by a commercial operation of this type. Moreover, the fish market has a smoking licence, and the vent for the smokehouse is within three metres of the western wall of the proposed development.

Here there has been a significant change, inasmuch as the business has expanded by 25% since 2013, with more vehicle movements, including heavy goods vehicles returning to site at 1800 to pick up deliveries. In addition, an extracting fan which operates continually during business hours has now been fitted alongside the smokehouse vent. I find it puzzling that the odour tests carried out make no mention whatsoever of the smell and fumes given off by the smokehouse, particularly as it is in operation daily.

Moreover, the tests were carried out on the plot as it is. The smells, and smoke fumes associated with the operations of Swansea Fish Market would behave in an entirely different manner once any residential block has been built, as this would alter the airflow considerably.

It remains my view that as there can be no question of requiring the pre-existing businesses to relocate, or curtail their operations, then this residential developments wholly inappropriate, and that the degree of inconvenience, interference, and nuisance will be much greater than it would have been two years ago.

NRW – Natural Resources Wales (NRW) does not object to the above application, providing appropriately worded conditions are attached to any planning permission your Authority is minded to grant.

Flood Risk

The site is located within Zone A, as defined by the development advice maps referred to under TAN 15 Development and Flood Risk (July 2004). Our Flood Map information, which is updated on a quarterly basis, indicates the site to be outside the currently flood zones.

We note that the proposal is for a retail and residential development which is therefore classed as highly vulnerable development according to TAN15.

Our flood maps do not include an allowance for climate change and as the nearby flood risk is tidal, when climate change allowances are applied the site may be at risk from tidal inundation.

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A Flood Risk Assessment by Shear Design (Ref. SM/MB/07147.01.D100), dated 12th June 2013 has been prepared in support of the application. This indicates that the existing ground levels on the site are 7.4m AOD. However the finished floor level for the development will be set slightly higher at 7.6m AOD. Section 5.2 considers the impact of climate change allowances upon current tide levels in order to determine if the development complies with TAN15.

Whilst the report was prepared in 2013 and sea level rise for the last two years has not been considered, we can confirm that the development remains compliant with the requirements of Table A1.14 and guidance in Table A1.15 of TAN15.

Climate change is now also a consideration during the 0.1% scenario and we would advise your Authority that when climate change allowances are applied to this tide level, the depth of flooding that could affect the development is within the guidelines of Table A1.15.

Although the development will comply with the requirements of TAN15 the only existing vehicular access along Trawler Road is at a lower level and shown to be at risk of flooding.

Therefore, it is possible that over the lifetime of the development there will be occasions when the road is flooded and emergency access restricted. In order to ensure the safety of all residents a Flood Management Plan (FMP) should be provided and approved by the Local Planning Authority. The plan should include flood warning, emergency access/evacuation arrangements and clear responsibilities.

Surface Water Disposal

With regards to surface water drainage, we note that the intension is to discharge directly to the marina. Whilst there is unlikely to be any effect on flood risk at this location the use of SuDS is still recommended as best practice.

Ultimately the drainage system design is a matter for the Local Authority Engineers. However, we would advise that the surface water drainage system must be designed to ensure no increased run-off from the site during and post development in all events up to the 1:100 year storm with an allowance for climate change.

Foul Water Disposal

We note from the drainage statement proposals that the foul water is to be connected to the main foul water public sewer located on Trawler Road. We recommend that Dwr Cymru Welsh Water (DCWW) are consulted and asked to confirm that there is sufficient hydraulic capacity within the sewer network at this location to accommodate the additional flows generated without causing pollution.

Your Authority must be satisfied that the proposed foul water arrangements are satisfactory and will not pose a risk of pollution to controlled waters, prior to determination.

Contaminated Land

NRW considers that the controlled waters at this site are not of high environmental sensitivity, and therefore we will not be providing detailed site-specific advice or comments with regards to land contamination issues for this site.

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However, it is recommended that the requirements of Planning Policy Wales and the Guiding Principles for Land Contamination (GPLC) should be followed.

These comments are based on our assumption that gross contamination is not present at this location. If, during development, gross contamination is found to be present at the site, then the Local Planning Authority may wish to re-consult Natural Resources Wales.

Pollution Prevention

As your Authority will be aware there can be no deterioration of water bodies under the Water Framework Directive. It is therefore vital that all appropriate pollution control measures are adopted on site to ensure that the integrity of controlled waters (surface and ground) is assured.

As best practice, we would advise the developer to produce a site specific construction management / pollution prevention plan with particular reference given to the protection of the surrounding land & water environments.

Waste Management

Given the location of this development, we would recommend that a site waste management plan (SWMP) for the project 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).

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.

To conclude, we would not object to the proposal, providing that appropriately worded conditions are attached to any planning permission your Authority is minded to grant.

Dwr Cymru Welsh Water – We would request that if you are minded to grant planning consent for the above development that conditions are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from the site.

Glamorgan Gwent Archaeological Trust (GGAT) – You will recall that in our response to the submission of 2012/1226, we noted that the Historic Environment Record curated by this Trust shows that the application area is located on the wharf area of the South Dock Half Tide Basin, adjacent to the site of the Globe Dry Dock. Begun in 1852, the entrance to the South Dock was remodelled at the turn of the 19th – 20th centuries, with alterations to the lock access and the conversion of the Globe to a wet dock. Since then, the area has been significantly remodelled and as the application area is on made ground there is nothing to suggest that any previously unknown archaeological features are present in the vicinity. There has been no change to our understanding of the archaeological resource since our letter and we have no objection to the positive determination of this application.

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The record is not definitive, however, and archaeological features or finds may be disturbed during the course of the work. In this event, please contact this division of this Trust. Nevertheless, as the archaeological advisers to your Members, we have no objection to the determination of this application.

Council's Drainage Engineer – We have reviewed the submitted application and recommend that a condition for a scheme for the comprehensive and integrated drainage of the site showing how surface water and land drainage will be dealt with is appended to any permissions given. Nb – This is subject to a positive response from DCWW as the development is proposing to connect to a public surface water sewer which outfalls into Swansea Marina.

Council's Ecologist - I don't think there is likely to be any significant ecological impact with the proposed flats. The building on the site appears to offer few opportunities for roosting bats, it is also situated in a location with very little suitable foraging nearby. It is possible the building may be used by nesting birds. I think a bat and bird informative would be sufficient.

Head of Public Protection, Housing and Public Health – The Pollution Control division are satisfied with the outcome of pre-application discussions with the consultants acting for this site. They have no objections or special site specific conditions to request.

Various discussions followed with local residents and local members; it may be worth adding some additional comments given the questions asked by third parties having read the various application reports. In terms of noise, this site is subjected to industrial noise from neighbouring activities and does require a degree of insulation to ensure that all the habitable rooms can be occupied without nuisance. Whilst many may consider that this is not ideal, it is not unusual to require this, particularly where the industrial noises are clearly regular and predictable. The current British Standards and planning guidance allows for this approach. The Pollution Control division raised many questions with the noise consultant as there are obvious queries about the way the survey work was approached and the reporting of some of the data. We were satisfied with their responses although some confusion could have been avoided by a more rigorous and open reporting appendix. Some third parties have queried the misclassification of some of the data, although this does not change the overall position in that a suitable acoustically insulated window design will be necessary and the occupants will have the choice to open those windows if they wish.

The division did not discuss the odour control assessment as it is felt that the outcome is unclear and always would be unclear. The odour consultant does state the fact that the nearest opening window in the new structure is too close to the extract vent from the fish smoking process to reliably predict the degree of detection by any occupant of that room. It is notoriously difficult to construct any appropriate scientific model which could reliably predict odour nuisance over such short distances and between buildings which do not currently exist. Any future odour complaint cannot be ruled out but it is difficult to forecast that with any certainty. Whilst it is possible that future steps may need to be taken to reduce that probability even further, it is not likely enough to justify refusal of this application. Too much depends on too many variables including the widely different sensitivity of any future occupants. The division does expect some degree of complaint from odour and noise, or even jet wash overspray from boat cleaning when the wind is in the wrong direction. These sort of complaints are always likely when uses are mixed to

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this degree and in such proximity. However, as discussed previously, much depends upon the individual sensitivity of future occupants to the new flats and the willingness of all parties to cooperate. It seems unlikely that these issues could be sufficiently quantified to engage in a clear and logical debate in any planning appeal. However the long term outcome is further complicated by recent Supreme Court decisions affecting defences to nuisance claims where the nature of the locality had been changed by lawfully granted changes of use.

Highway Observations – 2015-1498 The Boat Yard, adjacent to Fishmarket Quay, Trawler Road, Maritime Quarter, Swansea SA1 1UP

Construction of a four / three storey block containing 50 residential apartments (Class C3) and 1 no. ground floor retail unit (Class A1) with associated undercroft car parking (outline - including details of access, appearance, layout and scale)

1. Introduction

- 1.1 This proposal is for outline consent (with only landscaping being reserved) for the erection of 50 apartments and ground floor retail use (110 sq.m) on the site of a former boat yard on Trawler Road, Marina, Swansea. The site is located 600m south of Swansea City Centre and is bounded to the north by the Tawe basin, to the east by the existing parking area and open boat storage yard, to the south by Trawler Road and the west by industrial commercial properties.
- 1.2 The indicative plan shows 10 two bedroom apartments and 40 one bedroom apartments (including 3 wheelchair accessible apartments). The site is to be accessed off Trawler Road at three locations, one is via an existing access which serves the existing public parking area/boat yard to the east, and two are newly formed providing access to the main body of the car park on a one way in and one way out basis.
- 1.3 The car parking is laid out on the ground floor and comprises 49 car parking spaces (including three suitable for disabled users), and storage for 54 bikes in two separate storage locations. Access to the parking area is gained via a one way in–one way out system for spaces 1 to 40, whereas spaces 41 to 49 are utilized accessed via an existing point.
- 1.4 The site is well served by public transport with a service running along Trawler Road at a frequency of 60 minutes. In addition the site is within close proximity to the Quadrant bus station with services both locally and nationally. In terms of cycling the site is in close proximity to the National Cycle Network with county wide links. In terms of pedestrian movements the site is well located in terms of road, footways and bridges to link to the both the city centre and the waterfront.
- 1.5 A Transport Assessment has been submitted in support of the application due to the sensitive nature of traffic issues in the area, perceived problems brought about by recent large scale developments in the area and the objection letters submitted by local residents. The results are discussed below.

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2 Transport Assessment

- 2.1 The Transport Assessment has been submitted to support the proposal for residential flats with ground floor retail. The assessment has considered the impact on the Trawler Road (Dunvant Place)/Oystermouth Road Junction as this is the sole access in and out of the marina. The assessment has been undertaken in accordance with nationally accepted standards and best practice where committed traffic and development traffic is added to base traffic movements and the efficiency of the junctions. The output gives an indication of the degree of saturation at the junction and predicted queuing. All testing is undertaken during the am and pm peak periods.
- 2.2 The development has been checked for the year of opening (2017) and five years later (2022) this is standard practice. The base traffic flows are factored using growth factors and the trip rates are calculated using the TRICS database which is a nationally used software package. The report outlines the transport characteristics of the proposed development and the likely impact on the local transport network.
- 2.3 A parking beat survey was undertaken both in the week and at the weekend (in October 2014) in order to assess the availability of spaces within the Marina. This showed availability of 409 car parking spaces within a 500m radius of the site. When the residential demand is at its peak, i.e. overnight the car parking availability was between 260 spaces and 306 spaces (between 63% and 75% free). When retail use is at its peak (Saturday lunchtime) there were 211 unoccupied spaces which equates to 51% of capacity. It is noted that the parking beat survey included areas that are not open for public access and as such should not have been included. Notwithstanding that fact there are still a number of car parks in the area that are available to accommodate visitor parking.
- 2.4 A manual count was undertaken on behalf of the developer in October 2012 at the Trawler Road (Dunvant Place)/Oystermouth Road signalised junction.
- Flows of 4688 vehicles on Oystermouth Road were recorded in the a.m. peak (0730 to 0930) which averages out at 2344 per hour
 - Flows of 5680 in the p.m. peak (1630 to 1830) which averages out at 2840 vehicles per hour.
 - Flows of 447 vehicles were recorded on Dunvant Place in the a.m. peak (0730 to 0930) which averages out at 224 vehicles per hour
 - Flows of 578 in the p.m. peak (1630 to 1830) which averages out at 289 vehicles per hour.

These flows have been factored up to 2017 and 2022 and the development traffic added onto the existing flows to give the predicted future impact.

This compares well to tube counts that were undertaken by City and County of Swansea CS on Dunvant Place (in November 2012) which showed 217 movements in the a.m. peak and 258 in the p.m. peak with a 24 hour count of 3142 vehicles. It is reasonable therefore to accept the independent survey results as being a valid assessment of the actual movements.

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- 2.5 The development of 50 flats is predicted to generate 6 arrivals and 10 departures in the morning peak (16 total traffic movements), and 11 arrivals and 8 departures in the pm peak (19 total traffic movements). It is clear therefore that given the volumes of traffic along Duvant Place/Trawler Road that these additional movements represent an increase of approximately 1% in the morning peak (diluted to virtually zero on Oystermouth Road). Similarly in the p.m peak the effect is an increase of 1%, again diluting down to virtually zero impact on Oystermouth Road.
- 2.6 For the year of opening plus five years (2022) due to an increase in traffic on the road in general the impact of the proposal on the highway and congestion is further reduced.
- 2.7 As the retail element is intended to be ancillary to the residential use, and its size is aimed at local shoppers then no trip generation has been included. This assumption was agreed in the scoping for the Transport Assessment.
- 2.8 The fall back position as a working boat yard was not included in the analysis thus the increase in vehicular movements will be offset to a certain degree by the trips generated by the current lawful use. This would have the effect of reducing down the impact even further.
- 2.9 The Transport Assessment has been assessed internally and it was concluded that the proposed development can be accommodated without any detriment to highway safety, nor the efficiency of the signalised junction of Trawler Road/Oystermouth Road.
3. Parking provision.
- 3.1 Parking is provided at 49 spaces for 50 flats, this equates to 98% provision. The sustainability appendix of the Swansea parking standards was completed and demonstrated that a reduction to one space per flat could be justified. Whilst the site is one space short of 100% provision it is not felt that this alone would be a sustainable reason for refusal that could be sustained at appeal
- 3.2 Cycle parking is being provided at 54 spaces for the proposed development and this is well in excess of the current recommended levels of provision for residential apartments/retail use. This will also reduce the dependency on cars and take advantage of the site's location so close to the waterfront.
- 3.3 Due to the confines of the site it was not possible to include visitor parking. Whilst no visitor parking is being provided there are a number of pay and display car parks in the area to accommodate this use. The parking beat survey, as referenced in clause 2.3 identified a large number of car parking spaces available and as the visitor requirement would only have been for 10 spaces (at one space per 5 units) then it was not considered that lack of visitor parking alone was sufficient reason to generate a Highways Reason for refusal that could be sustained at appeal.

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- 3.4 The CCS parking Standards require 1 space per five units and in the notes for guidance it states that 'visitor parking must be designed as an integral part of any development *where is it required*, and must take into account the needs of disabled people.' Thus if there is public car parking availability in the area then this can be used to take up the shortfall in the visitor parking (which is only 10 spaces).
- 3.5 As concern has been raised regarding the lack of visitor parking provision I have consulted with my colleagues who are part of the South Wales Highways Development Control forum for their thoughts. Of the limited responses that I have received both Powys County Council and Bridgend County Borough Council were of the opinion that given the fact that public parking facilities are available then they would not raise an objection to the proposal solely on the basis that visitor parking is not an integral part of the development.
- 3.6 Regarding car ownership in this ward (Castle) the 2011 census showed that 50.6% of all the households did not have access to a car. Given that the parking for the residential uses within this site is 98% (based on one space per flat) then it is reasonable to assume that there will be an element of residents that will not be needing their car parking space, and as such there will be scope to accommodate visitor parking informally within the ground floor layout. To manage the car park it will be a requirement that each parking space is allocated to a particular flat.
- 3.7 As servicing for the unit will take place on Trawler Road (as it the case for the adjacent retail/commercial units) I would recommend a condition restricting the servicing to be outside of the traditional peak hours, i.e. not between 0800 and 0900, and 1700 and 1800 in the interests of highway safety.
- 3.8 The parking layout is in line with adopted standard. Each of the two new access points is intended for one way use only thus minimizing the loss of the on street parking facility, and reducing down the likelihood of obstruction being caused on the adjacent highway of Trawler Road.
- 4 Accessibility / Sustainability
- 4.1 Public Transport movements within reasonable walking distance of the site are considered to be acceptable. There is an hourly service along Trawler Road and a much more frequent service available from the Quadrant. The site is well served for pedestrian footways linking the site to the city centre and the waterfront.
- 4.2 A Travel Plan will be required by condition to promote modes of transport other than the private car by identifying local bus and train facilities and the location of other facilities such as shops, schools, Doctor's surgery, Post Office and Banks. This is standard practice for residential developments.
5. Conclusions
- 5.1 This is a new development site that will add additional traffic movements onto the local highway network. Testing of the main junctions in the vicinity of the site indicate that there will be a very minor impact but the junction will continue to operate within theoretical capacity.

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5.2 In terms of parking, the provision of suitable bike storage plus the car parking (as detailed on the ground floor plan) is considered as adequate taking into consideration the availability of off-site parking to support any visitor usage, plus the Census Statistics for the Castle ward which indicate that 50.6% of households do not own a car. On that basis a recommendation of refusal is not justified.

6 Recommendation

6.1 I recommend that no highway objections are raised to the proposed development subject to the following;

- i. No highway objection subject to the construction of vehicular crossings to Highway Authority Specification.
- ii. The roller shutter doors to have a manual override facility to ensure that in the event of a power failure, vehicles would be able to continue to access/egress the site. Details to be submitted for approval to the LPA.
- iii. The car parking shall be laid out in accordance with the approved plans and maintained for parking purposes only by the residents of that development.
- iv. The cycle parking shall be laid out in accordance with the approved plans and maintained for cycle parking purposes only by the residents of that development.
- v. The applicant be required to submit a Travel Plan for approval within 12 months of consent and that the Travel Plan be implemented prior to the beneficial use of the building commencing.
- vi. Servicing/deliveries shall not take place between 0800 and 0900 and 1700 and 1800 in the interests of the freeflow of traffic.
- vii. The parking for disabled use (3 number spaces) to comply with the current British Standard in terms of layout/materials.
- viii. The parking shall be assigned to individual flats and shall not be sublet.
- ix. The applicant to fund the required changes to the TRO'S fronting the site (in order to facilitate the vehicular access points proposed.)

Note 1: The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary.

Note 2: The Developer must contact the Highway Management Group , The City and County of Swansea , Penllergaer Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Leader , e-mails to, tel. no. 01792 636091

APPRAISAL

The 0.19 hectare application site is located on the northern side of Trawler Road along Fishmarket Quay and faces onto the Tawe Basin Marina. The site until recently was used as a boatyard with associated boat maintenance and chandlery. There is a fenced enclosure around the site perimeter with a boatyard building located in the south eastern corner of the site. The site is bounded to the west by the commercial units along Fishmarkey Quay whilst the residential apartments blocks of St Catherine's Court (Swansea Point) are located on the opposite southern side of Trawler Road. The Marina Boatyard is situated to the east of the site.

The overriding design context within the area is established by the Swansea Point development, which consists of a residential apartment / townhouse development which is predominantly three stories in scale within a contemporary architectural style. The accompanying Design and Access Statement (DAS) states that the proposed development has adopted a similar contemporary design approach and the DAS provides a contextual analysis to the local character and surrounding land uses.

Members will recall that the previous proposal for the construction of a four / three storey block containing 50 residential apartments (Class C3) and 1 no. ground floor retail unit (Class A1) with associated undercroft car parking (ref:2012/1226) was refused planning permission on 3 July, 2014 for the following reasons:

1. The introduction of a residential use in close proximity to existing business uses would be detrimental to the residential amenity that future residents of the proposed development could reasonably expect to enjoy by virtue of the noise, smells and air pollution generated by the existing business operations. The proposal is therefore contrary to Policies EV2, EV40, HC2 and CC1 of the City and County of Swansea Unitary Development Plan (2008).
2. The introduction of a residential use within close proximity to existing business activities, namely the marina boatyard(including the boat hoist operation) and commercial fish market would likely result in nuisance complaints from future occupiers of the proposed residential apartments, which in turn could unduly impact on the operations of those existing businesses, which are of strategic importance to the City and County of Swansea and its adopted vision to make Swansea a vibrant, attractive and distinctive 21st century Waterfront City which capitalises on its waterfront location. The proposal is therefore contrary to Policies EV2, EV40, HC2 and CC1 of the City and County of Swansea Unitary Development Plan (2008).
3. The proposed development fails to provide any off-street car parking for visitors to the development which will lead to an increase in parking on the adjoining highway network to the detriment of highway safety. The proposal is therefore contrary to Policies EV1, EV3, AS6 and CC1 of the City and County of Swansea Unitary Development Plan (2008).

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This revised proposal has now been submitted for consideration which again seeks outline planning permission but with details of access, appearance, layout and scale to be considered at this stage (with details of landscaping being reserved for subsequent submission) to construct a single ground floor retail unit, 50 no. residential units comprising of 3 no. ground floor 'wheelchair accessible' flats, 37 one bed roomed flats and 10 no. two bed roomed apartments within a four storey development with associated landscaping and car parking (49 spaces).

In addition to the DAS, the application is accompanied by a separate Planning Supporting Statement, a revised Noise Impact Assessment, a revised Transport Assessment and an Odour Assessment and Industrial Source Screening Assessment have been submitted. Additionally, a Flood Risk Assessment, Drainage Statement, Summary of Geo-Environmental Site Conditions and Daylight Analysis have been submitted.

The Planning Statement indicates that in order to overcome the first two reasons for refusal, it is proposed to implement noise mitigation measures which include acoustic secondary glazing (as opposed to standard double glazing) and acoustic trickle vents to control the external noise climate, including noise from the existing boat yard and proposed new retail unit, in order to create acceptable internal living conditions. This revised submission has also sought to address air quality and odour issues. The revised Transport Assessment (TA) has sought to justify the car parking provision for the development. In particular, it is indicated that the proximity of public parking facilities both on street and in public pay and displays within and close to Swansea Marina is such that it is considered that there was a plentiful supply of available parking for visitors associated with the proposed development. The TA attempts to evidence this with parking beat surveys which were undertaken in October 2014 which indicate that when the residential demand is at its peak there are between 260 and 306 space spaces (63% - 75%) and when retail demand is at its peak there are 211 unoccupied spaces within 500m of the site (51% available capacity). These issues are addressed in more detail below.

Main Issues

The main issues for consideration relate to whether the proposed development at this location, having regard to the prevailing Development Plan Policies, is an acceptable form of development in urban design terms, the impact upon the residential amenities of existing local residents, the impact upon future occupiers having regard to the existing noise environment generated by business operations within the Marina, and the traffic and highway implications of the development. There are in this instance no additional overriding issues for consideration under the provisions of the Human Rights Act.

Development Plan Policy and Land Uses

National Planning Policy

In line with recent Welsh Assembly Government guidance provided by Planning Policy Wales (PPW) (July. 2014 7th Edition), the redevelopment of the former boatyard, would ensure that previously developed land is used in preference to a greenfield site, and seeks to ensure new housing is well designed, meets national standards for the sustainability of new homes, makes a significant contribution to promoting community regeneration to improve the quality of life, and provides a greater choice and variety of homes in sustainable communities.

Unitary Development Plan (UDP)

The former Spontex site within the Maritime Quarter is allocated for housing development under UDP Policy HC1 (81) and has been substantially built out under the Swansea Point development. However, the application site of the boatyard is not allocated under a specific land use allocation policy. Whilst Policy HC31 encourages the opportunities for the development of water based recreation, there is no specific policy preventing the re-development of this site. Policy HC2 indicates that proposals for housing development within the urban area will be supported where the site has been previously developed or is not covered by conflicting plan policies or proposals provided the proposed development does not result in cramped / overintensive development; significant loss of residential amenity; significant adverse effect on the character and appearance of the area or significant harm to highway safety. The amplification to this policy indicates that this policy offers guidance on the determination of proposals for residential development on unallocated sites, or white land. It seeks to maximise the use of previously developed (brownfield) land and buildings, with higher density encouraged on easily accessible sites within or adjacent to the Central Area. Infill development is defined as the development of land within an existing settlement and within this context, the proposal falls to be considered against the above criteria for urban infill housing.

In terms of considering the design and layout of the proposed development, Policy EV1 of the UDP requires new development to accord with 11 specified objectives of good design, in particular, new development should be appropriate to its local context in terms of scale, height, massing, elevational treatment, materials, and detailing, layout, form, mix and density. Policy EV2 states that the siting of new development should give preference to the use of previously developed land over greenfield sites and should have regard to the physical character and topography of the site and surroundings by meeting specified criteria relating to siting and location. In particular, criteria xiii requires new development to have full regard to existing adjacent developments and the possible impact of environmental pollution from those developments, as well as the creation of any environmental pollution to the detriment of neighbouring occupiers including light, air and noise.

Urban Design

The application seeks outline planning permission but includes details of access, appearance, layout and scale to be considered at this stage (with details of landscaping being reserved for subsequent submission); to construct a single ground floor retail unit (110 sq. m), with 50 no. residential units (comprising of 3 no. ground floor 'wheelchair accessible' flats, 37 one bedroomed flats and 10 no. two bedroomed apartments) with a total of 49 car parking spaces predominantly with an undercroft area (40 spaces) with external 9 spaces. The 3 no. ground floor 'wheelchair accessible' flats would face onto Fishmarket Quay but would be accessed from the undercroft area. The retail unit would be located on the north-eastern corner of the building again fronting onto Fishmarket Quay. The undercroft area (as well as providing access to the apartments on the upper floors) would also accommodate bicycle parking and a bin store. The upper floor apartments would be accessed from a central corridor which allows the apartments to either have an aspect to Trawler Road or over the Tawe Basin.

The overriding design context is dominated by the three / four storey contemporary development of the residential development of Swansea Point and the contemporary appearance of the proposed building is designed to complement that development.

The north-eastern corner of the building provides a visually prominent point to relation to the marine basin, and the building is designed to make a feature of this corner through providing a projecting corner element with a 'gull winged roof' to mimic a feature of the neighbouring architecture. This design feature will create a visual focus on the corner of the building and avoid a monotonous urban form. The projecting ground floor elements to both elevations will provide a strong plinth base to the building. The palette of materials would consist predominantly of brick, render and timber cladding. Whilst being predominantly a four storey development, the elevation adjacent to Fishmarket Quay reduces to three stories to relate to the scale of those existing commercial units, and this is considered to be appropriate. The revised scheme incorporates a series of glazed 'Juliette' balconies on both the Trawler Road and Tawe Basin elevations in order to articulate the building. Being common features throughout Swansea Point and the Maritime Quarter they provide architectural embellishment/articulation and allows occupants an opportunity to better enjoy and interact with this attractive waterside setting.

Affordable Housing

The need for affordable housing is a material planning consideration and an essential element in contributing to community regeneration and social inclusion. The provision of affordable housing is a key priority for the Welsh Government and National Planning Policy in the form of Planning Policy Wales (Edition 7 – July 2014) and Technical Advice Note 2: Planning and Affordable Housing (June 2006) provides the policy guidance.

UDP Policy HC3 states that in areas where a demonstrable lack of affordable housing exists, the Council will seek to negotiate the inclusion of an appropriate element of affordable housing on sites which are suitable in locational / accessibility terms and where this is not ruled out by exceptional development costs. The general threshold is new housing developments of more than 25 units in the urban area are viewed as appropriate for consideration to be given to the inclusion of affordable housing. The requirement to provide affordable housing will depend upon factors such as the site size, suitability and development costs and whether it would prejudice the realisation of other planning objectives. The Local Housing Market Needs Assessment (LHMNA) assessed the dynamics of the housing market in and around Swansea and underpins the Council's Local Housing Strategy and has been adopted as Council policy. The Council's adopted SPG on Planning Obligations establishes an affordable housing target of 25 - 30% of all new developments.

The Head of Housing has confirmed that the proposed development should seek to secure the 30% on-site affordable housing contribution in line with Council's policy. The applicant has confirmed that this is acceptable. Moreover, the Planning Statement indicates that an agreement has been reached with a Registered Social Landlord to deliver the affordable housing in accordance with the Council's policy requirements. The previous scheme was recommended for approval subject to the applicant entering into a Section 106 Planning Obligation in respect of the provision of affordable housing. However, the site is still in Council ownership and it has since been established that the Council cannot covenant with itself in a Section 106 agreement on land within its ownership. Therefore, it is proposed for a condition be imposed, together with an informative within the recommendation, instead of the previous requirement for the completion of a Section 106 Planning Obligation prior to the granting of a planning permission. This will have the effect of securing the necessary obligations as no development can commence until a planning obligation is completed. The Council currently owns the land but does not intend to develop the land itself.

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Planning permission runs with the land so once the Council cease to have a legal interest in the site then it will be able to covenant with the developer to secure the obligations by way of a Section 106 Agreement. It is not a practise that would be utilised in respect of land not owned by the Council and is only suggested here to bridge an anomalous gap in the planning legislation which only affects unitary authorities.

Residential Amenity

Privacy and Daylight Analysis

Turning to the potential impact on privacy, at its closest point, the development would achieve a separation distance (between opposing windows) of approximately 17m to the nearest existing residential property on the opposite side of Trawler Road in St Catherine's Court. This is considered to be a satisfactory distance in a front to front relationship and would not lead to an unacceptable loss of privacy to any existing or planned residential property.

In order to assist in assessing the potential for loss of light to existing properties as a result of the proposed development, a daylighting analysis has been submitted in support of the application (it should be noted that this is the same report submitted under Ref:2012/1226). The analysis identifies five dwellings which are likely to be most affected by the proposed development. These dwellings consist of ground floor flats within the Swansea Point development (St Catherine's Court) situated on the opposite side of Trawler Road.

The analysis acknowledges that it is unavoidable that new developments will have an impact upon the natural light levels within adjacent and nearby properties but as highlighted in the Building Research Establishment (BRE) document Site Layout Planning for Daylight and Sunlight: A Good Practice Guide (2012), it is good practice for this impact to be assessed, considered and minimised.

The BRE document states that wherever possible, various measures of daylight quality should not be unreasonably reduced due to the new development. These measures are:

- i. View of the sky (diffuse light).
- ii. Access to direct sunlight (direct light).
- iii. Average daylight factor (total light).

In order to assess the impact, the analysis has focussed on the worst affected properties within the Swansea Point development and of these, only one room i.e. that of the ground floor bedroom of an apartment, would have an average daylight factor below the British Standard recommended levels as a direct result of the proposed development. It is highlighted however that this room only just meets the target as existing and that any meaningful development of this site will inevitably lead to a reduction in daylight levels.

It is highlighted that of the other rooms which were part of the average daylight analysis, nine would remain above the recommended values and six were already below the recommended minimum level prior to development of the proposed site. The conclusion of the Daylight Analysis is that the further incremental decrease in average daylighting is not significant.

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The analysis concludes that the number of probable sunlight hours experienced by the majority of the apartments in Swansea Point would be largely unaffected by the proposed development, and of those affected, their reduction would be within the levels considered acceptable within the aforementioned BRE document.

With regard to the view of the sky from the ground floor rooms, this will be reduced to an extent greater than that recommended by BRE, but this is acknowledged as very difficult to avoid when constructing a new building within a built up area.

The reduction in sky view can however be expected to be less severe in the higher floor apartments and in addition, the view of sky reduction has shown to not have any major impact upon the average daylight factors expected to be achieved and as such would not result in an unacceptable loss of daylight to the existing properties along Trawler Road such as to warrant refusal of this application.

Further weight is given to this conclusion within the Daylight Analysis given the relatively small number of properties affected by the proposed development and when combined with the beneficial effect of reflected light on brighter / sunny days, the average impact on the whole of the north facing apartments of the Swansea Point development is expected to not be significant.

Representations have been received that Table 2 within the Daylight Analysis is inaccurate in that the final column in Table 2 *does not in fact give the % reduction between existing and proposed levels but merely deducts proposed from existing – so the % reductions are in reality much higher than stated and way over the BRE 20% recommendation.* This point has been clarified with the agents / consultants who indicate: *“The information presented in Table 2 is correct. The percentage reduction presented in the final column of the table is not measuring the percentage difference between the Existing and Proposed columns, but is instead a measure of the difference in sunlight hours experienced, presented as a percentage of the total hours in a year. e.g. The lounge of Dwelling 2 experiences a difference of only 0.1% of its annual hours. The room currently experiences direct sunlight for 10.1% of hours in the year, and after the proposed development, would still get access to sunlight for 10.0% of hours in the year. The reduction is therefore only 0.1% of hours in the year (10.1% – 10.0%).”*

Notwithstanding this, the Daylight Analysis is not the only means of assessing the impact on the residential amenities of the existing neighbouring properties. As indicated above, the upper three floors of the development would achieve a minimum separation distance of approximately 17m to the properties on the opposite side of Trawler Road in St Catherine's Court. This is a satisfactory distance in a front to front relationship and would not lead to an unacceptable loss of privacy to any existing or planned residential property. Similarly, the scale and massing of the proposed development would be compatible to the adjacent Swansea Point development and as such would not result in a physically overbearing form of development.

Noise

UDP Policy EV2 requires new development to have regard to the physical character and topography of the site and its surroundings and under criteria xiii, development must have full regard to existing adjacent developments and the possible impact of environmental pollution from those developments, as well as the creation of any environmental pollution to the detriment of neighbouring occupiers (including light, air and noise).

Additionally, UDP Policy EV40 states that 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. The amplification to the policy states: *“where proposed development is to be located in close proximity to a source of noise pollution, or includes possible noise conflicts within the proposed site, proposals will be required to incorporate design, landscaping and other measures to minimise the effects on future occupants. The layout of buildings can frequently be designed or modified to reduce the effects of noise disturbance. Similarly, schemes can be designed to incorporate materials, features and landscaping which reduce the impact of noise on the surrounding buildings. Where there are potential noise implications, developers may be required to provide an assessment of noise impact, together with proposals for mitigation in support of planning applications. Planning permission will be refused if the Council is not satisfied with the results of the assessment and proposed mitigation measures. Notwithstanding the use of good design and materials, there will be some instances where new residential and other noise sensitive uses such as hospitals and schools will not be acceptable in close proximity to existing noise generating uses or activities.”*

In accordance with Unitary Development Plan Policy EV40, the application is accompanied by a Noise Impact Assessment (NIA) in order to measure and assess the impact of noise at the proposed site. In terms of context, the site is bounded by Fishmarket Quay to the west, which consists of 5 commercial units, one of which is a fishmonger retail unit which operates from early morning. On the other side, Swansea Marina boatyard operates during the day, 7 days a week and includes a boat hoist which is situated immediately adjacent to the site. It is indicated that the boat yard activities usually finishes by 16.00, although is not limited to set hours.

The NIA indicates that the existing noise levels impacting on the proposed development consists mainly of traffic noise from Trawler Road, the general noise from the marina and the general activity from the boatyard. Consideration is also given to resident’s car movements in and out of the car park and potential mechanical equipment associated with the A1 retail unit. Background noise measurements were undertaken at two positions to the south east and south west of the proposed development over a 72 hour period to establish the existing underlying background noise levels. At the south east position, the maximum day time levels were found to be $L_{Aeq, 16 \text{ hours}} 62 \text{ dB}$ and the maximum night time levels were found to be $L_{Aeq, 8 \text{ hours}} 58 \text{ dB}$. At the south west position, the maximum day time levels were found to be $L_{Aeq, 16 \text{ hours}} 60 \text{ dB}$ and the maximum night time levels were found to be $L_{Aeq, 8 \text{ hours}} 57 \text{ dB}$. The NIA indicates that due to these relatively high ambient noise levels, it is recommended that the development incorporates all glazing with double glazed units fitted with acoustic vents and internal sound insulation, and concludes that the proposed mitigation measures in terms of acoustic secondary glazing and acoustic trickle vents will adequately control the external noise climate including the noise from the existing boatyard and proposed A1 retail unit, resulting in acceptable internal living conditions as per British Standard 8233:2014. Additionally, the resultant external levels are within Noise Category B of TAN11.

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As indicated above, the previous proposal was refused not only due to the potential detrimental impacts to the residential amenity of the future residents due to them being adjacent to existing business activities, but also due to the potential impact on the neighbouring commercial operations, by introducing a neighbouring residential use which may result in nuisance complaints from future occupiers of the proposed residential apartments. Therefore these issues remain significant material considerations for this application.

The Divisional Head of Pollution Control, Housing and Public Health acknowledges that the site is subjected to industrial noise from neighbouring activities and does require a degree of insulation to ensure that all the habitable rooms can be occupied without nuisance. The conclusions of the Noise Impact Assessment are accepted and it is agreed that suitable acoustically insulated window design will be necessary and this may be controlled through a planning condition. This would of course control internal noise levels and if the occupants choose to open those windows then they may do so. To conclude, the proposal introduces a noise sensitive use alongside existing noise generating uses and could result in complaints from future residents which could impact upon the operation of the boatyard as a business as indicated above. However, subject to the imposition of planning conditions to ensure that the measures are incorporated to control the acoustic amenity of future residents it is concluded that on balance the incorporation of the additional measures would render a recommendation of refusal to be unsustainable.

Odour

This revised scheme has been accompanied by an Odour Assessment in order to identify the risk of potential odour impacts on future residents of the proposed development resulting from activities in the immediate area. In particular, it presents the findings of a number of 'sniff-tests' carried out at 20 locations within the development site and the surrounding area, including near to extraction vent and door of the fishmarket.

As indicated above, UDP Policy EV2 requires new development to have regard to the physical character and topography of the site and its surroundings, and under criteria xiii, development must have full regard to existing adjacent developments and the possible impact of environmental pollution from those developments, as well as the creation of any environmental pollution to the detriment of neighbouring occupiers (including light, air and noise). Additionally, UDP Policy EV40 states that 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.

The methodology for the assessment are based on the potential sources of odour from the fishmarket in Fishmarket Quay ('Swansea Fish Ltd.'). The results of the 'sniff-tests' indicated that whilst odours generated by Swansea Fish Ltd were detected at the development site, they were only detected close to the western boundary, and not more than 5m from the site boundary. Odours were experienced to escape from the front door of the premises, and the conclusion of the assessment is that the overall risk of odour impacts on future residents would be negligible and should not provide a constraint to the residential development.

Representations have been received indicating that the Odour Assessment does not specifically have regard to the fish smoking operation by Swansea Fish Ltd. In response to this, the agents / consultants have responded: *Sniff tests were carried out along diagonal transects in order to cover the whole site, and in particular at locations near to the extraction vent and door of Swansea Fish Ltd. Sniff tests were carried out along the transects multiple times during each site visit day to take account of possible varying operations at the fish market at different times of day. The data presented with the assessment represent the worst-case odour conditions recorded at each of the 20 sniff test locations during any of the multiple sniff tests conducted on each site visit day.*

The Divisional Head of Pollution Control, Housing and Public Health has highlighted that it is difficult to construct any appropriate scientific model which could reliably predict odour nuisance over such short distances and between buildings and that any future odour complaint cannot be ruled out but it is difficult to forecast that with any certainty. It is acknowledged that the development may result in some degree of complaint from odour (and possibly noise), however, it is not likely enough to justify refusal of this application.

Highway Considerations

Concerns have been expressed indicating that Trawler Road cannot handle any more traffic and that further traffic movements will hinder access onto Oystermouth Road at the Dunvant Place junction. To consider this, the application has been accompanied by a Transport Assessment (TA) in order to outline the transport issues of the proposed development and to identify the likely impact of the proposals on the local transport network. The TA has also incorporated a parking beat survey in order to determine the existing parking demand within the vicinity of the site.

The Transport Assessment has considered the impact on the Trawler Road (Dunvant Place) / Oystermouth Road Junction as this is the sole access in and out of the marina. The assessment has been undertaken in accordance with nationally accepted standards and best practice where committed traffic and development traffic is added to base traffic movements and the efficiency of the junctions. The output gives an indication of the degree of saturation at the junction and predicted queuing. All testing is undertaken during the am and pm peak periods. The development has been checked for the year of opening (2017) and five years later (2022); this is standard practice. The base traffic flows are factored using growth factors and the trip rates are calculated using the TRICS database which is a nationally used software package. The report outlines the transport characteristics of the proposed development and the likely impact on the local transport network.

In order to measure the traffic flows, a manual count was undertaken at the A4067 Oystermouth Road / Dunvant Place junction on behalf of the developer in October 2012.

- Flows of 4688 vehicles on Oystermouth Road were recorded in the a.m. peak (0730 to 0930) which averages out at 2344 per hour.
- Flows of 5680 in the p.m. peak (1630 to 1830) which averages out at 2840 vehicles per hour.
- Flows of 447 vehicles were recorded on Dunvant Place in the a.m. peak (0730 to 0930) which averages out at 224 vehicles per hour
- Flows of 578 in the p.m. peak (1630 to 1830) which averages out at 289 vehicles per hour.

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The Head of Transportation has indicated that these flows have been factored up to 2017 and 2022 and the development traffic added onto the existing flows to give the predicted future impact and confirms that the survey results were a valid assessment of the actual movements.

The TA indicates that the development of 50 flats is predicted to generate 6 arrivals and 10 departures in the morning peak (16 total traffic movements), and 11 arrivals and 8 departures in the pm peak (19 total traffic movements). The Head of Transportation highlights that the additional volumes of traffic along Duvant Place/Trawler Road would represent an increase of 7% in the morning peak (diluted to virtually zero on Oystermouth Road), with an increase of 6% within the p.m. peak, which is diluted down to virtually zero impact on Oystermouth Road. The Head of Transportation also highlights that the fall back position as a working boat yard was not included in the analysis, thus the increase in vehicular movements will be offset to a certain degree by the trips generated by the current lawful use. This would have the effect of reducing down the impact further.

The Head of Transportation concurs with the conclusions of the TA, in that the traffic from the proposed development can be accommodated on the surrounding highway network without any detriment to highway safety or the signalised junction of Trawler Road/Oystermouth Road.

Car Parking

Car parking is provided at 49 spaces (3 of which will be designated as disabled parking bays) for 50 flats, this equates to 98% provision. Cycle parking is also indicated as 54 spaces within the undercroft area. It is proposed to provide 40 spaces within an undercroft parking area with separate entrance and exit onto Trawler Road. The Head of Transportation indicates that this arrangement would be adequate for two way flow thus allowing vehicles to pass and reduce the likelihood of obstruction being caused on the adjacent highway.

The remaining 9 surface parking spaces will be located along the eastern boundary accessed from the boatyard access to the east of the site. Access to the undercroft parking will be controlled through automated roller shutters, whilst the surface parking will be controlled through the use of lockable bollards. It is indicated that the apartments and retail unit would be serviced from Trawler Road and the Head of Transportation recommends a condition restricting the servicing to be outside of the traditional peak hours, i.e. not between 0800 and 0900, and 1700 and 1800, in the interests of highway safety.

The TA incorporates a sustainability assessment in accordance with the Council's parking standards. The car parking standards for the proposed 40 no. one bedroom apartments and 10 no. two bedroom apartments would require 60 spaces, however, based on the sustainability criteria of accessibility to local facilities and public transport, a reduction to one space per flat is considered to be justified (50 spaces required). Whilst the site is one space short of 100% provision, the Head of Transportation considers that this would not constitute a sustainable reason for refusal that could be sustained on appeal. Additionally, the cycle parking is being provided at one cycle space per flat and is well in excess of the current recommended levels of provision for residential apartments and this will also reduce the dependency on cars.

The proposal does not provide any specific visitor parking, although there are a number of pay and display car parks in the area and there is some on street parking available along Trawler Road. The parking beat survey, submitted as part of the TA, has identified a large number of available car parking spaces (409 car parking spaces within a 500m radius of the site), although whilst some of these spaces were not available to the public, there are still a number of car parks in the area that are available to accommodate visitor parking. The visitor requirement under the CCS parking guidelines would require 10 spaces (at one space per 5 units) and in the notes for guidance it states that '*visitor parking must be designed as an integral part of any development where is it required, and must take into account the needs of disabled people.*' Thus if there is public car parking availability in the area then this can be used to take up the shortfall in the visitor parking (which is only 10 spaces). The Head of Transportation has highlighted that car ownership in the Castle ward showed that 50.6% of all the households did not have access to a car. Given that the parking for the residential uses within this site is 98% (based on one space per flat) then it is reasonable to assume that there will be an element of residents that will not be needing their car parking space, and as such there will be scope to accommodate visitor parking informally within the ground floor layout. Therefore on balance it is considered that the parking provision would be adequate taking into consideration the availability of off-site parking to support any visitor usage, and that the lack of visitor parking alone was not a sufficient reason to generate a reason for refusal.

Flood Risk

Under Policy EV2 new development must have regard to whether the proposal would be at risk from flooding, increase flood risk off-site, or create additional water run-off. Similarly Policy EV36 states that 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.

A Flood Risk Assessment (FRA) has been submitted with the application, and Natural Resources Wales (NRW) confirm the site of the proposed development is situated in Zone A on the development advice map and is not currently considered to be at risk in flood events up to the 0.1% (1:1000) event. However, the FCA acknowledges that the access from Trawler Road is shown to be risk of flooding when emergency access may be restricted. In order to ensure the safety of all future residents, NRW recommend that a flood management plan be submitted to the Local Planning Authority, which should incorporate details of flood warning and emergency access / evacuation arrangements. This could be controlled by condition.

Other Issues

Site Investigation

The application is accompanied by a summary of Geo-Environmental ground conditions to provide preliminary information on potential ground hazards which could impact on the proposed development. This indicates that ground investigation, observation and testing has not indicated unacceptable levels in the soils beneath the site and the risks to the health of future site users are considered low and no specific remedial measures are anticipated. It is worth noting that the Natural Resources Wales consultation response has indicated that based on the submitted study, they are comfortable that the proposal will pose no risk of pollution of controlled waters as a result of contaminated land.

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Dock Wall Stability

Consideration has been given to the stability of the dock wall and it is indicated that the dock wall construction is likely to be of substantial construction and recommends that the proposed development will require piled foundations and the majority of similar developments have been safely developed in this way. It is considered that this issue may be covered by planning condition.

Conclusion

Having considered the application in detail and having had regard to the objections received, overall it is considered that the final detailed designs represents an acceptable urban design solution to the site in terms of scale, building mass and detailed elevational design. The new development would provide adequate car parking and the conclusion of the Transportation Section is that the additional traffic from the development will not significantly impact on the capacity of the local highway network. As outlined above, it is not considered that the development would result in an unacceptable loss of residential amenity to any existing residential property having regard to the scale and design of the new development and its juxtaposition with those properties.

The fundamental concern of the proposed development is that the proposal has the potential to introduce noise sensitive residential apartments in close proximity to existing noise generating activities associated with existing business operations, namely the marina boatyard, including the boat hoist operation and associated uses, and the commercial fish market. However, subject to the imposition of planning conditions to ensure that the measures are incorporated to control the acoustic amenity of future residents, it is concluded that on balance the incorporation of the additional measures would render a recommendation of refusal to be unsustainable.

Approval is therefore recommended.

RECOMMENDATION

The application be APPROVED, subject to the conditions:

- 1 Details of the landscaping of the site (hereinafter called "the reserved matter") 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 The application for approval of the reserved matter (i.e. the landscaping works) shall be made to the Local Planning Authority not later than 3 years from the date of this permission. The reserved matter application shall include all details of the external surfaces to the undercroft and car parking areas, pedestrian areas and any external lighting.

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.

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- 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 reserved matter, 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 The development shall be carried out in accordance with the following approved plans and documents: Site location plan - AS.15; Site Plan - AS.00; Existing Site Plan - AS.01; Level 00 Plan - AL.00rev. E; Level 01 Plan - AL.01 rev. J; Level 02 Plan - AL.02 rev. G; Level 03 Plan - AL.03 rev. G; Level 04 Plan - Roof AL.04; Elevation 03 / Sections - AE.01 rev A (Rev. B); Elevations 01 & 02 AE.00 rev. B.

Reason: To define the extent of the permission granted.

- 5 Notwithstanding the details shown on any approved plan, the precise location, extent, height and design of all means of enclosure, including the vehicular entrance and exit gates, and the enclosure to the undercroft parking area, shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of any superstructure works. All of the means of enclosure shall be built and installed in accordance with the approved details, before any of the flats hereby approved are occupied.

Reason: In the interests of visual amenity and general amenity.

- 6 Notwithstanding the details shown on any approved plan, samples of all external finishes, including windows and doors and the precise pattern and distribution of the external finishes shall be submitted for the written approval of the Local Planning Authority, prior to the development of superstructure works. If following the submission of the sample materials, the Local Planning Authority requires the provision of a composite sample panel, this shall be provided/built on site.

The development of superstructure works shall not commence until the Local Planning Authority has agreed all external finishes, and the approved sample panel shall be retained on site for the duration of the works, unless otherwise agreed in writing by the Local Planning Authority.

The development shall only be carried out in accordance with the agreed details.

Reason: In the interests of visual amenity.

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ITEM 1 (CONT'D)

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7 Prior to the commencement of any superstructure works, details at an appropriately agreed scale of the following elements shall be submitted to and agreed in writing by the Local Planning Authority:

- A typical window unit within its opening;
- Typical external door within its opening;
- Typical balcony construction and balustrade detail;
- Precise design and location of the rainwater goods;
- Glazed shop front and fascia;
- PPC metal fascia and soffit;
- Louvre panels and any ventilation grilles;

The development shall be carried out in accordance with the agreed details unless otherwise agreed by the Local Planning Authority.

Reason: In the interests of visual amenity.

8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking or amending that Order), Part 25 of Schedule 2 shall not apply, and if required, the installation of any satellite antenna shall comprise of a single satellite television system solution to serve each residential block in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to its installation.

Reason: The development hereby approved is such that the Council wish to retain control over any future development being permitted in order to ensure that a satisfactory form of development is achieved at all times.

9 The vehicular crossings over the existing footpath shall be completed before any of the development is occupied and shall be constructed in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason: In the interests of highway safety.

10 Prior to the occupation of any part of the development hereby approved, the on-site car parking shall be laid out within the development site in accordance with the approved plan - Level 00 Plan (Drwg. No. AL.00.Rev. E - rev. F), with the incorporation of 3 disabled parking bays and shall be retained as such for that purpose at all times thereafter.

Reason: To ensure adequate on site car parking provision in the interests of highway safety.

11 Prior to the occupation of any part of the development hereby approved, the on site cycle parking facilities shall be provided within the development site in accordance with the approved plan - Level 00 Plan (Drwg. No. AL.00.Rev. E - rev. F) and shall be retained as such for use by the residents of the development hereby approved.

Reason: To ensure adequate on site car parking provision in the interests of highway safety.

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ITEM 1 (CONT'D)

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- 12 A scheme for the management of the access to the undercroft and surface car parking area, along with the servicing of the site shall be submitted to and agreed in writing by the Local Planning Authority. The roller shutter doors and other form of automated enclosure shall incorporate a manual override facility to ensure that in the event of a power failure, vehicles would be able to continue to access and egress the site in accordance with details to be submitted as part of the management scheme. The agreed scheme shall be implemented at all times following the commencement of development.

Reason: To maintain the free flow of traffic on the highway.

- 13 Servicing / deliveries to the retail unit shall not take place between 0800 and 0900 hours and 1700 and 1800 hours, unless otherwise agreed by the Local Planning Authority.

Reason: In the interests of the free flow of traffic.

- 14 A travel plan shall be submitted to and agreed in writing by the Local Planning Authority prior to any of the flats being occupied or the retail unit being brought into beneficial use. The recommendations and suggested actions contained within the agreed Travel Plan (to include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary) shall be fully implemented by the developer thereafter.

Reason: In order to reduce car borne traffic and encourage other modes of transportation in the interests of sustainability.

- 15 The development hereby approved shall not be occupied until a scheme for the comprehensive and integrated foul water, surface water and land drainage for the site has been implemented in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Foul water and surface water discharges must be drained separately from the site and no surface water shall be allowed to connect (either directly or indirectly) to the public foul sewerage system. No land drainage run-off will be permitted, either directly or indirectly, to discharge into the public foul sewerage system.

Reason: To ensure a satisfactory means of drainage.

- 16 A flood management plan shall be submitted to and approved in writing by the Local Planning Authority prior to the beneficial occupation/use of any part of the development commencing. The plan should include flood warning, emergency access / evacuation arrangements and clear responsibilities. The agreed plan shall be communicated to all occupiers of the proposed flats and the retail unit, in accordance with details to be agreed by the Local Planning Authority prior to the beneficial occupation/use of any part of the development commencing.

Reason: To ensure that the consequences of flooding can be acceptably managed.

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- 17 Prior to the commencement of superstructure works, details of the sound attenuation properties of the windows and doors and external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
Reason: To ensure reasonable noise levels are met within the proposed development in the interests of the residential amenities of the future occupiers.
- 18 Prior to the beneficial occupation of the Class A1 retail unit, a scheme for protecting residential units from noise generated by any plant requirement shall be submitted to and approved in writing by the Local Planning Authority. Any subsequent plant installed shall incorporate the agreed scheme, and shall be maintained as such at all times thereafter.
Reason: In the interests of residential amenity.
- 19 Prior to the commencement of demolition/construction works on the application site, a Construction Pollution Management Plan (CPMP) should be submitted to and approved in writing by the Local Planning Authority. The CPMP shall include the following:
- a) Demolition/Construction programme and timetable;
 - b) Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas etc;
 - c) Traffic scheme (access and egress) in respect of all demolition/construction related vehicles;
 - d) An assessment of construction traffic generation and management in so far as public roads are affected, including provisions to keep all public roads free from mud and silt;
 - e) Proposed working hours;
 - f) Principal Contractor details, which will include a nominated contact for complaints;
 - g) Details of all on site lighting (including mitigation measures) having regard to best practicable means (BPM);
 - h) Details of on site dust mitigation measures having regard to BPM;
 - i) Details of on site noise mitigation measures having regard to BPM;
 - j) Details of waste management arrangements (including any proposed crushing/screening operations); and
 - k) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by the Principle Contractor on the Local Authority.
- Reason: In the interest of the residential amenities of neighbouring occupiers.
- 20 Prior to the commencement of development, details of the proposed method of piling or other foundation design for the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The proposed development shall be completed in accordance with the approved scheme.
Reason: In order to safeguard the stability of the existing dock wall of the Tawe Basin.

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ITEM 1 (CONT'D)

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- 21 Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

Reason: To demonstrate that the remediation criteria relating to any site contamination have been met (if necessary). To ensure that there are no longer remaining unacceptable risks to public safety following remediation of the site.

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV3, EV4, EV34, EV40, HC1, HC2, HC3, AS1, AS2 and AS6.
- 2 Written approval of an affordable housing scheme referred to in Condition 23 will need be secured by entering into an appropriate Section 106 Planning Obligation.
-

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ITEM 2

APPLICATION NO.

2014/1906

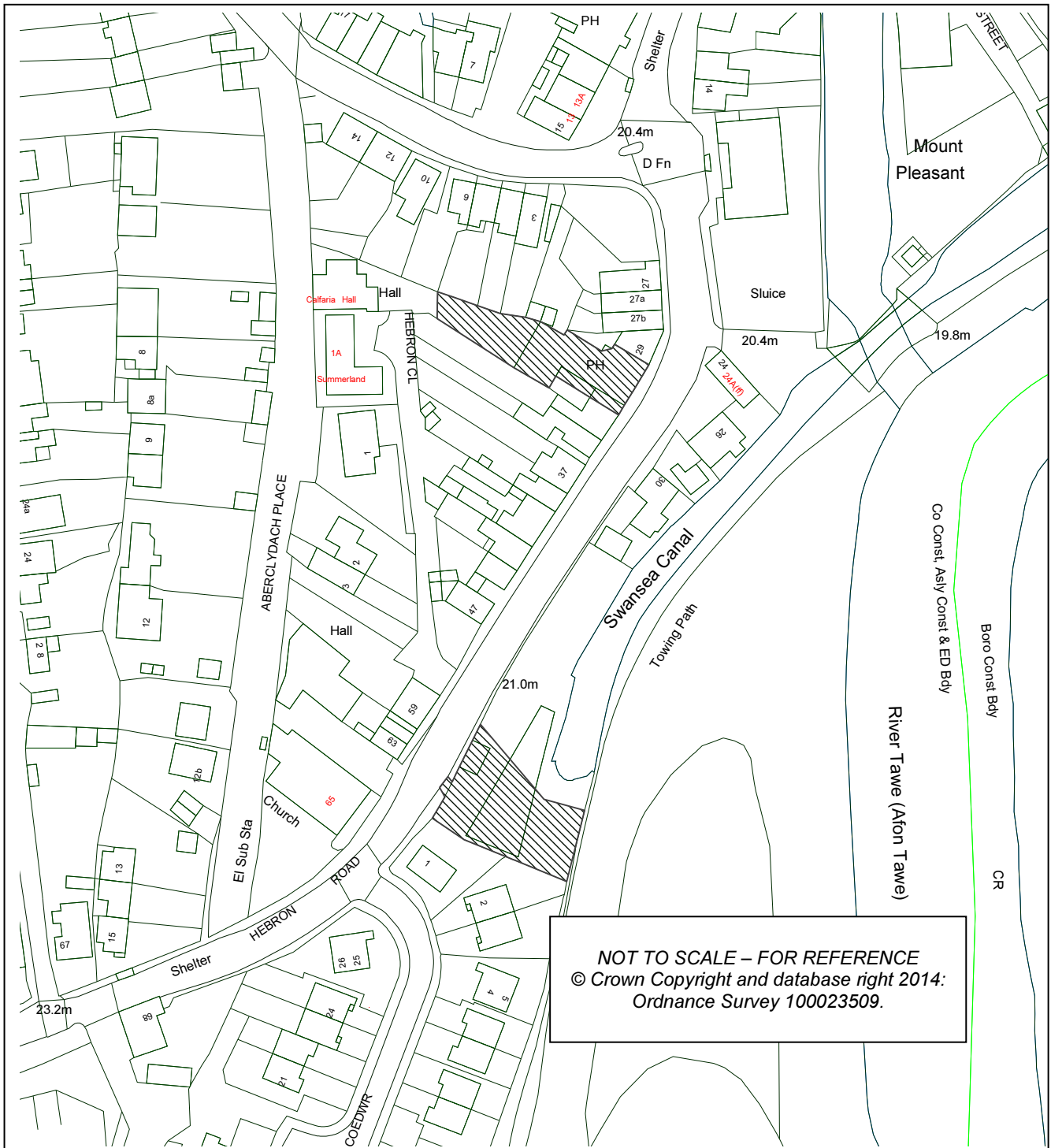
WARD:

Clydach

Location: 31 Hebron Road and land opposite 59-63 Hebron Road, Clydach, Swansea SA6 5EJ

Proposal: Change of use of public house (Class A3) to an 8 bed care home (Class C2), demolition of part of building at land opposite 59-63 Hebron Road and creation of separate car parking area to be used in association with the care home

Applicant: Mr T Heath



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ITEM 2 (CONT'D)

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BACKGROUND INFORMATION

POLICIES

Policy	Policy Description
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 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 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 HC15	Proposals for new and improved local community and health facilities will be supported subject to compliance with a defined list of criteria including access ability, significant impact on amenity, significant effect on natural heritage and historic environment and impact on adjacent road network. (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)

SITE HISTORY

App No.	Proposal
2001/1428	Amended house type (Amendment to planning permission 99/0469 granted 18th June 1999) Decision: Grant Permission Conditional Decision Date: 24/10/2001

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ITEM 2 (CONT'D)

APPLICATION NO.

2014/1906

97/1608

TWO SINGLE STOREY REAR EXTENSIONS

Decision: *HGPC - GRANT PERMISSION CONDITIONAL

Decision Date: 20/04/1998

This application is reported to Committee as it was called in by Cllr Paulette Smith under the previous scheme of delegation to allow Members to consider the impacts of the proposal on highway safety and residential amenity. A site visit has also been requested.

RESPONSE TO CONSULTATIONS

The application was advertised on site and thirteen neighbours were consulted. NINE LETTERS OF OBJECTION have been received including one letter from Clydach Community Council, and a PETITION OF OBJECTION CONTAINING 33 SIGNATURES. TWO LETTERS OF COMMENT has been received. The letters are summarised below:

1. The proposed development would have an adverse affect on the privacy, safety and access to No. 33 Hebron Road.
2. Concerns the applicant has no intention of using the proposed car park on the opposite side of the road.
3. Parking in the area is a significant problem due to visitors of the climbing centre, Forge Fach and Fadre rugby club. The proposed development would increase parking pressure in the area from staff and visitors.
4. The proposed development would create more noise from cars and coming and goings to the premises at all times.
5. Concerns regarding the nature of the proposed use and that children should not feel unsafe playing in neighbouring gardens.
6. Concerns regarding a loss of privacy to neighbouring properties.
7. Concerns the use of the building and the intended occupiers is not clear. The application refers to a care home but doesn't state what type of care home is proposed. There is a concern the premises may be occupied by sex offenders, drug abusers or young offenders.
8. There is no mention of how the applicant will ensure the parking area will only be used by staff and visitors to the proposed care home, nor is there mention of how the applicant will treat the Japanese knotweed on the site.
9. Concerns regarding where waste will be stored and whether a commercial waste collection would be required.
10. Concerns regarding how the cellar will be dealt with.
11. Concerns there may be a culvert and the applicant may not have taken this into account in this proposals.
12. The area proposed for parking hasn't been used for any purpose for years so there has been no traffic associated with it. Assumptions about potential traffic as a result of its potential use for storage are no more than guesses based on no evidence. Concerns, for this reason, the comments should carry no weight.

Other consultation responses:

Planning Ecologist 20.01.15

The buildings to be demolished have potential to be used as bat roosts

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Please request a survey of protected species (for the buildings to be demolished only) and should any protected species be found full plans for mitigation. If bats are found plans must be submitted describing the proposed bat mitigation including the roosting provision for the species identified. These should include the exact location, dimensions and nature of bat access points and bat roost spaces. These need to be shown on architectural drawings and block plans for the buildings.

If evidence of bats are found Natural Resources Wales should be consulted prior to planning permission being given. Bat surveys must be carried out by an experienced bat worker having the competencies listed in the IEEM "Competencies for Species Survey: Bats" They must hold a current roost visitors licence, and must follow the survey guidelines published by the Bat Conservation Trust (2007).

Planning Ecologist 19.03.15

I think because of the state of the building and the findings of the surveyor an informative statement (see below) will be sufficient. Much of the roof has been damaged letting light and weather in there may be some opportunities for bat roosts but I think these are likely to be occasional. The building doesn't appear suitable for either maternity or winter roosting.

Canal and River Trust 22.01.15

After due consideration of the application details, the Canal & River Trust has the following general **comments** to make:

The Canal & River Trust has no objection to the conversion of the Public House but has some concerns regarding the work to create the associated car park.

The car park is adjacent to our land and the building to be demolished is attached to a building on our land. We are concerned that this proposal may include or impact on land and buildings within our ownership. Our land includes operational structures and may become more important if the canal is restored in the future as it could be needed for access to the towpath or as a turning point for boats.

I will contact the applicant/agent to discuss this proposal further and how it may impact on our usage of the remainder of the building or access to it.

Swansea Canal Society 23.01.15

1. The Society has no comments on the change of use of the public house opposite the Canal and River Trust depot at 28 Hebron Road to an 8 bed care home.
2. Our concerns centre on the demolition of part of the building opposite 59-63 Hebron Road. This derelict building is a few metres from the canal itself. A part of this one-storey building is owned by the Canal and River Trust. This part (if restored) can be of value to the Society in the future. We do not object to the use of the land adjacent as a car park for four cars but we would want to see that there will be no further damage to the part of the building owned by CRT in the process of the demolition or building of the car park.

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3. We are concerned that the demolition of part of the building may cause contamination to the canal behind the building. Strict controls must be in place to prevent any damage to the water or wildlife on the canal. The presence of any asbestos in the building would have to be checked. No rubble or waste material should enter the canal.
4. We note that the southern side of this building which used to allow access over the canal at its terminus has now been closed off. The right of way here has to be checked as public access would be an encouragement for visitors to see the canal on the tow path side from the new car park.
5. Access to the remaining part of the building owned by the Canal and River Trust must be protected via the new car park or elsewhere.

The Society has no objection to part of the derelict building that has been an eyesore for some time being used for a useful purpose. I am sure others have commented on the problems of access and egress from the new car park on to Hebron Road and these need to be addressed. We have no objection to a four car car-park built as long as all CRT property is protected and the canal itself is not damaged or polluted or filled with rubble.

Natural Resources Wales (NRW) 26.01.15

We would ask that determination of the application is deferred until a Flood Consequences Assessment (FCA) is provided for review and comment, along with confirmation that the two bedrooms on the ground floor will be removed from the application. We also recommend that an assessment of the building to be demolished, is carried out to identify any potential use by bats.

Flood Risk

The site is located within zone C2, as defined by the development advice maps referred to under TAN 15 Development and Flood Risk (July 2004). Our Flood Map information, which is updated on a quarterly basis, indicates the site to be at risk of flooding in the 0.1% flood event.

We note that the proposal is for the conversion of an existing pub with residential accommodation on the first floor to an 8 bedroom care home. Whilst we acknowledge that there is no change in vulnerability as a result of the development (which will remain classed as highly vulnerable), we must highlight that the proposal will result in an intensification of use and bring more people into a flood risk area. In addition to this, as the proposal is for a care home, the residents will be of a more vulnerable nature and therefore this needs to be taken into consideration when assessing the management of the site during a flood event.

We note from the plans that the proposal includes two bedrooms located on the ground floor. We would request that these bedrooms are removed as we cannot permit ground floor sleeping in a flood risk area. **If these bedrooms are not removed from the plans we would recommend refusal of this application on flood risk grounds.**

Notwithstanding this, given that the proposal will bring more people who are of a vulnerable nature into a flood risk area, we would advise that the flood risk at the site is quantified and fully understood through the production of a Flood Consequences Assessment (FCA).

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The FCA will need to be prepared by a suitably qualified person carrying a professional indemnity, in order to fully understand the potential flood risks to the site and to demonstrate that the flood risk can be acceptably managed in line with TAN15.

The FCA should also be used to inform a detailed Flood Management Plan for the site which should demonstrate how the site can be safely managed/evacuated should a flood event occur. This plan should be approved by your Authority prior to determination of the application.

Surface Water Disposal

We acknowledge that the surface water system is existing, but should any opportunity exist to divert the surface water from the main sewer to, for example soakaway (if ground conditions are acceptable), then it should be taken. Section 8 of TAN15 advocates the use of Sustainable Urban Drainage Systems (SUDS) in the management of surface water from a site. Developers must give a good reason as to why SUDS cannot be utilised on a site and a conventional drainage system must improve upon the existing status quo.

Foul Water Disposal

We note that foul water flows are to be discharged to the main public sewer. We would recommend that Dwr Cymru/Welsh Water (DCWW) are consulted and asked to confirm that there is sufficient hydraulic capacity within the sewer network at this location to accommodate the flows generated without causing pollution. We would also recommend that the applicant contact DCWW to ensure a trade effluent consent is applied for.

Protected Species (Bats)

We also note that the proposal will involve the demolition of part of a building on land which is opposite 59-63 Hebron Road. Given the condition and location of this building it is recommended that an assessment of the building is carried out to identify any potential use by bats. The survey/assessment should be carried out by a suitably qualified individual. It is particularly important to ensure that all survey work is carried out in accordance with published guidance, where this exists, and best practise.

Bats are a European Protected Species (EPS) and it is an offence to injure or kill the species, to disturb it, or to damage or destroy their breeding or resting place. In such circumstances, development may only proceed under a licence issued by NRW, having satisfied three requirements set out in the legislation.

In consideration of the above we would ask that determination of the application is deferred until the additional information and confirmation requested above, is provided.

NRW 4.08.15

We do not object to the above proposal, but we do wish to make the following comments.

Flood Risk

The site is located within zone C2, as defined by the development advice maps referred to under TAN 15 Development and Flood Risk (July 2004). Our Flood Map information, which is updated on a quarterly basis, indicates the site to be at risk of flooding in the 0.1% flood event.

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Whilst we acknowledge that there is no change in vulnerability as a result of the development (which will remain classed as highly vulnerable), we must highlight that the proposal will result in an intensification of use and bring more people into a flood risk area. In addition to this, as the proposal is for a care home, the residents will be of a more vulnerable nature and therefore this needs to be taken into consideration when assessing the management of the site during a flood event.

An FCA, entitled; '*Hebron Road, Clydach: Flood Consequence Assessment (Ref. FMW 1634)*', dated July 2015, has been prepared by FMW Consultancy in support of the application.

Our previous concerns with regards to this development were that ground floor sleeping accommodation was proposed. However, we note that the FCA has explored this issue in further detail and we acknowledge that the proposed ground floor bedrooms will be located at the rear of the building which is elevated by approximately 300mm from the finished floor level of 20.58m AOD at the front of the property. A topographic survey has also been undertaken to obtain ground levels at the front of the property and along the road which is shown to flood during the 0.1% scenario, albeit this area is at the boundary of the flood zone. Ground levels along the road are also within the region of 20.58m AOD. The FCA also considers the access to the development which is shown to flood during the 0.1% scenario and states that flood depths are expected to be less than 200mm on the road. This is within the tolerances outlined in Table A1.15 of TAN15.

However, the FCA does not address the remaining three tolerances of velocity, speed of inundation and rate of rise of floodwaters; it is therefore for your Authority to determine whether you are satisfied with the information received.

Based on the information outlined above and were your Authority minded to approve this application we would advise that a detailed Flood Management Plan is submitted to and approved by your Authority to ensure that the development can be safely managed and evacuated should a flood event occur.

We would also advise that where possible, flood resilient measures are incorporated into the design of the building and also that the applicant signs up to receive flood warnings. Further details of which are available from our website:
www.naturalresourceswales.gov.uk or on 0345 988 1188

Protected Species (Bats)

We note the submission of the document entitled; '*Assessment for the Potential or Likelihood of Bat Use of Derelict Building on Land opposite 59 & 63 Hebron Rd, Clydach SA6*', dated 13 March 2015, by The Countryman: Wildlife Consultancy.

Although the assessment was undertaken outside the optimum period for survey/assessment, we note the report concludes that the condition of the building is such that the potential for bat use is low and the likelihood of bat use is low. Therefore, we do not wish to comment further in this instance.

Foul and Surface Water Disposal

We refer your Authority to our previous response (SH/2014/117978/01), for our comments in relation to foul and surface water disposal

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APPLICATION NO.

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Dwr Cymru Welsh Water 3.02.15

We would request that if you are minded to grant Planning Consent that Conditions and Advisory Notes are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

Head of Highways and Transportation

The current use of the building is as a pub. With the pub use there was no dedicated parking availability and parking had to take place on street.

The applicant came in for a pre-application enquiry and was advised that in the absence of parking then it was unlikely to be successful and a recommendation of refusal would be likely to be raised by Highways. On that basis this secured a further parcel of land on which to provide adequate parking to meet the care home need. Given the staffing levels and number of residents then adequate parking is available within the land sited opposite 59-63. A formal car parking layout has been submitted detailing that four spaces can be provided although there is space to safely accommodate more than this. A better layout to accommodate more vehicles can be secured by condition. The lawful use of the proposed car parking area is storage so it is felt that the introduction of a small number of car parking spaces will result in less movements than those potentially generated by the storage use.

There is no cycle parking shown as being available and it would help promote viable car alternatives if some were to be made available. There is space within the site to accommodate this and a suitable condition can secure this.

As the pub use had no dedicated parking associated with it and the proposed parking area will result in less traffic movements than the storage use then it is felt that the proposed use will result in less traffic and parking demands than the pub use. On that basis I recommend that no highway objections are raised to the proposal subject to:

1. An amended parking layout be submitted for approval to the LPA Detailing five parking spaces, and that layout be formally laid out prior to beneficial occupation of the any part of the care home.
2. Cycle parking to be provided in accordance with details to be submitted to and approved by the LPA.
3. The front boundary wall to the car parking area to be kept below 1m in the interests of visibility

APPRAISAL

This application seeks planning permission for the change of use of a former pub 'Colliers Arms' 31 Hebron Road to a care home (use class C2) and the formation of a car parking area facilitated by the demolition of an existing single storey building on land opposite 59-63 Hebron Road.

The pub building is a traditional two storey stone faced property with accommodation within the roof set within a tight grouping of terraced properties on the western side of Hebron Road. At the rear is a single storey projection with accommodation in the roof which leads out to an overgrown tiered rear garden area.

ITEM 2 (CONT'D)

APPLICATION NO.

2014/1906

Either side of the application premises are residential properties. In the wider locality there are an estate agents, indoor climbing centre, takeaway premises and pub. Clydach district centre is located some 250m to the north east of the site.

Following concerns received from surrounding properties regarding the nature of the use and the intended occupiers, the applicant has submitted supporting information which explains that the premises would cater for younger adults primarily between the ages of 17 to 25 but would accommodate all adults up to the age of 65 with a range of disabilities, from physical to learning, with help for people with stroke, physical and visual impairments.

The premises would be converted to an eight bed care facility. Three full time staff would be employed in eight hour shift periods with the potential for a total of nine staff working in eight hour shifts in any 24-hour period.

To cater for the parking requirements associated with the proposed development the application proposes to utilise an area of land to the south west, following the demolition of the existing single storey building on the site. The remainder of the building outside of the application site would remain as existing.

Main Issues

The main issues are the impacts of the development on the character and appearance of the area, the impacts on the living conditions of neighbouring occupiers, the impacts on parking and highway safety, and the impacts on flooding. It is not considered that the Huma Rights Act would raise any further material planning considerations.

The following policies of the City and County of Swansea Unitary Development Plan (2008) (UDP) are relevant to the consideration of this proposal.

EV1 (Design), EV2 (Siting), EV3 (Parking) and AS6 (Parking) seek amongst other things that developments accord with good design principles and are compatible with surrounding uses in terms of noise and pollution, in this respect EV40 (Air, Noise and Light Pollution) is also relevant. Moreover developments must provide satisfactory access and parking facilities. In addition to these policies HC15 (Community and Health Facilities) supports and encourages the provision of new or improved health and social care facilities in appropriate locations to serve the local population whilst EV36 (Flooding) requires developers to demonstrate to the satisfaction of the Local Planning Authority that the location of the development is justified and the consequences of flooding are acceptable.

Visual Amenity

In relation to the impact of the development on the character and appearance of the area, there are no external alterations proposed to the pub building, all existing openings would be retained as such the appearance of the building would be very similar, save for the removal of the signage associated with the former use of the building as a pub. In terms of the impacts of the use on the character of the area, the occasional comings and goings of staff, visitors and occupiers will introduce a use that is distinctly different from the residential properties immediately surrounding the application site.

ITEM 2 (CONT'D)

APPLICATION NO.

2014/1906

Notwithstanding this there are several commercial premises within the street scene including the application site which when open would also have attracted a steady flow of visitors. Therefore in view of the mixed street scene in the area and the existing lawful commercial use of the premises, it is not considered the proposed development would introduce a use that would result in any significant harm to the character and appearance of the area.

In terms of the car parking area, the existing flat roof single storey building has little design merit and is in a poor state of repair. The site is overgrown and does not, it is considered, contribute positively to the character or appearance of the area. When considered against this existing context the demolition of the part of the building within the application site area and its replacement with a small car parking area would not, it is considered, result in any material harmful impacts to the character and appearance of the area.

Residential Amenity

In terms of residential amenity, several letters of objection have been received in relation to the potential impacts of the development on neighbouring occupiers in terms of loss of privacy.

The proposal would utilise existing window and door openings to provide communal living areas, cooking facilities, toilets and two bedrooms on the ground floor. There are two bedroom windows in the ground floor side elevation that would face the neighbouring property, these windows previously served a function room and subject to the provision of a suitable boundary treatment with No. 33, would not result in any significant overlooking or loss of privacy to the occupiers of this property.

At first floor level there are four bedrooms proposed, a staff room and a washing and drying area. The upper floors of the pub were previously used as living accommodation and given that there are no new window openings proposed it is not considered that the overlooking to neighbouring properties would be materially different to the situation when the pub was occupied. It is noted there is an existing door at first floor level which leads out onto a flat roof area from where there would be the potential to overlook neighbouring properties. There is no planning mechanism available to restrict the use of this flat roof area, however, it is noted there is no means of enclosure around the roof which should prevent its use as an amenity area. Furthermore, good management of the premises should also ensure that this area is not accessed other than for emergencies. In this respect it is recommended that an informative note is included advising the applicant that this area should not be used as an amenity area.

The velux windows serving the rear bedroom are high level which would prevent any significant overlooking of neighbouring properties. There is a side elevation window which faces No. 33 that currently served a bathroom and is proposed to serve a small staff room. It is recommended that this window is fitted with obscure glazing to prevent any overlooking of No. 33.

At roof level two bedrooms are proposed which is the same situation as existing as such there would be no additional overlooking of neighbours over and above the existing situation.

ITEM 2 (CONT'D)

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In terms of potential noise and disturbance to neighbouring properties from the proposed use, it is not considered the coming and goings of residents, staff and visitors would result in any material harm in terms of noise and disturbance to neighbouring occupiers over and above the use of the premises as a pub, which has the potential to result in significant disturbance from activities taking place both within and outside the building together with the general levels of comings and goings to the premises.

In light of the above it is not considered that the proposed development would result in any significant impacts to the living conditions of neighbouring occupiers and would therefore be in accordance with UDP Policies EV2, EV40 and HC15.

Access and Highway Safety

Concerns have been raised by residents that parking in the area is already a significant problem.

When in operation there was no dedicated parking availability for staff and customers of the pub as such parking had to take place on street.

The applicant intends that three full time staff will be employed in any 8-hour shift period with the potential for a total of 9 staff working in 8-hour shifts in any 24-hour period.

Having regard to the intended staffing levels and numbers of residents then it is considered that adequate parking would be available within the proposed car parking facility to the south west of the site. A formal car parking layout has been submitted detailing that four spaces can be provided although there is space to safely accommodate more than this. A better layout to accommodate more vehicles can be secured by condition.

It is considered the vehicular movements generated by the use of this parking area would not result in any significant highway safety concerns.

There is no cycle parking shown as being available and it would help promote viable car alternatives if some were to be made available. There is space within the site to accommodate this and a suitable condition can secure this.

The Head of Highways and Transportation has raised no objection to the application on parking and highway safety grounds subject to the provision of an amended parking layout indicating the provision of 5 spaces, the provision of cycle parking and the front boundary wall of the parking area to be kept below 1m in height. These matters can be addressed by conditions and informatives.

In light of the above the proposed development is considered to be in accordance with UDP Policies EV3, AS6 and HC15.

Flooding

Following a holding objection from NRW the applicant submitted a Flood Consequences Assessment.

Both existing and proposed uses are classed as highly vulnerable development under TAN 15 Development and Flood Risk (July 2004). The site is located within zone C2, as defined by the development advice maps referred to under TAN 15.

ITEM 2 (CONT'D)

APPLICATION NO.

2014/1906

NRW Flood Map information, which is updated on a quarterly basis, indicates the site to be at risk of flooding in the 0.1% flood event.

Whilst sleeping accommodation is being provided at ground floor level, the site levels are such that the bedrooms are elevated above the road level, which is at the boundary of the flood zone. The FCA also considers the access to the development which is shown to flood during the 0.1% scenario and states that flood depths are expected to be less than 200mm on the road. This is within the tolerances outlined in Table A1.15 of TAN15. The FCA does not address the remaining three tolerances of velocity, speed of inundation and rate of rise of floodwaters, however, given the expected flood depths on the road it is considered that the consequences of flooding can be suitably managed and in this respect it is recommended, in line with the advice of NRW, that a Flood Management Plan is submitted to ensure that the development can be safely managed and evacuated should a flood event occur.

Subject to the provision of this information the development is considered to be in accordance with UDP Policies EV2 and EV36.

Ecology

Following a request from the Council's planning ecologist and NRW the applicant has submitted a bat survey for the building which is proposed to be demolished. Although the assessment was undertaken outside the optimum period for survey/assessment, the report concludes that the condition of the building is such that the potential for bat use is low and the likelihood of bat use is low as such the planning ecologist has recommended a bat informative, should planning permission be granted.

Other Matters

Concerns have been raised that neighbouring occupiers may feel unsafe and would lose privacy as a result of this development. In terms of privacy, this issue has been discussed above, in terms of safety, whilst the Local Planning Authority would have no control over the management of the premises or the behaviour of the occupiers it is considered that a well-managed care home facility should not give rise to any safety concerns for neighbouring residents, such facilities are regulated through the Care and Social Services Inspectorate Wales and any failings in the management of the premises may be addressed by the regulator.

Concerns have been raised that the use of the building and the intended occupiers is not clear. There is a concern the premises may be occupied by sex offenders, drug abusers or young offenders. Whilst these concerns are noted, the Local Planning Authority is considering the acceptability of the proposed use of the premises as a care home and cannot control by condition the occupiers of the premises who would be receiving care, to do so would be contrary to Welsh Government advice outlined in Circular 16/2014 'The Use of Planning Conditions for Development Management'.

Concerns have been raised that the applicant has no intention of utilising the proposed parking area. The proposed parking area is only a short distance from the premises and given anecdotal evidence of parking problems in the area it is considered that the proposed parking area would be utilised by staff and visitors to the premises.

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ITEM 2 (CONT'D)

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Concerns have been raised regarding how the applicant will ensure the car park is used only by staff and visitors to the premises. This matter will be left at the discretion of the applicant, who may wish to erect signage to indicate that the area is a private car park.

Concerns have been raised regarding how the knotweed will be treated on site. This matter can be addressed by a planning condition.

Concerns have been raised regarding how waste will be dealt with at the site. There is considered to be sufficient space within the site to accommodate and manage the waste generated from the development, which is unlikely to be over and above that generated by the former pub use.

Concerns have been raised regarding how the cellar would be dealt with. No details have been provided in relation to the use of the cellar, however, given there are no window openings to this area it is assumed the area would be used for ancillary storage.

Concerns have been raised that there may be a culvert running under the premises and the applicant may not have taken this into account in this proposals. As there are no proposed works to the premises other than internal alterations it is not considered that the proposals would have an adverse impact on any culvert that may be running under the site.

Concerns have been raised by Swansea Canal society regarding potential pollution to the canal from the demolition of the building. It is not for the Local Planning Authority to manage the demolition of the building. Any concerns regarding the demolition can be dealt with under separate legislation.

All other matters raised in consultation responses have been dealt with in the above report.

Conclusion

The proposed development is considered to be acceptable in terms of its impacts on the character and appearance of the area, its impacts on residential amenity and its impacts on parking, highway safety and ecology. Furthermore, subject to conditions the development is considered to be acceptable in terms of the consequences of flooding at the site. It is not considered that the provisions of the Human Rights Act would raise any further material planning considerations as such the application is recommended for conditional approval.

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.

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ITEM 2 (CONT'D)

APPLICATION NO.

2014/1906

- 2 The development shall be carried out in accordance with the following approved plans and documents: 14/643/1 site plan, 14/643/2 block plan, 14/643/3 proposed site layout, 14/643/4 existing floor plans, 14/643/5 existing elevations, 14/643/6 proposed floor plans, 14/643/7 proposed elevations dated 12th December 2014
Reason: To define the extent of the permission granted.
- 3 Prior to the use hereby approved commencing, the first floor window in the side elevation facing 33 Hebron Road, shall be obscure glazed and unopenable below a height of 1.7m from internal floor level, and shall be retained as such at all times.
Reason: To safeguard the privacy of the occupiers of neighbouring residential properties.
- 4 Before the use hereby approved commences the means of enclosing the boundaries of the site at 31 Hebron Road shall be completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The means of enclosure shall be completed in accordance with the approved details prior to the use hereby approved commencing.
Reason: In the interests of visual amenity and general amenity.
- 5 Prior to the commencement of the use hereby approved a cycle storage area at 31 Hebron Road shall be constructed in accordance with details to be submitted to and approved in writing by the local planning authority. The cycle store shall be retained as approved for the duration of the use.
Reason: To promote alternative modes of transportation.
- 6 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 in accordance with the approved scheme prior to the commencement of work on site.
Reason: In the interests of the ecology and amenity of the area.
- 7 No development shall take place until details of the making good and external finishes for the side elevation of the remaining part of the building that is proposed to be demolished have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details prior to the use hereby approved commencing.
Reason: In the interests of visual amenity.
- 8 Notwithstanding the details indicated on the approved plans, prior to the commencement of the use hereby approved, the car parking area shall be laid out with a minimum of five parking spaces in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The car spaces shall be used solely for the benefit of the staff, occupants and visitors of the development hereby approved and for no other purpose and shall be retained as such for the duration of the use.
Reason: In order to provide satisfactory car parking provision for the development in the interests of highway safety.

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ITEM 2 (CONT'D)

APPLICATION NO.

2014/1906

- 9 A flood management plan shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the use hereby approved. The development shall be carried out in accordance with the approved plan.

Reason: To ensure the consequences of flooding at the site can be managed.

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV3, EV36, EV40, AS6 and HC15.
- 2 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 e.g. live or dead animals or droppings, work should cease immediately and the advice of the Natural Resources Wales sought before continuing with any work (01792 634960).
- 3 We would also advise that where possible, flood resilient measures are incorporated into the design of the building and also that the applicant signs up to receive flood warnings. Further details of which are available from our website: www.naturalresourceswales.gov.uk or on 0345 988 1188.
- 4 The applicant shall ensure that the flat roof area at the rear of the premises shall be used only for emergency purposes and shall not be used as an amenity or sitting out area - in the interests of protecting the privacy of neighbouring occupiers.
- 5 The boundary wall for the car park shall not exceed 1m in height.
-

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ITEM 3

APPLICATION NO.

2013/1405

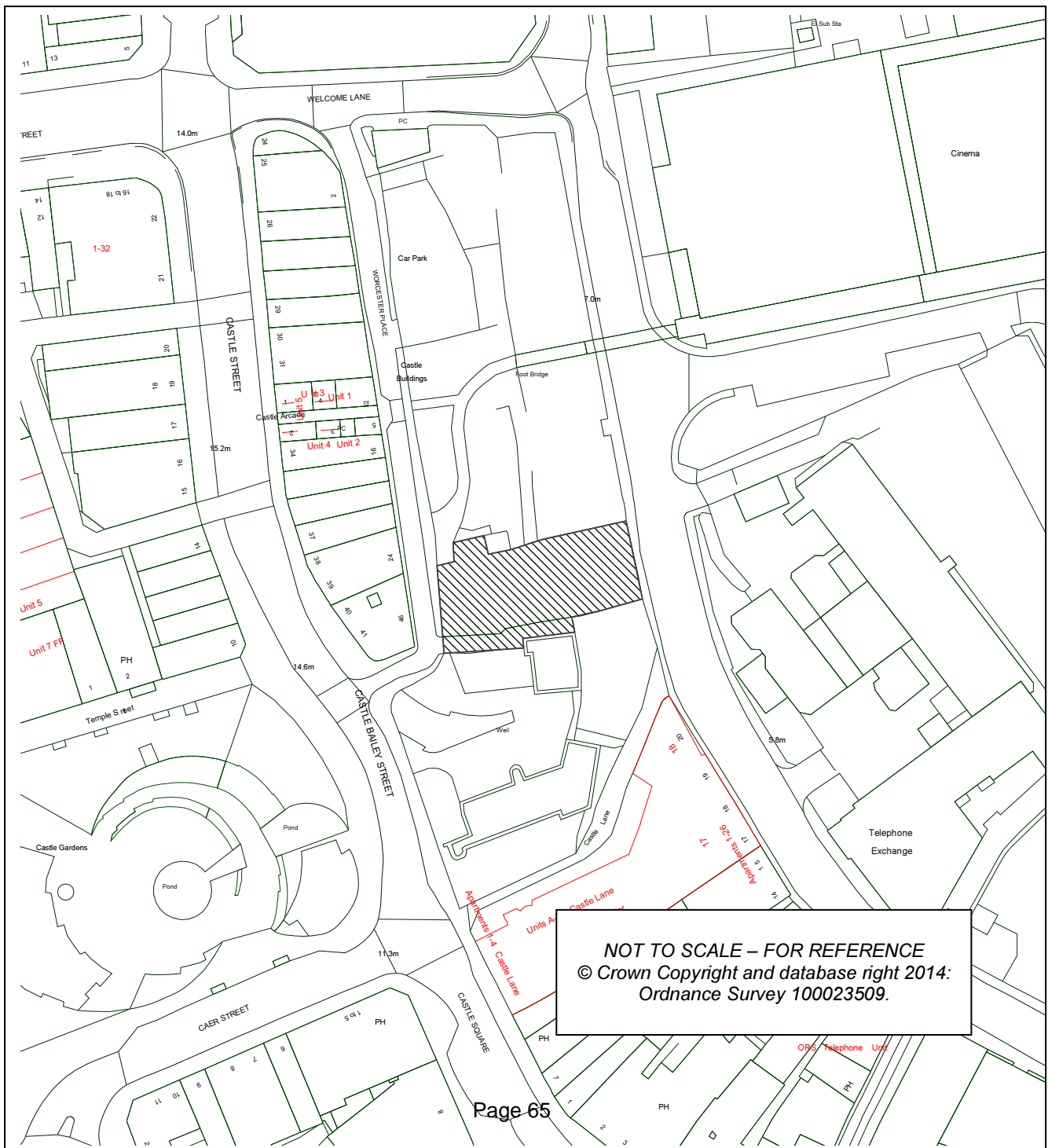
WARD:

Castle

Location: Former Castle Cinema, Worcester Place, Swansea, SA1 1JQ

Proposal: Substantial demolition of the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a part 5 / part 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 67 student study bedrooms within 13 cluster flats (application for Listed Building Consent)

Applicant: Mr & Mrs R Jones



BACKGROUND INFORMATION

RELEVANT PLANNING POLICIES

Swansea Unitary Development Plan

Policy EV1 New development shall accord with a defined set of criteria of good design including to have regard to the desirability of preserving the setting of any listed building

Policy EV6 The Council will seek to protect, preserve and enhance Scheduled Ancient Monuments and their settings. Where proposals affect sites and areas of archaeological potential, applicants will be required to provide the following information with planning applications:

- i) An assessment or evaluation of the archaeological or historic importance of the site or structure.
- ii) The likely impact of development on the archaeological site, and
- iii) the measures proposed to preserve, enhance and record features of archaeological interest

Policy EV7 Extensions or alterations to a listed building will not be permitted unless they safeguard the following:

- i) the character of the listed building in terms of its scale, design, materials, and features which it possesses that are of special architectural or historic interest, and
- ii) the historic form and structural integrity of the building.

The change of use of listed buildings will be permitted where this contributes towards the retention of a building without having an adverse effect on its character, special interest or structural integrity.

Policy EV8 Permission will not be granted for the total or substantial demolition of a listed building other than where there is the strongest justification and convincing evidence that:

- i) Every reasonable effort has been made to sustain existing uses or find viable new uses compatible with the building's character and setting, and
- ii) Preservation in some form of charitable or community ownership is not possible or suitable, and
- iii) The proposed new development would produce substantial benefits for the community, which would decisively outweigh the loss resulting from demolition.

Policy EV9 Development within or adjacent to a conservation area will only be permitted if it would preserve or enhance the character or appearance of the conservation area or its setting

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ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

New development in such locations must also be of a high standard of design, respond to the area's special characteristics, and pay particular regard to a list of criteria

RELEVANT PLANNING HISTORY

- 76/1142 Conversion of cinema to bingo hall
Planning Permission Sept. 1976
- 97/0146 Demolition of Castle Cinema (Application for Listed Building Consent)
Granted Dec. 1997
- 2013/1403 - Substantial demolition of the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a part 5 / part 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 66 student study bedrooms within 16 cluster flats
Currently being considered

RESPONSE TO CONSULTATIONS

The application was advertised in the local press and on site. No public response.

Swansea Civic Society – Having reviewed in some detail the applications and supporting documentation we wish to raise the following issues that we feel are important to a development in this high profile city location and request that these should be given serious consideration when drawing up your department's recommendation and by the Committee when reaching their decision.

1. We consider that the application lacks the level of detail to be expected for proposals relating to a key City Centre scheme. In particular it fails to adequately demonstrate the visual and special relationship of the proposals to the adjacent Castle with regard to its significance and its surroundings.
2. The proposed South Elevation in form and materials does not provide a sympathetic back drop to the Castle and its recently landscaped forecourt. Nor does the proposal appear to sit well next to the façade of the Castle Buildings to the west.
3. The retention and renovation of the classical styled Worcester Place façade is welcomed and is an essential feature of any redevelopment. It is of concern that this original façade may be dwarfed by the proposals. It remains unclear as to what extent the remaining original internal features are to be restored and retained.
4. It has been of considerable concern to the Civic Society that successive developments fronting the Strand have permitted the demolition of existing buildings of character and history. Also that their replacements have been created "dead frontages" not contributing to the street scene (e.g. The Urban Village multi-storey car park).

ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

As the Strand is the link between High Street and Parc Tawe, it desperately needs to have “life” brought back to it with active frontages. We would recommend that the proposals include a retail or commercial use of the two existing lower ground floor areas and not allocate them to car parking and storage.

5. Of the elements to be retained and repaired, we would recommend that the existing masonry cartouche to the Strand Elevation, which appears to include a later “Castle Cinema” sign be incorporated into the final scheme.
6. The proposals for the South Elevation currently includes for a section of the existing white glazed brickwork to be “cleaned and repaired”. We do not consider this to have any merit. Probably it originally formed a part of an internal courtyard light well, without its context it is reminiscent of an abandoned Victorian toilet and should be concealed or replaced.
7. It has been stated by the City that as a part of its City Centre Strategy a Visitor Centre would be constructed within the Castle precinct when funds permitted. What provisions have been made within the current Castle Cinema proposals to make this possible in the future?
8. Due to the location of the proposed development, please confirm that a full archaeological assessment will be carried out and all excavations supervised by the Glamorgan Gwent Archaeological Trust or other suitable specialist with the powers to carry out additional investigations and to fully record finds before covering up the works.

Although the Swansea Civic Society has these significant concerns relating to the current proposals, we would welcome and support a sympathetic redevelopment for the Castle Cinema in order to provide the means to preserve its significant remaining features and provide a lively and sustainable future for this element of the city street scene. However, the current proposals as submitted fail to meet our expectations and therefore we recommend either their revision and re-submission, or outright rejection.

The Cinema Theatre Association

31, January, 2014 - CTA Cymru strongly objects to the proposal to part demolish the former Castle Cinema, Worcester Place, Swansea for the construction of retail units and flats.

The Castle Cinema was constructed between 1912 and 1913 for the Andrew family of Cardiff and is the oldest purpose built cinema that survives in Swansea, opening on 4 December 1913. Aside from the former Carlton Cinema, Oxford Street (Waterstones), of which only the front elevation and spiral staircase to the first floor remains, there is nothing left in the city centre of the Edwardian period of cinema architecture. The nearby Picture House Cinema in the High Street which dated from the same period was lost in the bombing raids of February 1941, making the Castle the only survivor and the case for its preservation of paramount importance. To part demolish the Castle would compromise the listing criteria which CADW took into consideration in 1984, of which I shall give a brief outline.

ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

Although there were alterations to the interior of the building in the 1960's, much original detail remains. Behind the sound proof upholstered side walls there remains a segmental vault, coved cornice pilasters, all of which are original. Additionally, the sinuous gallery front with safety bats intact remains at circle level, although the proscenium was modified for the installation of wide screen circa 1962. The elaborately carved stone classical frontage is particularly distinctive, enhanced by channelled pilasters to ground floor level and with festoons and a wreath framing a castle above the recessed entrance doors. Of particular concern to CTA Cymru is the unauthorised removal by the owner of the central wooden pay box (circa 1930) and the fine wrought iron staircases to the balcony from the otherwise original longitudinal foyer. The rear elevation to the Strand has a frieze to second floor level with an original gilt inscription "Castle Cinema" which must be preserved as it is an integral part of the building.

On these grounds, the Cinema Theatre Association urges the City and County of Swansea to reject this ill-considered and insensitive proposal to part demolish an outstanding example of cinema architecture of this period.

16 March, 2015 – CTA Cymru strongly objects to the revised application to part demolish the former Castle Cinema, Worcester Place, Swansea for the construction of retail units and flats.

The Castle Cinema was constructed between 1912 and 1913 for the Andrew family of Cardiff and is the oldest purpose built cinema that survives in Swansea, opening on 4 December 1913. The building was damaged during the wartime bombing of the city in 1940 but survived remarkably intact as did the buildings immediately in front of the cinema in Castle Street which were renovated and now function as successful retail units.

There are several statements in the planning application that we would like to challenge. In the section headed "The Building Generally", it is stated that "the elevation to the Strand bears no relation to the Worcester Place elevation". It was quite common for cinemas in general to have plain side and rear elevations in different building materials, in this case in brick as opposed to the stone frontage. Indeed , the Castle Cinema was unusual in that the name of the cinema was inscribed in a frieze on the rear elevation in contrast to cinema of later construction where the name was distinctly placed on the front of the building.

In the section headed "The Building in Detail", the architect displays very little understanding of the impact that interior decoration of cinemas had in audiences, many of whom were from poor housing and appreciated the opulent décor of the buildings that they entered. To state that "*it is no surprise that the auditorium is so plain as in use as a cinema, it would hardly have been seen as all attention in the darkened space would have been directed at the cinema screen*" is borne of ignorance of the purpose of cinema architecture in general.

In the section headed "the Proposed Redevelopment in Relation to Conservation Principles", the architect states that "*the building has no communal value since it has no spiritual or social significance*". This is an inaccurate assertion as cinemas, especially those that were purpose built had tremendous social significance for the towns in which they stood and the Castle Cinema is a rare and complete survivor of the early period of cinema construction which brought a new medium of entertainment to the residents of Swansea.

ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

Another inaccuracy in the application is the closing date of the cinema, stated as being in 1985. The cinema did in fact close much later on 31 October 1991 due to competition from the newly built (UCI now Odeon) Multiplex in Parc Tawe.

We would also like to point out that the original projection box (circa 1927 – 30) was removed without authorisation by the present occupiers Laserquest and now remains in storage at the rear of the building under the former stage. It is important that this is saved at all costs and it is not mentioned in the application what is going to be done to safeguard this period fitting.

On these grounds and the fact that the proposed development is out of scale and out of character with what is being retained of the building. The Cinema Theatre Association urges the City and County of Swansea to reject this revised application.

**Glamorgan Gwent Archaeological Trust –
18 Dec. 2013**

Castle Cinema, a Grade II Listed building, is situated between two Scheduled Ancient Monuments; immediately to the north lies the site of Swansea Old Castle (GM441), which contains the earliest evidence of occupation in Swansea and likely dates to the early twelfth century, whilst immediately to the south is the site of Swansea New Castle (GM012), which likely dates to the fifteenth century. In addition, the Historic Environment Record shows the close proximity of a number of other important archaeological sites in the immediate vicinity, including the Swansea Castle Walls (03329w), and human burials (01946w). Previous archaeological work in this area indicates that there is a substantial likelihood that important archaeological deposits survive within the project area and beneath the existing building. These deposits have a high potential for significantly enhancing our understanding of the early settlement of Swansea and our understanding of Medieval life. In particular, they may be essential for providing information on the different phases of castle development, which currently remain poorly understood. Consequently, their preservation is considered to be highly desirable.

The applicants claim that the development will be confined to the existing footprint of the building; however, the submitted plans clearly indicate that the southern side of the commercial unit will extend beyond these boundaries and will likely have a direct impact on highly sensitive archaeological deposits.

However, at present there is insufficient knowledge of either the exact nature or the full extents of the archaeological resources present. Therefore, there is a need for an archaeological evaluation of the area to be carried out prior to the positive determination of any planning application.

The proposed development has the potential to reveal archaeological remains. Planning Policy Wales (2012) Section 6.5.1 notes that “The desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or unscheduled.” The more detailed advice in Welsh Office Circular 60/96, Section 13, recommends that “where research indicates that important archaeological remains may exist, the planning authority should request the prospective developer to arrange for an archaeological field evaluation to be carried out before any decision on the planning application is taken.”

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ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

It is therefore our opinion in our role as the professionally retained archaeological advisors to your Members that the applicant should be requested to commission such an archaeological work. The determination of the planning application therefore should be deferred until a report on the archaeological evaluation has been submitted to your Members.

We recommend that this work be undertaken to a brief approved by yourselves and we can, upon request, provide a suitable document for your approval.

30 March, 2015

You may recall we wrote to you on 18th December 2013. Our understanding of the archaeological resource remains unchanged. Therefore we wish the advice given on that occasion be applied.

Castle Cinema, a Grade II Listed building, is situated between two Scheduled Ancient Monuments; immediately to the north lies the site of Swansea Old Castle (GM441), which contains the earliest evidence of occupation in Swansea and likely dates to the early twelfth century, whilst immediately to the south is the site of Swansea New Castle (GM012), which likely dates to the fifteenth century. In addition, the Historic Environment Record shows the close proximity of a number of other important archaeological sites in the immediate vicinity, including the Swansea Castle Walls (03329w), and human burials (01946w). Previous archaeological work in this area indicates that there is a substantial likelihood that important archaeological deposits survive within the project area and beneath the existing building. These deposits have a high potential for significantly enhancing our understanding of the early settlement of Swansea and our understanding of Medieval life. In particular, they may be essential for providing information on the different phases of castle development, which currently remain poorly understood. Consequently, their preservation is considered to be highly desirable.

The current application has reduced the footprint such that it now remains within the boundaries of the original building. Recent work in the vicinity has shown that the whole area between High Street, Castle Street and the Strand contains highly sensitive archaeological deposits. However, at present there is insufficient knowledge of either the exact nature or the full extents of the archaeological resources present. Therefore, there is a need for an archaeological evaluation of the area to be carried out prior to the positive determination of any planning application.

The proposed development has the potential to reveal archaeological remains. Planning Policy Wales (2012) Section 6.5.1 notes that *“The desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or unscheduled.”* The more detailed advice in Welsh Office Circular 60/96, Section 13, recommends that *“where research indicates that important archaeological remains may exist, the planning authority should request the prospective developer to arrange for an archaeological field evaluation to be carried out before any decision on the planning application is taken.”*

It is therefore our opinion in our role as the professionally retained archaeological advisors to your Members that the applicant should be requested to commission such an archaeological work. The determination of the planning application therefore should be deferred until a report on the archaeological evaluation has been submitted to your Members.

ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

We recommend that this work be undertaken to a brief approved by yourselves and we can, upon request, provide a suitable document for your approval.

Council for British Archaeology –

Thank you for allowing the Council for British Archaeology (CBA) extra time to comment on the above application which seeks consent for the substantial demolition of the former Castle Cinema and construction of student accommodation and commercial space. The application has been discussed by our Casework Panel and I now write to you with their comments.

The former Castle Cinema was built between 1912 and 1914 making it the earliest cinema in Swansea. It also lies in an archaeologically sensitive area with both below and above ground archaeology of major consideration in this application. Externally and internally the cinema still retains some excellent features. The classically styled front façade with Beaux Arts influence is to be retained, and we hope sensitively restored. We would expect the inappropriate paint on the façade to be carefully removed and would expect the cinema doors to be restored too, as should the over lights and windows above. These are all part of the character and interest of the façade and a reminder of the building's original use.

The rear faced also holds strong evidential value of the original use of the building and is an important part of the street scene. Proposals to remove the upper half of the faced with the iconic 'Castle Cinema' signage should be refused.

Internally, inadequate evidence has been supplied in the application regarding the internal character and features of the cinema. We are aware that it still retains the balcony support, on steel columns, whilst the foyer's classical detailing apparently continues under the balcony area. Although refitted in the 1960's, the List Description describes original features such as cornices and pilasters hidden behind the wall coverings. We have also been advised that until recently the 1930's pay booth still existed but has now disappeared, as has an original wrought iron staircase. Unfortunately, the Design and Access Statement only says that the auditorium 'has been stripped and nothing remains of any value' and contains no evidence or images of the interior to support this statement. Without any other evidence, the CBA would ask that your Authority is quite clear on the extent or otherwise of the existence of internal features some of which may be hidden, before any decision is taken regarding extensive demolition. We therefore ask that before the application proceeds any further that a survey is made by an appropriately architectural historian or archaeologist. *Conservation Principles* (CADW, 2011) states that new work and alteration to an historic asset will normally only be acceptable if 'there is sufficient information comprehensively to understand the impacts of the proposals on the significance of the asset' (para 28.b).

We also regard the condition of the building and 'lack of incentive to carry out major repairs' (Design and Access Statement p.3) as a poor justification for the substantial demolition of a listed building. *Welsh Office Circular 61/96*, paragraph 92/i states that the cost of repair of a listed building where it is included as a justification for its demolition should be given less weight where it is clear the property has been neglected. We feel that there is potential for more of the existing structure to be incorporated into proposals for re-use.

ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

Planning Policy Wales 6.5.8 states that there should be a general presumption in favour of the preservation of listed buildings, and therefore every effort should be made to retain as much original fabric as possible. We also do not feel that the applicant has demonstrated that he has fully explored possible alternative uses for the building as required in paragraph 92 ii-iii of *Welsh Office Circular 61/96*.

The Casework Panel also commented on the proposed new build. They initially expressed their concern that building was quite clearly not within the original footprint as described in the Design and Access Statement. Nor did they believe the claim in the same document that the new building would not go below present foundation levels. Given the scale of the building and current building regulations, as well as the sloping site, there appears a very great possibility that deeper foundations would be required and concern was expressed that archaeological deposit below the building would be disturbed. They were supportive of Glamorgan and Gwent Archaeological Trust recommendation that an archaeological evaluation should be carried out.

A further concern was expressed by the Panel of the effect of the new building on the setting of the Scheduled Ancient Monument. The Castle Cinema is in close proximity to the castle and clearly visible from many viewpoints. Members of the panel were unanimous in their opinion that the present design of the building was extremely poor. They felt that even if your Authority decided that extensive demolition is acceptable, this was a rarer opportunity for an imaginative and appropriate design to act as a drop to the castle. As *Conservation Principles* (Cadw, 2011) states 'the quality of design and execution must add value to the existing asset' and that 'there must be a clear and coherent understanding of the relationship of all parts to the whole, as well as to the setting into which the new work is to be introduced' (p29). The present design, choice of materials, the scale and massing, fails to do this on all counts.

In summary, the CBA cannot support this application. There is a need for greater understanding of the significance of the present building in the light of proposals for extensive demolition, there is also the possibility of a major impact on underground archaeology and finally, the applicant has submitted proposals for a poorly designed building which is inappropriate and unimaginative. Your Authority should insist on the best quality of design in this highly sensitive location.

Victorian Society - Thank you for consulting the Victorian Society on the above application. The application makes no attempt to demonstrate what survives of the interior of the listed building, nor does it describe its significance, contrary to paragraph 128 of the National Planning Policy Framework. As a result, we cannot make an informed judgement on the proposal and assess whether the loss of the interior of the building would be acceptable.

We therefore recommend that a detailed heritage assessment is sought in order for the application to comply with the NPPF, and to provide the necessary information that will allow us to fully assess the scheme. We would be pleased to comment further upon notice of the inclusion of additional information.

If the information cannot be added to the application, we advise that you reject this application in its present form.

ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

Further comments 30 April, 2015

Thank you for consulting the Victorian Society on this application. This has been discussed by the Society's Southern Buildings Committee and I write now to object to this latest proposal for the adaptation of the former Castle Cinema, which would be detrimental to the building's significance.

The Castle Cinema is listed Grade II as a handsome, well-preserved cinema from the early days of the growth of purpose-built cinemas. The Castle Cinema is one of only two cinemas cited as being of national significance in David Atwell's book on the topic, "Cathedrals of the Movies". Its two principal facades are particularly impressive and interestingly contrasting in appearance and style. The interior has suffered considerable alterations, including, as we understand it, a number of unconsented works. This is a matter that should be pursued by the Council's enforcement team. The illegal removal of historic fabric, resulting in a less intact interior, cannot be used as justification for further depredation.

What is proposed is essentially the demolition of the majority of the building between the two principal elevations, and the erection in its place of a part-four, part-five storey building between them. The justification for doing so appears to lie in the purported lack of surviving historic fabric, as well as in the supposedly bleak character of the building's side elevations. Unfortunately, the documents submitted with the application fail to demonstrate what is claimed, that is that almost nothing of any historic or architectural interest survives. It is for the Council's officers to satisfy themselves that this is the case. If so, the principle of such extensive demolition may well be acceptable.

Its acceptability, however, would depend on the development of a sympathetic design of high quality, one befitting of a nationally important building. Regrettably that is not case here. The quality of the infill proposed is simply not commensurate with the fragments of the building that would be retained. CGI's of proposed views from Castle Square reveal the wholly unsatisfactory southern elevation, with its asymmetrical appearance and somewhat overbearing character, particularly in relation to the Cinema's comparatively low and florid Worcester Place façade. The garish tones of the proposed building's mishmash of cladding materials would strike a jarring note in the context of the listed building and that of the historic setting in which the Castle Cinema is located. Furthermore, while the new building's ridge height would be comparable to that of the present pitched roof, the eaves height would be considerably increased, resulting in a much more domineering and intrusively bulky form.

As a building of national importance the Castle Cinema demands far better than what is currently proposed. It is a moot point, but it is questionable whether the building would merit its listed status should this scheme be implemented. We object to this application and urge you to refuse it consent.

Ancient Monument Society - Thankyou for your consultation.

There seem to be two distinct but inter-related issues here.

Firstly, the correct treatment of the listed building.

Secondly, the impact of the redevelopment on the broader townscape, including the Castle.

ITEM 3 (CONT'D)

APPLICATION NO.

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1. To deal with the listed building - the Castle Cinema is an evocative example of an early cinema - one of only two within the building type that David Atwell described in the classic book on the subject, "Cathedrals of the Movies", as being of national importance in the Welsh context, the other being The Carlton, elsewhere in Swansea. The front elevation is surprisingly grand and formal, albeit on a small scale.

a) What is proposed is in effect "facadism". The two bookend elevations are largely kept and a new build then constructed on the site of the demolished auditorium.

b) The schedule refers to what is clearly the case - that the return elevations, which were surely never meant to be seen so clearly as they are now, are very plain - they always are so in the building type given the maximum need for blackout. It also mentions some surviving internal elements but I think that these are largely confined to the foyer, which is to be retained in the projected "commercial unit"

c) It must be a matter of real regret that the top storey of the elevation onto The Strand is demolished. This destroys the splendidly oversized signage in stone (or is terracotta ?) announcing the Cinema.

2. On the townscape:

a) The present cinema is a classic curate's egg. The two principal elevations make dynamic contributions to the townscape whereas the returns are bland, completely unarticulated and rather oppressive. The ivy has softened the view from the North East but this is an unorthodox way to civilise an urban townscape.

The South elevation facing the Castle is raw and unattractive.

b) That being so, there might be an argument for healing the townscape by judicious redevelopment. However, we must have misgivings over what is being proposed

c) The newcomer is to some extent disciplined by the form of the elevation to The Strand - although we continue to deplore the loss of the top floor. The symmetrical balance is continued upwards. However on Worcester Place the very important 3 bay Beaux Arts elevation becomes a footstool to the new build which rears up behind it, and does so asymmetrically.

d) The southern view, facing the Castle, looks ill-coordinated and does not make a pleasing architectural composition.

In summary, there might be an argument for some careful redevelopment on this site but what is being proposed is a disappointment and not worthy of such a prominent location.

There are too many characterless Post Modern constructions already framing the Castle. This site could show the way with a scheme that retains the key elements of the cinema with a new build of innovative, powerful but contextual design.

Highway Observations – no response.

APPLICANTS STATEMENT

I would like the following points to be considered in determining the planning applications:

1. There is nothing special or 'designed' about the eaves height of the existing building, it came about purely as a result of the function of the building as a cinema. The proposed building is further away from the Debtors Prison and while it has a higher eaves line, the overall height of the proposed building is approximately two metres lower than the ridge line of the existing building. The difference in height between the Debtors Prison and the proposed building equates to one residential storey height, which in terms of the considerable differences in height and scale seen in the surrounding buildings, in a city centre location, is nothing.
2. The additional photomontages demonstrate that the basic design principle of constructing a flat roofed building with an irregular plan form and slight differences in height sits well alongside the Castle and the adjoining Castle Buildings and is an appropriate solution in terms of scale and massing.
3. In terms of urban design, the proposed building is smaller in scale and size than the recently completed Castle Lane development and considerably smaller than its immediate neighbour, Castle Buildings. In the broader context, the proposed building needs to balance the development at Castle Lane and relate to the large scale of Castle Buildings, a smaller building than proposed would not do that.
4. Again, in terms of urban design and in the context of Castle Square, the proposed building needs to be large enough to enclose and define the space around the Castle. This is essential, not only to prevent the space from 'Leaking away' but also to mitigate some of the damage done to the townscape by the enormous bulk of the BT Tower behind.

APPRAISAL

Introduction

The application seeks Listed Building Consent (LBC) to substantially demolish the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a primarily 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 67 student study bedrooms within 13 cluster flats. The associated application for full planning permission has been submitted under Ref:2013/1403.

Castle Cinema is a grade II listed building and is currently in use as 'Laserzone'. The building was built in 1912 – 1914 and is situated adjacent to Swansea Castle which is both Grade 1 Listed and an Ancient Monument. Castle Cinema is also a key building within the Wind Street Conservation Area, and is a highly prominent building on entering the city centre core area from Parc Tawe. The principal entrance is obtained from Worcester Place and the building extends down to The Strand, and due to the topography of the site has a secondary entrance at the lower Strand level. The existing building consists of a roughly rectangular auditorium in form with a pitched slate roof, with an ornate Beaux Arts classical elevation facing Worcester Place, whilst The Strand façade of three storeys comprises a brick elevation.

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ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

The building was damaged by fire in 1927, partly bomb damaged in 1941, whilst the cinema interior was remodelled in 1962. It is indicated that the cinema use ceased in 1985.

The development as originally submitted sought consent for the significant demolition of Castle Cinema with only the eastern and western elevations being retained and was a very significant and irreversible alteration to the listed building. The proposal was to provide a commercial unit at ground floor level on Worcester Place, a further commercial unit at the lower levels along The Strand and to construct effectively a new building within the footprint of the existing building to accommodate 66 student study bedrooms within 16 cluster flats. The new build element would effectively been a five / part four storey building with a communal access area from Worcester Place.

The scheme was considered to be an overdevelopment and harmful to the retained elements of the listed building, harmful to the setting of Swansea Castle and harmful to the character and appearance of the Wind Street Conservation Area. These issues are considered in more detail below. The applicant was advised that at the very least, the lobby space off Worcester Place and the entirety of both sets of stairs should be retained in addition to those already in the application, and also the full height of the Strand elevation brickwork including the 'Castle Cinema' lettering.

Consequently, the scheme was revised to incorporate the following amendments:

- the footprint of the building along the southern elevation (facing Swansea Castle) has been set back from the existing building;
- the layout of the ground floor commercial unit has been re-designed to orientate to the front of the building (onto Worcester Place) as opposed to the southern elevation;
- the entrance to the residential units has been relocated to the southern elevation;
- An increase in bed spaces to 67 (from 66) within 13 cluster flats
- A retained rear building elevation to the Strand
- Amended elevational treatment to northern and southern elevations
- Provision of 4 levels of accommodation

The proposed building is essentially a 4 storey flat roofed structure with an irregular floor plan. The DAS indicates that in order to provide a focal point, the higher roof section has incorporated a 'tower' as a design feature. A section of the southern elevation enclosing the staircase and entrance to the residential units is proposed to be constructed in clear glazing as an attempt to break down the mass of the building. It is proposed for the stone façade to Worcester Place to be restored. The southern elevation would incorporate a variety of materials consisting of glazed copper finished tile rain screen cladding, ceramic tiling and facing brickwork.

The justification for this scheme was weak as the building condition, largely due to the lack of maintenance, is not a legitimate argument for the significant demolition works. A stronger justification of why the substantial demolition of the listed building and the proposed works were considered necessary should have been submitted in accordance with the guidance provided within paragraphs 91 – 92 of the Planning and the Historic Environment: Historic Buildings and Conservation Area – Welsh Office Circular 61/ 96.

Further guidance is provided by UDP Policies EV6, EV7, EV8 and EV9. Additionally, in accordance with Regulation 6 of the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (in respect of the Design and Access Statements - DAS), the DAS fails to fully explain the design principles and concepts that have been applied to the works; taking into account the special architectural or historic importance of the building; the particular physical features of the building that justify its designation as a listed building; and the building's setting having regard to its location within the Wind Street Conservation Area and relationship to the Ancient Monument (Swansea Castle) and how the approach adopted takes account of the policy background having regard to the above. Cadw 'Conservation Principles' document provides the basis to indicate the significance of various elements and features in order to come to a rational and robust conclusion of what must be retained and what could change.

Given the sensitivity of the context, the applicant was also advised that the scheme should be supported with perspective visuals, initially sketch 3d views are needed to discuss the massing and form as the backdrop to the castle and ultimately photomontage visuals will be required to demonstrate the visual relationships.

Consequently, a Structural Survey and a Building Assessment were submitted and additionally, Computer Generated Images (CGI's) of the proposed development were submitted in support of the application.

The submitted Structural Survey highlights that the steel framed roof structure over the auditorium appears to be part of the original structure and that strengthening works have been undertaken probably to deal with structural issues arising out of the fire and/or blast damage. The survey highlights the use of a heavy concrete casing to infill the steel roof trusses and as a consequence has impacted upon the stability of the perimeter walling, and there is a significant structural crack along the southern elevation. This would require large scale improvement works to the existing structure and the structural survey indicates that this would make the cost of a potential conversion prohibitive.

The submitted Building Assessment in support of the application highlights that there is considerable water ingress within the building, and overall the building is in a poor condition. The Assessment states that there has been no capital investment in the building for many years, and now needs a significant amount of money on it. The building is now on the Councils Listed Building at Risk Register. The Building Assessment concludes that the form of the building and its structural condition makes the building unsuitable for conversion, and that there is sufficient justification for its partial demolition.

Although the building is in use ('Laserzone'), there clearly are significant maintenance issues; this includes water ingress and structural defects. Internally the building has been significantly altered, this includes remodelling of the entrance foyer and removal of the paying booth, decking over the upper balcony, removal of all seats. However there are heritage features remaining such as the cinema screen, the balcony structure, stairs to the first floor balcony, doors and architraves etc so the DAS is incorrect in saying '*The interior has been stripped and nothing remains of any value*'. The application would have benefitted from the submission of a Heritage Assessment to evaluate such features.

Material Planning Considerations

The main issue to be considered is whether there was a justification for the substantial demolition of the listed building having regard to the relevant Planning Legislation, under the Planning (Listed Buildings and Conservations Areas) Act 1990 and other related national planning policy and guidance. There are considered to be no additional issues arising from the provisions of the Human Rights Act.

Compliance with prevailing National and Development Plan policy

Planning (Listed Building and Conservations) Act 1990 & National Planning Policy Framework

Planning Policy Wales (PPW) sets out the land use planning policies as they apply to Wales, lists relevant legislation and sets out the general sustainable development principles and the role of the planning system. Section 6 sets out the objectives in respect of conserving the historic environment and in particular the objective of ensuring the character of historic buildings is safeguarded from alterations, extensions or demolition that would compromise a building special architectural and historic interest (6.1.1.). PPW indicates there is no statutory requirement to have regard to the provisions of the development plan when considering an application for listed building consent.

Planning and the Historic Environment: Historic Buildings and Conservations Area (5 Dec. 1996) (W.O.Circular 61/96) sets out advice on legislation and procedures relating of historic buildings and together with PPW, the combined guidance may be material to decisions in individual planning applications and should always be taken into account in the exercise of listed building and conservation area controls. PPW and WO Circular 61/96 indicate that it is generally preferable for related applications for planning permission and listed building consent to be considered concurrently.

Section 66(1) of the Planning (Listed Buildings and Conservations Areas) Act 1990 in considering whether to grant planning permission which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Applicants for listed building consent must be able to justify their proposals. They will need to show why works which would affect the character of a listed building are desirable or necessary. They must provide the LPA with full information, to enable them to assess the likely impact of their proposals on the special architectural or historic interest of the building and on its setting.

In determining applications for the total or substantial demolition of any listed building, proposals need to provide convincing evidence that all reasonable efforts have been made to sustain existing uses or find viable new uses, and these efforts have failed; that preservation in some form of charitable or community ownership is not possible or suitable; or that redevelopment would produce substantial benefits for the community which would decisively outweigh the loss resulting from demolition. Applications should not be granted for demolition simply because redevelopment is economically more attractive to the developer than repair and re-use of a historic building.

Unitary Development Plan (UDP)

Policy EV7 of the UDP refers to proposals to extend or alter listed buildings which will not be permitted unless they safeguard the character of the listed building in terms of its scale, design, materials and features which it possesses that are of special architectural or historic interest, and the historic form and structural integrity of the building.

The change of use of listed buildings will be permitted where this contributes towards the retention of a building without having an adverse effect on its character, special interest or structural integrity. The amplification to the policy indicates that the setting of a listed building is often an essential part of its character. If listed buildings become isolated from their surroundings, their character as well as their economic viability may suffer. They may also lose much of their interest and the contribution they make to townscapes or the natural heritage. Where the original use of a building is no longer viable, proposals will be determined on the basis of concurrent applications for detailed planning permission and listed building consent, which should contain full detailed and surveyed drawings of the existing building and any works associated with the proposed change of use. The impact on the character of the listed building is considered in greater detail as part of the application for listed building consent – ref: 2013/1405.

The proposed development would involve the substantial demolition of the listed building with only the front and rear elevations being retained. UDP Policy EV8 states that permission will not be granted for the total or substantial demolition of a listed building other than where there is the strongest justification and convincing evidence that, i) every reasonable effort has been made to sustain existing uses or find viable new uses compatible with the building's character and setting, and ii) preservation in some form of charitable or community ownership is not possible or suitable, and iii) the proposed new development would produce substantial benefits for the community, which would decisively outweigh the loss resulting from demolition. The amplification to the policy states that the Council will follow the advice contained within WO Circulars 61/96 and 1/98 in assessing applications for the demolition of a listed building, which must be accompanied by sufficient supporting information to allow assessment under the above criteria. Applications must also be accompanied by a full structural survey detailing why demolition is required.

Heritage Impact

An historic analysis reveals that the side (north and south) elevations were originally hidden by adjoining/ adjacent buildings that have since been demolished. Therefore the blank side elevations of the Castle Cinema were never designed to be seen and the re-creation of these elevations with windows to provide a sense of activity and life is encouraged in principle. However, the south elevation will be highly prominent rising up behind the debtor's prison and Swansea Castle. The original drawings indicate that the new building would be some 7.5m higher than the prison. Whilst the proposed new built elements are at approximately the same level as the existing ridge line of the Castle Cinema, this is very different in terms of massing with a vertical building face in place of a sloping roof which will have a much more dominant effect. Therefore the proposed height and massing is considered unacceptable as the new build would dominate the castle and harm the setting of this Grade I listed building/ ancient monument. Furthermore the proposed new architecture of this side elevation is fragmented and unrelated to the context. The proposed use of natural stone as a facing material does not make the unacceptable scale and form acceptable. It is considered that any new side elevation must have a conventional eaves line to reflect the current scale of the Castle Cinema as a backdrop to the castle with the potential for one additional floor as a subservient element within a pitched roof space. Based on these requirements, the proposals were considered to be an overdevelopment which is harmful to the retained elements of the listed building, harmful to the setting of Swansea Castle and harmful to the character and appearance of the Wind Street Conservation Area.

Turning to the west elevation onto Worcester Place, the DAS indicates that the proposed new elements will not be highly visible from street level due to the narrowness of the lane, however this elevation also forms the highly visible oblique backdrop to Swansea Castle. As per the south elevation, it is considered that this elevation was too high and the proposed built form is poorly related to the listed building/ historic context. The north elevation should have the same character as the south to give the listed building integrity as a gateway feature on the link from Parc Tawe. This should include eaves at the current level and subservient accommodation within the pitched roof space. The full height of brickwork in the east (strand) elevation must be retained as this is a key feature of the building. The guidance given for the other elevations will also apply to this. The use of the two lower floors off the Strand as business space is welcomed to contribute to the mixed use nature of the area, however the existing partitions should be retained.

The Worcester Place level plan indicates a commercial unit in the southern elevation. Whilst this is welcomed in principle, the orientation of this unit overlooking the castle courtyard was considered to conflict with the proposed heritage regeneration of Swansea Castle which includes proposals for a visitor centre alongside the debtors prison in front of the proposed commercial unit, although it is stressed that these proposals have to be progressed through a planning submission. The applicant was advised for the commercial unit to be revised to face west onto Worcester Place with the primary south facing windows removed. Furthermore the proposed commercial unit extends to the south outside the existing footprint, which will likely have a direct impact on highly sensitive archaeological deposits. Glamorgan Gwent Archaeological Trust advised that there was a need for an archaeological evaluation of the area. Cadw have also expressed concerns that the closeness of the extension to the Ancient Monument will not only have a severe impact on the setting of the scheduled monument but will also cause significant problems with future repairs to the historic building.

The original scheme was considered to be harmful to the historic fabric of the listed building, harmful to the character of the listed building, whilst the amended scheme has attempted to address above issues, the scale and massing remains substantially similar to the submitted proposal, which it was considered to represent an overdevelopment which would be harmful to the retained elements of the listed building.

The applicants have indicated that the scale of the proposed scheme incorporating the number of units is necessary due to the viability of the proposal (although this is not backed up by any financial viability evidence), however, as the proposed scheme remains, it is considered to be harmful to the historic fabric of the listed building and character of the listed building. The proposal is therefore contrary to the provisions of UDP Policies EV7 and EV8 which in particular advises that applications for the total or substantial demolition of a listed building will only be granted permission where there is the strongest justification and convincing evidence in accordance with the listed criteria, and refusal will therefore be recommended.

Conclusions

Whilst it is appreciated that the scale of the proposed scheme incorporating the number of units maybe necessary due to the viability of the proposal (although this is not backed up by any financial viability evidence), this is not a justification for the proposal, and as the proposed scheme remains, it is considered that the scale and massing would represent an overdevelopment which would be harmful to the historic fabric of the listed building, and the character of the listed building.

ITEM 3 (CONT'D)

APPLICATION NO.

2013/1405

The proposal is, therefore, contrary to the provisions of UDP Policies EV7 and EV8 which in particular advises that applications for the total or substantial demolition of a listed building will only be granted permission where there is the strongest justification and convincing evidence in accordance with the listed criteria. Refusal will therefore be recommended.

RECOMMENDATION

REFUSE, for the following reason:

- 1 The scale and massing of the proposed development would represent an overdevelopment which would be harmful to the special architectural, historical importance and character of the listed building contrary to the provisions of the Planning (Listed Building and Conservation Areas) (Wales) Regulations 2012 and Swansea Unitary Development Plan Policies EV7, and EV8.

INFORMATIVES

- 6 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, EV6, EV7, EV8, EV9.

PLANS

Site location plan, 1037-21 existing site plan, 1037-22 existing lower ground floor plans, 1037-23 existing ground floor plan, 1037-24 existing first floor plan, 1037-25 existing south elevation, 1037-26 existing east and west elevations, 1037-27 existing north elevation, 1037-28 existing section, 1037-29 proposed site plan, 1037-31 proposed plans - level 2 (lower ground) 1037-32 proposed plans - level 3 (ground), 1037-33 proposed plans - level 4 (first), 1037-34 proposed plans - level 5 (second), 1037-35 proposed plans - level 6 (third) 1037-36 proposed plans - level 7 (fourth) 1037-37 proposed roof plan, 1037-38 proposed east elevation, 1037-39 proposed south elevation, 1037-40 proposed west elevation, 1037-41 proposed north elevation, 1037-42 proposed section, 1037-43 proposed south elevation in context, 1037-44 proposed elevation in context received 23rd September 2013

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ITEM 4

APPLICATION NO.

2013/1403

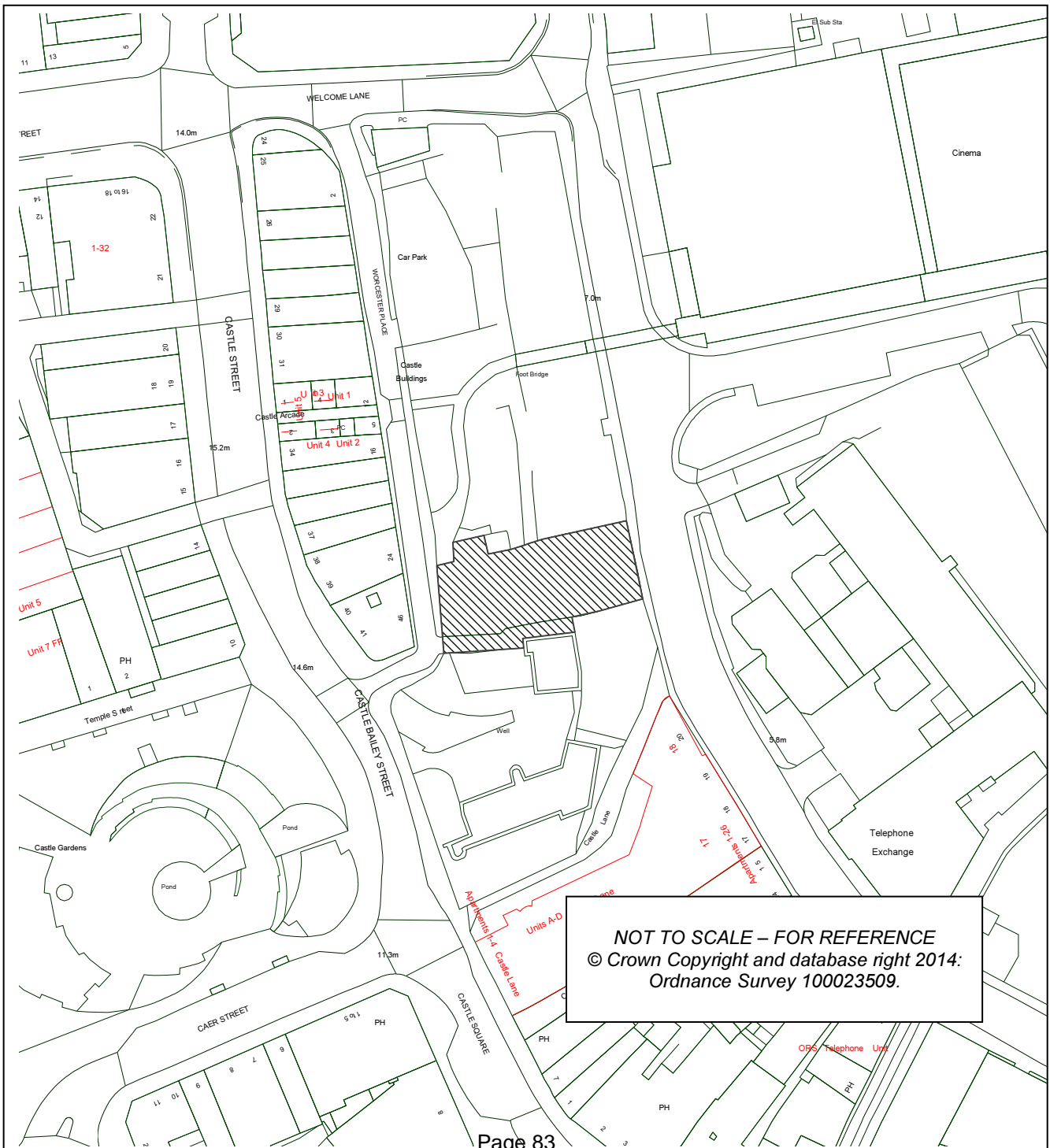
WARD:

Castle

Location: Former Castle Cinema, Worcester Place, Swansea, SA1 1JQ

Proposal: Substantial demolition of the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a part 5 / part 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 67 student study bedrooms within 13 cluster flats

Applicant: Mr & Mrs R Jones



BACKGROUND INFORMATION

RELEVANT PLANNING POLICIES

Swansea Unitary Development Plan

Policy EV1 New development shall accord with a defined set of criteria of good design including to have regard to the desirability of preserving the setting of any listed building

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.

Policy EV3 Accessibility criteria for new development.

Policy EV5 The provision of public works of art, craft or decorative features to enhance the identity and interest of major new developments or refurbishment schemes will be supported.

Policy EV6 The Council will seek to protect, preserve and enhance Scheduled Ancient Monuments and their settings. Where proposals affect sites and areas of archaeological potential, applicants will be required to provide the following information with planning applications:

- i) An assessment or evaluation of the archaeological or historic importance of the site or structure.
- ii) The likely impact of development on the archaeological site, and iii) the measures proposed to preserve, enhance and record features of archaeological interest

Policy EV7 Extensions or alterations to a listed building will not be permitted unless they safeguard the following:

- i) the character of the listed building in terms of its scale, design, materials, and features which it possesses that are of special architectural or historic interest, and
- ii) the historic form and structural integrity of the building.

The change of use of listed buildings will be permitted where this contributes towards the retention of a building without having an adverse effect on its character, special interest or structural integrity.

Policy EV8 Permission will not be granted for the total or substantial demolition of a listed building other than where there is the strongest justification and convincing evidence that:

- i) Every reasonable effort has been made to sustain existing uses or find viable new uses compatible with the building's character and setting, and

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- ii) Preservation in some form of charitable or community ownership is not possible or suitable, and
- iii) The proposed new development would produce substantial benefits for the community, which would decisively outweigh the loss resulting from demolition.

Policy EV9 Development within or adjacent to a conservation area will only be permitted if it would preserve or enhance the character or appearance of the conservation area or its setting

New development in such locations must also be of a high standard of design, respond to the area's special characteristics, and pay particular regard to a list of criteria

Policy EV33 Planning permission will 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

Policy EV34 Development proposals will only be permitted where they would not pose a significant risk to the quality of controlled waters.

Policy EV35 Surface water run-off

Policy EV36 New development within flood risk areas will only be permitted where flooding consequences are acceptable.

Policy EV38 Development proposals on contaminated land will not be permitted unless it can be demonstrated that measures can be taken to overcome damage to life, health and controlled waters.

Policy EV40 Development proposals will not be permitted that would cause or result in significant harm to health, local amenity because of significant levels of air, noise or light pollution.

Policy EC4 All new retail development will be assessed against need and other specific criteria

Policy HC2 Proposals for housing developments within the urban area will be supported where the site has been previously developed or is not covered by conflicting plans policies or proposals.

Policy AS1 New developments (including housing) should be located in areas that are currently highly accessible by a range of transport modes, in particular public transport, walking and cycling

Policy AS2 New developments should be designed to promote the use of public transport and facilitate sustainable travel choices, and comply with the principles of accessibility for all.

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- Policy AS5 Development proposals will be required to consider the access requirements for pedestrians and cyclists, where necessary, provide appropriate facilities and / or infrastructure to encourage their use.
- Policy AS6 Parking provision to serve developments will be assessed against adopted maximum parking standards to ensure appropriate levels of parking
- Policy CC1 Within the City Centre, development of the following uses will be supported:-
- (i) Retailing and associated uses (Classes A1, A2, A3),
 - (ii) Offices (B1),
 - (iii) Hotels, residential institutions and housing (C1, C2, C3),
 - (iv) Community and appropriate leisure uses (D1, D2, A3)
 - (v) Marine related industry (B1, B2).
- Subject to compliance with specified criteria.
- Policy CC2 New retail development that maintains and enhances the vitality, attractiveness and viability of the City Centre as a regional shopping destination will be encouraged subject to compliance with specified criteria.

RELEVANT PLANNING HISTORY

- 76/1142 Conversion of cinema to bingo hall
Planning Permission Sept. 1976
- 97/0146 Demolition of Castle Cinema (Application for Listed Building Consent)
Granted Dec. 1997
- 2013/1405 Substantial demolition of the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a part 5 / part 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 66 student study bedrooms within 16 cluster flats (application for Listed Building Consent)
Currently being considered

RESPONSE TO CONSULTATIONS

The application was advertised in the local press and on site. No public response.

Swansea Civic Society – Having reviewed in some detail the applications and supporting documentation we wish to raise the following issues that we feel are important to a development in this high profile city location and request that these should be given serious consideration when drawing up your department's recommendation and by the Committee when reaching their decision.

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1. We consider that the application lacks the level of detail to be expected for proposals relating to a key City Centre scheme. In particular it fails to adequately demonstrate the visual and special relationship of the proposals to the adjacent Castle with regard to its significance and its surroundings.
2. The proposed South Elevation in form and materials does not provide a sympathetic back drop to the Castle and its recently landscaped forecourt. Nor does the proposal appear to sit well next to the façade of the Castle Buildings to the west.
3. The retention and renovation of the classical styled Worcester Place façade is welcomed and is an essential feature of any redevelopment. It is of concern that this original façade may be dwarfed by the proposals. It remains unclear as to what extent the remaining original internal features are to be restored and retained.
4. It has been of considerable concern to the Civic Society that successive developments fronting the Strand have permitted the demolition of existing buildings of character and history. Also that their replacements have been created "dead frontages" not contributing to the street scene (e.g. The Urban Village multi-storey car park). As the Strand is the link between High Street and Parc Tawe, it desperately needs to have "life" brought back to it with active frontages. We would recommend that the proposals include a retail or commercial use of the two existing lower ground floor areas and not allocate them to car parking and storage.
5. Of the elements to be retained and repaired, we would recommend that the existing masonry cartouche to the Strand Elevation, which appears to include a later "Castle Cinema" sign be incorporated into the final scheme.
6. The proposals for the South Elevation currently includes for a section of the existing white glazed brickwork to be "cleaned and repaired". We do not consider this to have any merit. Probably it originally formed a part of an internal courtyard light well, without its context it is reminiscent of an abandoned Victorian toilet and should be concealed or replaced.
7. It has been stated by the City that as a part of its City Centre Strategy a Visitor Centre would be constructed within the Castle precinct when funds permitted. What provisions have been made within the current Castle Cinema proposals to make this possible in the future?
8. Due to the location of the proposed development, please confirm that a full archaeological assessment will be carried out and all excavations supervised by the Glamorgan Gwent Archaeological Trust or other suitable specialist with the powers to carry out additional investigations and to fully record finds before covering up the works.

Although the Swansea Civic Society has these significant concerns relating to the current proposals, we would welcome and support a sympathetic redevelopment for the Castle Cinema in order to provide the means to preserve its significant remaining features and provide a lively and sustainable future for this element of the city street scene. However, the current proposals as submitted fail to meet our expectations and therefore we recommend either their revision and re-submission, or outright rejection.

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The Cinema Theatre Association

31, January, 2014 - CTA Cymru strongly objects to the proposal to part demolish the former Castle Cinema, Worcester Place, Swansea for the construction of retail units and flats.

The Castle Cinema was constructed between 1912 and 1913 for the Andrew family of Cardiff and is the oldest purpose built cinema that survives in Swansea, opening on 4 December 1913. Aside from the former Carlton Cinema, Oxford Street (Waterstones), of which only the front elevation and spiral staircase to the first floor remains, there is nothing left in the city centre of the Edwardian period of cinema architecture. The nearby Picture House Cinema in the High Street which dated from the same period was lost in the bombing raids of February 1941, making the Castle the only survivor and the case for its preservation of paramount importance. To part demolish the Castle would compromise the listing criteria which CADW took into consideration in 1984, of which I shall give a brief outline.

Although there were alterations to the interior of the building in the 1960's, much original detail remains. Behind the sound proof upholstered side walls there remains a segmental vault, coved cornice pilasters, all of which are original. Additionally, the sinuous gallery front with safety bats intact remains at circle level, although the proscenium was modified for the installation of wide screen circa 1962. The elaborately carved stone classical frontage is particularly distinctive, enhanced by channelled pilasters to ground floor level and with festoons and a wreath framing a castle above the recessed entrance doors. Of particular concern to CTA Cymru is the unauthorised removal by the owner of the central wooden pay box (circa 1930) and the fine wrought iron staircases to the balcony from the otherwise original longitudinal foyer. The rear elevation to the Strand has a frieze to second floor level with an original gilt inscription "Castle Cinema" which must be preserved as it is an integral part of the building.

On these grounds, the Cinema Theatre Association urges the City and County of Swansea to reject this ill-considered and insensitive proposal to part demolish an outstanding example of cinema architecture of this period.

16 March, 2015 – CTA Cymru strongly objects to the revised application to part demolish the former Castle Cinema, Worcester Place, Swansea for the construction of retail units and flats.

The Castle Cinema was constructed between 1912 and 1913 for the Andrew family of Cardiff and is the oldest purpose built cinema that survives in Swansea, opening on 4 December 1913. The building was damaged during the wartime bombing of the city in 1940 but survived remarkably intact as did the buildings immediately in front of the cinema in Castle Street which were renovated and now function as successful retail units.

There are several statements in the planning application that we would like to challenge. In the section headed "The Building Generally", it is stated that "the elevation to the Strand bears no relation to the Worcester Place elevation". It was quite common for cinemas in general to have plain side and rear elevations in different building materials, in this case in brick as opposed to the stone frontage. Indeed , the Castle Cinema was unusual in that the name of the cinema was inscribed in a frieze on the rear elevation in contrast to cinema of later construction where the name was distinctly placed on the front of the building.

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In the section headed “The Building in Detail”, the architect displays very little understanding of the impact that interior decoration of cinemas had in audiences, many of whom were from poor housing and appreciated the opulent décor of the buildings that they entered. To state that *“it is no surprise that the auditorium is so plain as in use as a cinema, it would hardly have been seen as all attention in the darkened space would have been directed at the cinema screen”* is borne of ignorance of the purpose of cinema architecture in general.

In the section headed “the Proposed Redevelopment in Relation to Conservation Principles”, the architect states that *“the building has no communal value since it has no spiritual or social significance”*. This is an inaccurate assertion as cinemas, especially those that were purpose built had tremendous social significance for the towns in which they stood and the Castle Cinema is a rare and complete survivor of the early period of cinema construction which brought a new medium of entertainment to the residents of Swansea.

Another inaccuracy in the application is the closing date of the cinema, stated as being in 1985. The cinema did in fact close much later on 31 October 1991 due to competition from the newly built (UCI now Odeon) Multiplex in Parc Tawe.

We would also like to point out that the original projection box (circa 1927 – 30) was removed without authorisation by the present occupiers Laserquest and now remains in storage at the rear of the building under the former stage. It is important that this is saved at all costs and it is not mentioned in the application what is going to be done to safeguard this period fitting.

On these grounds and the fact that the proposed development is out of scale and out of character with what is being retained of the building. The Cinema Theatre Association urges the City and County of Swansea to reject this revised application.

Natural Resources Wales –

We would have no objection to the proposed development but would like to make the following comments.

Flood Risk

The application site lies just outside the identified flood outlines on both the development advice map (referred to in TAN15 (July 2004)) and our flood map. The only part of the proposed development that could be at risk of flooding is the lower ground unit fronting The Strand. This unit has an existing commercial use so we are satisfied that there will be no change in vulnerability class as a result of the proposed development. The highly vulnerable residential element is accessed from Worcester Place at a much higher level so would not be at risk.

There may however be some risk of future flooding to the lower ground floor fronting The Strand if an allowance for climate change is accounted for. There is no information on the threshold or floor level so it is not possible to advise your Authority on potential future flood depths. However, spot levels on The Strand range between 6.8 and 7m AOD. Based on these levels, if a 100 year lifetime of development is used, the maximum depths are likely to be less than 400mm.

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As there is no change of use we would recommend that the lower ground floor is designed to be resilient to the potential flood risk. This could include resilient walls, floors, doors, electric wiring etc. For further information on flood proofing, please see ODPM publication 'Preparing for Floods: Interim Guidance for Improving the Flood Resistance of Domestic and Small Business Properties'. This may be viewed on the Planning Portal website:

We would also recommend that consideration is given to emergency access arrangements during a flood event for those parts of the development that are accessed from The Strand.

Drainage

With regard to drainage from the site we are pleased to note that all foul water will be discharged to the main public sewer.

We also note from the application form that sustainable drainage (SUDS) is to be used to manage surface water from the site. No details of the surface water management have been provided, however we are satisfied that details can be submitted post determination via the inclusion of an appropriately worded condition.

The surface water management system should be designed to ensure there is no increase in surface water run-off from the site in all events up to and including the 1% (1:100 year) storm with an appropriate allowance for climate change. Whatever regulation method is adopted, it is essential that the developer enters a suitable long term legal agreement to ensure satisfactory long term maintenance and future renewal.

Bats

We welcome the submission of the survey report titled 'Former Castle Cinema – Bat & Owl Survey' (Rob Colley Associates, 2013) and note the conclusion that no use of the building by bats was observed. We have no further comments to make in this regard.

Pollution Prevention

Construction and demolition activities can give rise to pollution. It is therefore important that appropriate provisions are made for dealing with dust pollutions, surface water management and waste storage during the construction phase. We would therefore recommend that a detailed construction management plan (CMP) is produced and submitted as part of the application. In particular, we would be seeking details on what measures are in place to reduce the risk of contaminated surface run-off from entering and pollution controlled waters. On this basis, we would recommend that a CMP condition is included on any permission granted.

Waste Management

As demolition works are included as part of this application, we would recommend that a site waste management plan (SWMP) for the project 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).

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, we would recommend an appropriately worded condition is included on any permission granted.

ITEM 4 (CONT'D)

APPLICATION NO.

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Dwr Cymru Welsh Water – request conditions and informatives to ensure no detriment to existing residents or the environment and to Welsh Water's assets.

Glamorgan Gwent Archaeological Trust –

18 Dec. 2013

Castle Cinema, a Grade II Listed building, is situated between two Scheduled Ancient Monuments; immediately to the north lies the site of Swansea Old Castle (GM441), which contains the earliest evidence of occupation in Swansea and likely dates to the early twelfth century, whilst immediately to the south is the site of Swansea New Castle (GM012), which likely dates to the fifteenth century. In addition, the Historic Environment Record shows the close proximity of a number of other important archaeological sites in the immediate vicinity, including the Swansea Castle Walls (03329w), and human burials (01946w). Previous archaeological work in this area indicates that there is a substantial likelihood that important archaeological deposits survive within the project area and beneath the existing building. These deposits have a high potential for significantly enhancing our understanding of the early settlement of Swansea and our understanding of Medieval life. In particular, they may be essential for providing information on the different phases of castle development, which currently remain poorly understood. Consequently, their preservation is considered to be highly desirable.

The applicants claim that the development will be confined to the existing footprint of the building; however, the submitted plans clearly indicate that the southern side of the commercial unit will extend beyond these boundaries and will likely have a direct impact on highly sensitive archaeological deposits.

However, at present there is insufficient knowledge of either the exact nature or the full extents of the archaeological resources present. Therefore, there is a need for an archaeological evaluation of the area to be carried out prior to the positive determination of any planning application.

The proposed development has the potential to reveal archaeological remains. Planning Policy Wales (2012) Section 6.5.1 notes that “The desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or unscheduled.” The more detailed advice in Welsh Office Circular 60/96, Section 13, recommends that “where research indicates that important archaeological remains may exist, the planning authority should request the prospective developer to arrange for an archaeological field evaluation to be carried out before any decision on the planning application is taken.”

It is therefore our opinion in our role as the professionally retained archaeological advisors to your Members that the applicant should be requested to commission such an archaeological work. The determination of the planning application therefore should be deferred until a report on the archaeological evaluation has been submitted to your Members.

We recommend that this work be undertaken to a brief approved by yourselves and we can, upon request, provide a suitable document for your approval.

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ITEM 4 (CONT'D)

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30 March, 2015

You may recall we wrote to you on 18th December 2013. Our understanding of the archaeological resource remains unchanged. Therefore we wish the advice given on that occasion be applied.

Castle Cinema, a Grade II Listed building, is situated between two Scheduled Ancient Monuments; immediately to the north lies the site of Swansea Old Castle (GM441), which contains the earliest evidence of occupation in Swansea and likely dates to the early twelfth century, whilst immediately to the south is the site of Swansea New Castle (GM012), which likely dates to the fifteenth century. In addition, the Historic Environment Record shows the close proximity of a number of other important archaeological sites in the immediate vicinity, including the Swansea Castle Walls (03329w), and human burials (01946w). Previous archaeological work in this area indicates that there is a substantial likelihood that important archaeological deposits survive within the project area and beneath the existing building. These deposits have a high potential for significantly enhancing our understanding of the early settlement of Swansea and our understanding of Medieval life. In particular, they may be essential for providing information on the different phases of castle development, which currently remain poorly understood. Consequently, their preservation is considered to be highly desirable.

The current application has reduced the footprint such that it now remains within the boundaries of the original building. Recent work in the vicinity has shown that the whole area between High Street, Castle Street and the Strand contains highly sensitive archaeological deposits. However, at present there is insufficient knowledge of either the exact nature or the full extents of the archaeological resources present. Therefore, there is a need for an archaeological evaluation of the area to be carried out prior to the positive determination of any planning application.

The proposed development has the potential to reveal archaeological remains. Planning Policy Wales (2012) Section 6.5.1 notes that *“The desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or unscheduled.”* The more detailed advice in Welsh Office Circular 60/96, Section 13, recommends that *“where research indicates that important archaeological remains may exist, the planning authority should request the prospective developer to arrange for an archaeological field evaluation to be carried out before any decision on the planning application is taken.”*

It is therefore our opinion in our role as the professionally retained archaeological advisors to your Members that the applicant should be requested to commission such an archaeological work. The determination of the planning application therefore should be deferred until a report on the archaeological evaluation has been submitted to your Members.

We recommend that this work be undertaken to a brief approved by yourselves and we can, upon request, provide a suitable document for your approval.

CADW –

16 Jan. 2014 - The advice set out below relates only to those aspects of the proposal, which fall within Cadw's remit as a consultee on planning applications – the impact of developments on scheduled monuments or Registered Historic Landscapes, Parks and Gardens.

ITEM 4 (CONT'D)

APPLICATION NO.

2013/1403

Our comments do not address any potential impact on the setting of any listed building, which is properly a matter for your authority. These views are provided without prejudice to the Welsh Government's consideration of the matter, should it come before it formally for determination.

The proposed development will have a direct effect upon the scheduled ancient monuments known as Swansea Castle (GM012) and Original Swansea Castle (GM441). The scheduled areas of these monuments are shown outlined in red on the attached plan.

The eastern part (c. 25 metres long) of the southern side of the proposed development would immediately abut the scheduled area of GM012, Swansea Castle. The northern side of the proposed development would be located c.1.5 metres to the south of the scheduled area of GM441, Original Swansea Castle.

There has been considerable public funding to improvements to Swansea Castle in the last 2 year to allow the public access to the buildings and to improve the public realm around the historic buildings. Any development that will have a potential direct impact or on the setting of the ancient monument will therefore need to be sympathetic to the historic structures.

Unfortunately, the Design and Access statement submitted by the applicant does not include any reference to the designated status of the adjacent monuments nor does it include the results of any archaeological evaluation.

Although there are 2 separate designations for the area they are both part of the same historic complex Swansea Castle, with GM441 being the inner bailey of the original castle and GM012 covering a new ward constructed inside the curtilage of the original castle. The site of the Castle Cinema is therefore inside the historic castle but not inside a scheduled area. It is noted that the proposed building uses much of the footprint of the existing structure but an extension on the southern side extends outside the footprint but not into a scheduled area. Your authority are advised to consult your archaeological advisors GGAT (Glamorgan- Gwent Archaeological Trust, Heathfield House, Heathfield Road, Swansea, SA1 6EL) on this impact.

The impact of the development both physical and on their setting on each monument will be dealt with separately in the following advice.

GM012, Swansea Castle

Physical impact

It is proposed to add an extension to the southern side of the building but this will be constructed outside the boundaries of the designated area. Advice on the direct impact of this aspect of the development on the buried archaeological resource should therefore be sought from your authority's archaeological advisors, GGAT. The proposed development will not have a direct impact on the scheduled monument.

Impact on Setting

The western part of the proposed development will have an additional two storeys added to the height of the existing southern wall of the cinema. Whilst this will result in the new building only being slightly higher than the current one, the south wall will now be vertical to full height, rather than having sloping roof.

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This will considerably increase the visual bulk of the building behind (and above) the standing remains of the debtors prison when viewed from the main range of the New Castle (a building to which increasing public access is being made. Although the raised height will match that of the existing Castle Buildings these do not serve as a backdrop to the standing remains. The impact on the setting of the scheduled monument will therefore be severe from views from the south.

From the west the proposed extension will obscure views to the debtor's prison and the height of the new building will produce an overbearing presence above the historic building. The presence of this high building along with the existing Post Office Tower and Castle Buildings will emphasise that the historic castle buildings are surrounded and enclosed by modern high level buildings. This will produce a significant impact on the setting of the ancient monument from the west.

The south eastern corner of the proposed extension will be in close proximity to the Debtors Prison. Currently the south wall of the present building is some 2.7m away from wall of the historic building. The proposed extension will be some 1.2m away. The closeness of the extension will not only have a severe impact on the setting of the scheduled monument but will also cause significant problems with future repairs to the historic building. Currently routine repair work to the standing historic buildings, such as the removal of vegetation can be accomplished using a "cherry-picker" however the small gap between the proposed extension and the historic structure will preclude the use of such vehicles meaning that scaffolding will be required potentially significantly increasing the cost of routine maintenance.

GM441 Original Swansea Castle

Physical Impact

There will be no physical impact on this scheduled monument from the proposed development.

Impact on Setting

The proposed building is of similar height to the existing one, although the face of the building will now extend vertically to full height, unlike the current building which had a pitched roof. The current wall is blank unlike the proposed one which will be pierced by a number of windows but overall the impact on the setting of the monument will remain the same.

Conclusion

The proposed development will have a severe impact on the setting of GM012 Swansea Castle. It will also have an impact on the long term conservation of this monument as access to the historic fabric will be limited by the proposed extension to the building.

13 April, 2015 –

Thank you for your letter of 11 March 2015 inviting Cadw's comments on the planning application for the proposed development as described above.

Cadw's role in the planning process is not to oppose or support planning applications but to provide the local planning authority with an assessment concerned with the likely impact that the proposal will have on scheduled monuments or registered historic parks and gardens.

ITEM 4 (CONT'D)

APPLICATION NO.

2013/1403

It is a matter for the local planning authority to then weigh Cadw's assessment against all the other material considerations in determining whether to approve planning permission.

The advice set out below relates only to those aspects of the proposal, which fall within Cadw's remit as a statutory consultee. Our comments do not address any potential impact on the setting of any listed building, which is properly a matter for your authority. These views are provided without prejudice to the Welsh Government's consideration of the matter, should it come before it formally for determination.

Applications for planning permission are considered in light of the Welsh Government's land use planning policy and guidance contained in Planning Policy Wales (PPW), technical advice notes and circular guidance. PPW explains that the desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or not. Furthermore, it explains that where nationally archaeological remains, whether scheduled or not, and their settings are likely to be affected by proposed development, there should be a presumption in favour of their physical preservation in situ. Paragraph 17 of Circular 60/96, Planning and the Historic Environment: Archaeology, elaborates by explaining that this means a presumption against proposals which would involve significant alteration or cause damage, or which would have a significant impact on the setting of visible remains. PPW also explains that local authorities should protect parks and gardens and their settings included in the first part of the Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales.

Impact on Scheduled Monument

Cadw has carefully considered the amended plans and considers that the scheme is still likely to have a significant impact upon the setting of the scheduled monument.

In Cadw's response to the original consultation, concerns were raised regarding the potentially significant impact on the setting of Swansea Castle (GM012) due to the considerable increase of the visual bulk of the building behind (and above) the standing remains of the debtors prison when viewed from the main range of the New Castle and also in views from Castle Square to the west.

The amended design is essentially a 4 storey flat roofed structure with a lower rectangular element to the west where the existing building has been retained. In order to provide interest and a focal point to the design, a section of the southern side of the building has an increased height to produce a low "tower" and a section of the wall which directly faces the old debtors prison section of the castle has been set forward of the building line in order to provide a "backdrop" to this portion of the castle. Between the "tower" and the section of wall brought forward beside the old debtors prison, a glazed section of wall will present a transparent area that it is suggested by the applicant's architect "breaks down the mass of the building at this point".

Cadw considers that whilst the proposed design of the building is better than the previously submitted version, it has fundamentally failed to address the major issue that the wall of the proposed southern elevation will be higher and closer to the debtors prison than the existing wall of the cinema.

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This would considerably increase the visual bulk of the building behind (and above) the standing remains of the debtors prison when viewed from the main range of the New Castle (a building to which increasing public access is being made) thus producing a significant adverse impact to the setting of the scheduled monument.

From the west, Cadw considers that the height and closeness of the new building would also produce an overbearing presence above the debtors prison. In addition, the presence of this high building along with the existing Post Office Tower and Castle Buildings would emphasise that the historic castle buildings are surrounded and enclosed by modern high level buildings. Cadw considers that this would produce a significant impact on the setting of the scheduled monument from the west.

It should also be noted that Cadw is planning to undertake conservation works to the north elevation of the debtors' prison during this financial year.

Conclusion

In conclusion, Cadw considers that the design, as currently proposed, would have a significantly detrimental impact to the setting of the scheduled monument.

Pollution Control –

Could you attach the following conditions in respect of - Demolition/Construction Site Management Plan, Ventilation and Fume Extraction, building services plant noise emissions, Sound Proofing, External Noise (glazing), & Lighting and informatives in respect of construction noise, smoke/ burning of materials, dust control & lighting.

Highway Observations –

Vehicular access is gained directly off the Strand which leads to a small number of parking spaces (4). No plan has been submitted but it appears that this can be accommodated.

The site is located within the city centre core where there is no requirement to provide parking for the residential student uses. There will be a condition added to the effect that no parking permits will be issued to allow the residents of the proposed development to park in any restricted areas. This should safeguard the provision of existing residents.

In terms of the A3 Use which is accessed off Worcester Place there is no dedicated area for servicing but as the front facade needs to be retained on both the front and rear elevations there is no scope to accommodate this. Notwithstanding that there is an existing D2 use at the site which also would have had servicing and deliveries to the site. Given the confines of the site there is no appropriate area for servicing and as such the deliveries will have to take place on street as is currently the case.

There is no cycle parking indicated as being available within the site but in the absence of any car parking, and given the end users are students, then it will be a requirement to provide cycle parking in accordance with details to be submitted for approval to the LPA.

I recommend that no highway objection are raised to the proposal subject to:

1. Cycle parking to be provided in accordance with details to be submitted for approval to the LPA, as a minimum providing one space per bedroom.

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2. Before the development hereby permitted begins arrangements shall be agreed in writing with the local planning authority and be put in place to ensure that no resident of the development shall obtain a resident's parking permit within any controlled parking zone which may be in force on Worcester Place, Castle Street or the Strand at any time.
3. The applicant be required to submit a Travel Plan for approval within 12 months of consent and that the Travel Plan be implemented prior to the beneficial use of the building commencing.
4. Adequate bin storage to be contained within the site for both the A3 and residential uses in accordance with details to be submitted for approval to the LPA ,to avoid storage on the highway causing any obstruction to traffic.

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.

APPLICANTS STATEMENT

I would like the following points to be considered in determining the planning applications:

1. There is nothing special or 'designed about the eaves height of the existing building, it came about purely as a result of the function of the building as a cinema. The proposed building is further away from the Debtors Prison and while it has a higher eaves line, the overall height of the proposed building is approximately two metres lower than the ridge line of the existing building. The difference in height between the Debtors Prison and the proposed building equates to one residential storey height, which in terms of the considerable differences in height and scale seen in the surrounding buildings, in a city centre location, is nothing.
2. The additional photomontages demonstrate that the basic design principle of constructing a flat roofed building with an irregular plan form and slight differences in height sits well alongside the Castle and the adjoining Castle Buildings and is an appropriate solution in terms of scale and massing.
3. In terms of urban design, the proposed building is smaller in scale and size than the recently completed Castle Lane development and considerably smaller than its immediate neighbour, Castle Buildings. In the broader context, the proposed building needs to balance the development at Castle Lane and relate to the large scale of Castle Buildings, a smaller building than proposed would not do that.
4. Again, in terms of urban design and in the context of Castle Square, the proposed building needs to be large enough to enclose and define the space around the Castle. This is essential, not only to prevent the space from 'Leaking away' but also to mitigate some of the damage done to the townscape by the enormous bulk of the BT Tower behind.

APPRAISAL

Introduction

This application for full planning permission seeks to substantially demolish the former Castle Cinema with retention of two storey entrance foyer to Worcester Place elevation & two storey element to the Strand elevation, and construction of a primarily 4 storey mixed use development incorporating parking / storage on the Strand, commercial space (Class B1) on lower ground floor, commercial unit (Class A1, A2 / A3) at ground floor (to Worcester Place), with 67 student study bedrooms within 13 cluster flats. The corresponding application for Listed Building Consent is submitted under Ref:2013/1405.

Castle Cinema is a grade II listed building and is currently in use as 'Laserzone'. The building was built in 1912 – 1914 and is situated adjacent to Swansea Castle which is both Grade 1 Listed and an Ancient Monument. Castle Cinema is also a key building within the Wind Street Conservation Area, and is a highly prominent building on entering the city centre core area from Parc Tawe. The principal entrance is obtained from Worcester Place and the building extends down to The Strand, and due to the topography of the site has a secondary entrance at the lower Strand level. The existing building consists of a roughly rectangular auditorium in form with a pitched slate roof, with an ornate Beaux Arts classical elevation facing Worcester Place, whilst The Strand façade of three storeys comprises a brick elevation. The building was damaged by fire in 1927, partly bomb damaged in 1941, whilst the cinema interior was remodelled in 1962. It is indicated that the cinema use ceased in 1985.

The development as originally submitted sought consent for the significant demolition of Castle Cinema with only the eastern and western elevations being retained and was a very significant and irreversible alteration to the listed building. The proposal was to provide a commercial unit at ground floor level on Worcester Place, a further commercial unit at the lower levels along The Strand and to construct effectively a new building within the footprint of the existing building to accommodate 66 student study bedrooms within 16 cluster flats. The new build element would effectively been a five / part four storey building with a communal access area from Worcester Place.

The scheme was considered to be an overdevelopment and harmful to the retained elements of the listed building, harmful to the setting of Swansea Castle and harmful to the character and appearance of the Wind Street Conservation Area. These issues are considered in more detail below. The applicant was advised that at the very least, the lobby space off Worcester Place and the entirety of both sets of stairs should be retained in addition to those already in the application, and also the full height of the Strand elevation brickwork including the 'Castle Cinema' lettering.

Consequently, the scheme was revised to incorporate the following amendments:

- the footprint of the building along the southern elevation (facing Swansea Castle) has been set back from the existing building;
- the layout of the ground floor commercial unit has been re-designed to orientate to the front of the building (onto Worcester Place) as opposed to the southern elevation;
- the entrance to the residential units has been relocated to the southern elevation;

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- An increase in bed spaces to 67 (from 66) within 13 cluster flats
- A retained rear building elevation to the Strand
- Amended elevational treatment to northern and southern elevations
- Provision of 4 levels of accommodation

The proposed building is essentially a 4 storey flat roofed structure with an irregular floor plan. The DAS indicates that in order to provide a focal point, the higher roof section has incorporated a 'tower' as a design feature. A section of the southern elevation enclosing the staircase and entrance to the residential units is proposed to be constructed in clear glazing as an attempt to break down the mass of the building. It is proposed for the stone façade to Worcester Place to be restored. The southern elevation would incorporate a variety of materials consisting of glazed copper finished tile rain screen cladding, ceramic tiling and facing brickwork.

The justification for this scheme was weak as issues with the building condition largely due to the lack of maintenance is not a legitimate argument for the significant demolition works. A stronger justification of why the substantial demolition of the listed building and the proposed works was considered necessary and should have been submitted in accordance with the guidance provided within paragraphs 91 – 92 of the Planning and the Historic Environment: Historic Buildings and Conservation Area – Welsh Office Circular 61/ 96. Further guidance is provided by UDP Policies EV6, EV7, EV8 & EV9. Additionally, in accordance with Regulation 6 of the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (in respect of the Design and Access Statements - DAS), the DAS fails to fully explain the design principles and concepts that have been applied to the works; taking into account the special architectural or historic importance of the building; the particular physical features of the building that justify its designation as a listed building; and the building's setting having regard to its location within the Wind Street Conservation Area and relationship to the Ancient Monument (Swansea Castle) and how the approach adopted takes account of the policy background having regard to the above. Cadw 'Conservation Principles' document provides the basis to indicate the significance of various elements and features in order to come to a rational and robust conclusion of what must be retained and what could change.

Given the sensitivity of the context, the applicant was also advised that the scheme should be supported with perspective visuals, initially sketch 3d views are needed to discuss the massing and form as the backdrop to the castle and ultimately photomontage visuals will be required to demonstrate the visual relationships.

Consequently, a Structural Survey and Building Assessment were submitted and additionally, Computer Generated Images (CGI's) of the proposed development were submitted in support of the application.

The submitted Structural Survey highlights that the steel framed roof structure over the auditorium appears to be part of the original structure and that strengthening works have been undertaken probably to deal with structural issues arising out of the fire and/or blast damage. The survey highlights the use of a heavy concrete casing to infill the steel roof trusses and as a consequence has impacted upon the stability of the perimeter walling, and there is a significant structural crack along the southern elevation. This would require large scale improvement works to the existing structure and the structural survey indicates that this would make the cost of a potential conversion to be prohibitive.

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The submitted Building Assessment in support of the application highlights that there is considerable water ingress within the building, and overall the building is in a poor condition. The Assessment states that there has been no capital investment in the building for many years, and now needs a significant amount of money on it. The building is now on the Councils Listed Building at Risk Register. The Building Assessment concludes that the form of the building and its structural condition makes the building unsuitable for conversion, and that there is sufficient justification for its partial demolition.

Although the building is in use ('Laserzone'), there clearly are significant maintenance issues; this includes water ingress and structural defects. Internally the building has been significantly altered, this includes remodelling of the entrance foyer and removal of the paying booth, decking over the upper balcony, removal of all seats. However there are heritage features remaining such as the cinema screen, the balcony structure, stairs to the first floor balcony, doors and architraves etc so the DAS is incorrect in saying '*The interior has been stripped and nothing remains of any value*'. The application would have benefitted from the submission of a Heritage Assessment to evaluate such features.

Material Planning Considerations

The main material planning considerations in the determination of this planning application are set out as follows:

- Compliance with prevailing Development Plan policy and Supplementary Planning Guidance;
- Heritage Impact;
- Highways, traffic, car parking, access and pedestrian movements;
- Impact on archaeology;
- Impact on ecology;

There are considered to be no additional issues arising from the provisions of the Human Rights Act.

Compliance with prevailing Development Plan policy and Supplementary Planning Guidance

Unitary Development Plan (UDP)

The site is not specifically allocated under the UDP and Policy HC2 indicates that proposals for housing development within the urban area will be supported where the site has been previously developed or is not covered by conflicting plan policies or proposals.

Policy HC6 (Flat Conversions) of the Swansea Unitary Development Plan indicates that proposals for the conversion of vacant or underused commercial and industrial buildings to flats or other self-contained units of accommodation will be permitted subject to satisfaction of a list of criteria. These policies are supported by policies CC1 which encourages a mixed use development (including retail and residential) within the City Centre, and which in particular encourages the re-use of historic buildings and proposals will be considered against a list of criteria including residential amenity, potential for noise disturbance, traffic generation and parking, and in the case of retail development, the criteria specified in Policy EC4. Policy CC2 indicates that retailing is regarded as the most appropriate ground floor use within the primary shopping streets of the City Centre.

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Whilst the application property is not identified as a key frontage in the retail core area, within the SPG – Non Retail Uses in Swansea City Centre, the creation of the proposed retail unit together with 'shopfront' display windows, will provide an element of life and vitality within the commercial street scene thereby retaining an active ground floor frontage.

Policy EV1 UDP sets out the council's commitment to achieving high standards of design and layout in all new developments, and in particular requires new development to have regard to the desirability of preserving the setting of a listed building. Whilst Policy EV2 addresses the siting and location of new development and gives preference to the use of previously developed land over greenfield sites, having regard to the physical character and topography of the site and its surroundings. Policy CC5 states that the design of all new development schemes will be required to make a positive contribution to enhancing the City Centre's environment.

As indicated above, in addition to its Listed Building status, Castle Cinema forms a backdrop to Swansea Castle which is both Grade I Listed Building and an Ancient Monument. UDP Policy EV6 seeks to protect, preserve and enhance Scheduled Ancient Monuments and their settings. Where proposals affect sites and areas of archaeological potential, applicants will be required to provide i) an assessment or evaluation of the archaeological or historic importance of the site or structure, ii) the likely impact of development on the archaeological site, and iii) the measures proposed to preserve, enhance and record features of archaeological interest with the planning applications.

Policy EV7 of the UDP refers to proposals to extend or alter listed buildings which will not be permitted unless they safeguard the character of the listed building in terms of its scale, design, materials and features which it possesses that are of special architectural or historic interest, and the historic form and structural integrity of the building. The change of use of listed buildings will be permitted where this contributes towards the retention of a building without having an adverse effect on its character, special interest or structural integrity. The amplification to the policy indicates that the setting of a listed building is often an essential part of its character. If listed buildings become isolated from their surroundings, their character as well as their economic viability may suffer. They may also lose much of their interest and the contribution they make to townscapes or the natural heritage. Where the original use of a building is no longer viable, proposals will be determined on the basis of concurrent applications for detailed planning permission and listed building consent, which should contain full detailed and surveyed drawings of the existing building and any works associated with the proposed change of use. The impact on the character of the listed building is considered in greater detail as part of the application for listed building consent – ref: 2013/1405.

The proposed development would involve the substantial demolition of the listed building with only the front and rear elevations being retained. UDP Policy EV8 states that permission will not be granted for the total or substantial demolition of a listed building other than where there is the strongest justification and convincing evidence that, i) every reasonable effort has been made to sustain existing uses or find viable new uses compatible with the building's character and setting, and ii) preservation in some form of charitable or community ownership is not possible or suitable, and iii) the proposed new development would produce substantial benefits for the community, which would decisively outweigh the loss resulting from demolition.

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The amplification to the policy states that the Council will follow the advice contained within WO Circulars 61/96 and 1/98 in assessing applications for the demolition of a listed building, which must be accompanied by sufficient supporting information to allow assessment under the above criteria. Applications must also be accompanied by a full structural survey detailing why demolition is required.

The property is also located within the Wind Street Conservation Area and UDP Policy EV9 states that new development within or adjacent to a conservation area will only be permitted if it would preserve or enhance the character or appearance of the conservation area or its setting. New development in such locations must also be of a high standard of design, respond to the area's special characteristics, and pay particular regard to a list of criteria.

Heritage Impact

An historic analysis reveals that the side (north and south) elevations were originally hidden by adjoining/ adjacent buildings that have since been demolished. Therefore the blank side elevations of the Castle Cinema were never designed to be seen and the re-creation of these elevations with windows to provide a sense of activity and life is encouraged in principle. However, the south elevation will be highly prominent rising up behind the debtor's prison and Swansea Castle. The original drawings indicate that the new building would be some 7.5m higher than the prison. Whilst the proposed new built elements are at approximately the same level as the existing ridge line of the Castle Cinema, this is very different in terms of massing with a vertical building face in place of a sloping roof which will have a much more dominant effect. Therefore the proposed height and massing is considered unacceptable as the new build would dominate the castle and harm the setting of this Grade I listed building/ ancient monument. Furthermore the proposed new architecture of this side elevation is fragmented and unrelated to the context. The proposed use of natural stone as a facing material does not make the unacceptable scale and form acceptable. It is considered that any new side elevation must have a conventional eaves line to reflect the current scale of the Castle Cinema as a backdrop to the castle with the potential for one additional floor as a subservient element within a pitched roof space. Based on these requirements, the proposals were considered to be an overdevelopment which is harmful to the retained elements of the listed building, harmful to the setting of Swansea Castle and harmful to the character and appearance of the Wind Street Conservation Area.

Turning to the west elevation onto Worcester Place, the DAS indicates that the proposed new elements will not be highly visible from street level due to the narrowness of the lane, however this elevation also forms the highly visible oblique backdrop to Swansea Castle. As per the south elevation, it is considered that this elevation was too high and the proposed built form is poorly related to the listed building/ historic context. The north elevation should have the same character as the south to give the listed building integrity as a gateway feature on the link from Parc Tawe. This should include eaves at the current level and subservient accommodation within the pitched roof space. The full height of brickwork in the east (strand) elevation must be retained as this is a key feature of the building. The guidance given for the other elevations will also apply to this. The use of the two lower floors off the Strand as business space is welcomed to contribute to the mixed use nature of the area, however the existing partitions should be retained.

The Worcester Place level plan indicates a commercial unit in the southern elevation. Whilst this is welcomed in principle, the orientation of this unit overlooking the castle courtyard was considered to conflict with the proposed heritage regeneration of Swansea Castle which includes proposals for a visitor centre alongside the debtors prison in front of the proposed commercial unit, although it is stressed that these proposals have to be progressed through a planning submission. The applicant was advised for the commercial unit to be revised to face west onto Worcester Place with the primary south facing windows removed. Furthermore the proposed commercial unit extends to the south outside the existing footprint, which will likely have a direct impact on highly sensitive archaeological deposits. Glamorgan Gwent Archaeological Trust advised that there was a need for an archaeological evaluation of the area. Cadw have also expressed concerns that the closeness of the extension to the Ancient Monument will not only have a severe impact on the setting of the scheduled monument but will also cause significant problems with future repairs to the historic building.

The original scheme was considered to be harmful to the historic fabric of the listed building, harmful to the character of the listed building, harmful to the setting of the Ancient Monument of Swansea Castle and harmful to the overall quality and character of the Wind Street Conservation Area. The proposal was contrary to the provisions of UDP Policies EV7, EV8 & EV9 which in particular advises that applications for the total or substantial demolition of a listed building will only be granted permission where there is the strongest justification and convincing evidence in accordance with the listed criteria.

Whilst the amended scheme has attempted to address above issues, the scale and massing remains substantially similar to the submitted proposal, which it was considered to represent an overdevelopment which would be harmful to the retained elements of the listed building, harmful to the setting of Swansea Castle and harmful to the character and appearance of the Wind Street Conservation Area.

The applicants have indicated that the scale of the proposed scheme incorporating the number of units is necessary due to the viability of the proposal (although this is not backed up by any financial viability evidence), however, as the proposed scheme remains, it is considered to be harmful to the historic fabric of the listed building, harmful to the character of the listed building, harmful to the setting of the Ancient Monument of Swansea Castle and harmful to the overall quality and character of the Wind Street Conservation Area. The proposal is contrary to the provisions of UDP Policies EV7, EV8 & EV9 which in particular advises that applications for the total or substantial demolition of a listed building will only be granted permission where there is the strongest justification and convincing evidence in accordance with the listed criteria, and refusal will therefore be recommended.

Highways, traffic, and car parking

There is an existing garage car parking and storage area within the lower basement areas access from The Strand, which will be retained and will accommodate up to 4 vehicles, and which are intended to serve the commercial unit (Class B1) on the rear elevation. It is not proposed to provide any car parking facilities for the proposed student residential; units, however, the property is located within the city centre central core area, where proposals are not required to provide off-street car parking. The Head of Transportation raises no highway objections to the proposal subject to conditions in respect of cycle parking, restriction on residents parking permits, the submission of a travel plan and provision on on-site bin storage.

Impact on Archaeology

UDP Policy EV6 seeks to protect, preserve and enhance Scheduled Ancient Monuments and their settings, and also unscheduled archaeological sites and monuments. Where proposals affect sites and areas of archaeological potential, applicants will be required to provide the following information with planning applications:

- An assessment or evaluation of the archaeological or historic importance of the site or structure,
- The likely impact of development on the archaeological site, and
- The measures proposed to preserve, enhance and record features of archaeological interest.

Glamorgan Gwent Archaeological Trust (GGAT) have been consulted on the proposal as the Council's retained archaeological advisors. They reiterate that Castle Cinema, a Grade II Listed building, is situated between two Scheduled Ancient Monuments; immediately to the north lies the site of Swansea Old Castle (GM441), whilst immediately to the south is the site of Swansea New Castle (GM012). Additionally, GGAT indicate that the Historic Environment Record shows the close proximity of a number of other important archaeological sites in the immediate vicinity, including the Swansea Castle Walls (03329w), and human burials (01946w) and previous archaeological work in this area indicates that there is a substantial likelihood that important archaeological deposits survive within the project area and beneath the existing building.

Within the original proposal the proposed footprint would have extended the beyond of the existing building, and GGAT considered this would have a direct impact on highly sensitive archaeological deposits and advised that an archaeological evaluation of the area should be carried out prior to the positive determination of any planning application.

Whilst the current application has reduced the footprint such that it now remains within the boundaries of the original building, GGAT indicate that recent work in the vicinity has shown that the whole area between High Street, Castle Street and the Strand contains highly sensitive archaeological deposits. However, at present there is insufficient knowledge of either the exact nature or the full extents of the archaeological resources present. Therefore, there is still a need for an archaeological evaluation of the area to be carried out in accordance Planning Policy Wales (July 2014 7th Edition) and Welsh Office Circular 60/96, Section 13. GGAT therefore retain their stance that the determination of the planning application should be deferred until an archaeological evaluation has been submitted. CADW have endorsed the view that the impact on the archaeological resource should be investigated. The applicant has been invited to submit an archaeological evaluation but no such information has been forthcoming. Despite this having regard to the unacceptability of the scheme for the reasons outlined, it is that the application be determined with a recommendation of refusal.

Impact on Ecology

A Bat and Owl Survey have been submitted in support of the application in accordance with UDP Policy EV2(v), which requires at the earliest opportunity an assessment of species and habitats on site and, where planning permission is granted, implementing any necessary mitigation measures. The conclusions of the report were that there was owl use or bat use of the building and that no potential roost sites were identified. In this respect, Natural Resources Wales and the Council's Ecologist note the conclusion of the survey and have raised no objections accordingly.

ITEM 4 (CONT'D)

APPLICATION NO.

2013/1403

Conclusions

It is considered that the proposed student accommodation could contribute to the regeneration of Swansea City Centre in accordance with UDP Policies HC2 (Infill housing sites), HC6 (Flat Conversions), CC1 (City Centre mixed use development), and CC2 (City Centre retail core).

Whilst it is appreciated that the scale of the proposed scheme incorporating the number of units maybe necessary due to the viability of the proposal (although this is not backed up by any financial viability evidence), this is not a justification for the proposal, and as the proposed scheme remains, it is considered that the scale and massing would represent an overdevelopment which would be harmful to the historic fabric of the listed building, harmful to the character of the listed building, harmful to the setting of the Ancient Monument of Swansea Castle and harmful to the overall quality and character of the Wind Street Conservation Area. The proposal is contrary to the provisions of UDP Policy EV6 in respect of the impact on the setting of the Ancient Monument, UDP Policies EV7 & EV8 which in particular advises that applications for the total or substantial demolition of a listed building will only be granted permission where there is the strongest justification and convincing evidence in accordance with the listed criteria, and UDP Policy EV9 in respect of the effect on the character and appearance of the Wind Street Conservation Area. and Refusal will therefore be recommended.

RECOMMENDATION

REFUSE, for the following reasons:

- 1 The scale and massing of the proposed development would represent an overdevelopment which would be harmful to the special architectural, historical importance and character of the listed building, and harmful to the setting of the Ancient Monument and Listed Building status of Swansea Castle and harmful to the overall quality and character of the Wind Street Conservation Area, contrary to the provisions of the Planning (Listed Building and Conservation Areas) (Wales) Regulations 2012 and Swansea Unitary Development Plan Policies EV6, EV7, EV8 and EV9.
- 2 The application has not been supported by an archaeological evaluation assessment in order to assess the highly sensitive archaeological resource within the site contrary to the provisions of Swansea Unitary Development Plan EV6.

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV3, EV5, EV6, EV7, EV8, EV9, EV33, EV34, EV35, EV36, EV38, EV40, EC4, HC2, AS1, AS2, AS5, CC1, CC2.

PLANNING COMMITTEE – 13TH OCTOBER 2015

ITEM 4 (CONT'D)

APPLICATION NO.

2013/1403

PLANS

Site location plan, 1037-21 existing site plan, 1037-22 existing lower ground floor plans, 1037-23 existing ground floor plan, 1037-24 existing first floor plan, 1037-25 existing south elevation, 1037-26 existing east and west elevations, 1037-27 existing north elevation, 1037-28 existing section, 1037-29 proposed site plan, 1037-31 proposed plans - level 2 (lower ground) 1037-32 proposed plans - level 3 (ground), 1037-33 proposed plans - level 4 (first), 1037-34 proposed plans - level 5 (second), 1037-35 proposed plans - level 6 (third) 1037-36 proposed plans - level 7 (fourth) 1037-37 proposed roof plan, 1037-38 proposed east elevation, 1037-39 proposed south elevation, 1037-40 proposed west elevation, 1037-41 proposed north elevation, 1037-42 proposed section, 1037-43 proposed south elevation in context, 1037-44 proposed elevation in context received 23rd September 2013

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ITEM 5

APPLICATION NO.

2008/0912

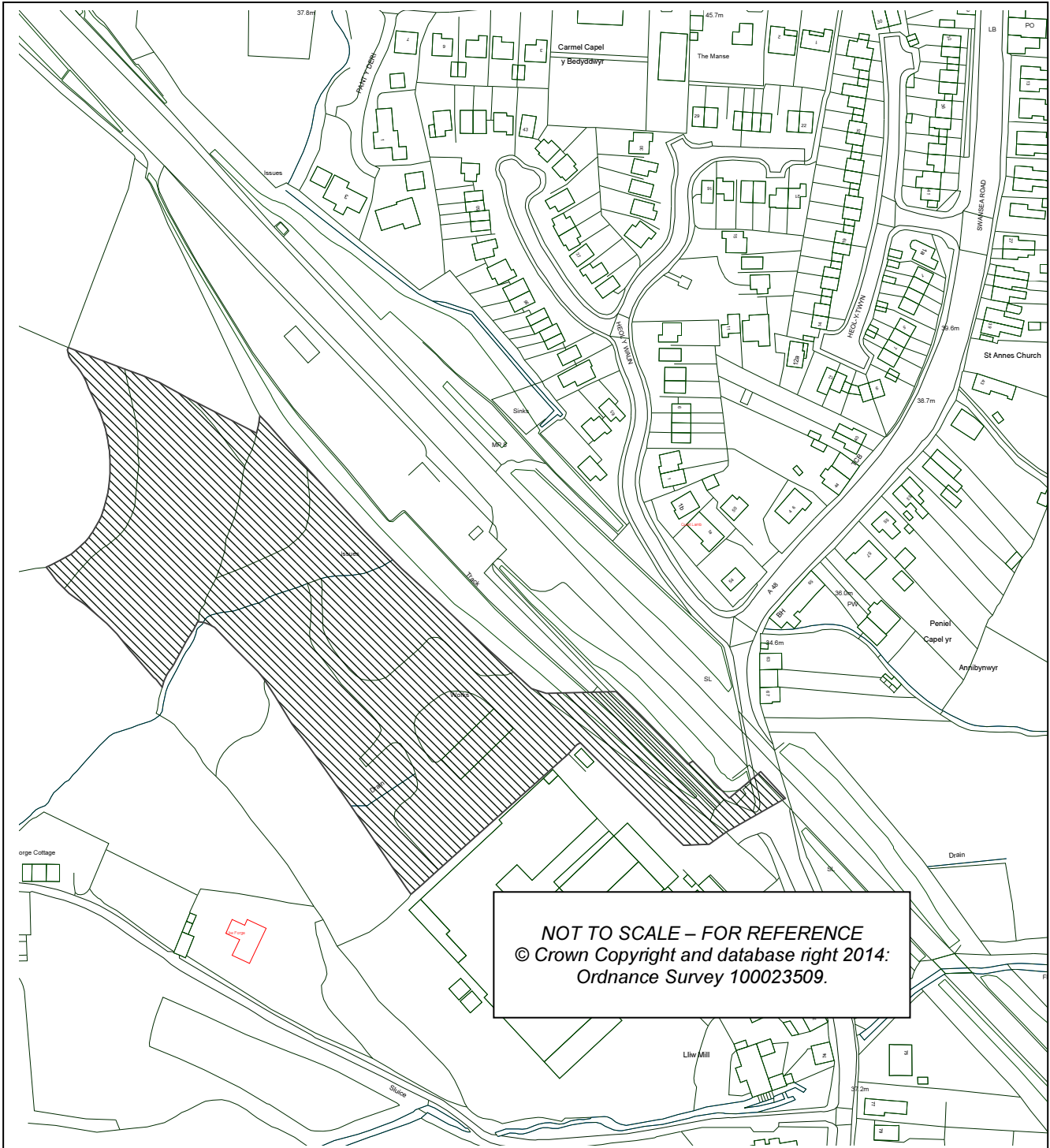
WARD:

Llangyfelach

Location: Former Walters Yard, Pontlliw, Swansea

Proposal: Construction of 67 dwellings with associated access, roads, parking, open space and demolition of existing buildings.

Applicant: Mr Hywel Walters



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ITEM 5 (CONT'D)

APPLICATION NO.

2008/0912

BACKGROUND INFORMATION

POLICIES

Policy	Policy Description
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 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 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 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 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)

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ITEM 5 (CONT'D)	APPLICATION NO.	2008/0912
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 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 EV38	Development proposals on land where there is a risk from contamination or landfill gas will not be permitted unless it can be demonstrated to the satisfaction of the Council, that measures can be taken to satisfactorily overcome any danger to life, health, property, controlled waters, or the natural and historic environment. (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 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 EV20	In the countryside new dwellings will only be permitted where justification is proved in terms of agriculture, forestry or the rural economy; there is no alternative existing dwelling in nearby settlements; and the proposed dwelling is located close to existing farm buildings etc. (City & County of Swansea Unitary Development Plan 2008)	

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ITEM 5 (CONT'D)

APPLICATION NO.

2008/0912

SITE HISTORY

App No.	Proposal
LV/80/0437/11	WORKSHOPS, OFFICE, STORED AND YARD Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 23/09/1980
LV/84/0186/11	CHANGE OF USE TO STORAGE OF SKIPS Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 15/05/1984
LV/90/0012/03	GENERAL PURPOSE STORE Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 22/03/1990
2013/1005	Diversion of overhead line (consultation from Western Power in accordance with Section 37 of the Electricity Act 1989) Decision: No Objection Decision Date: 22/08/2013

RESPONSE TO CONSULTATIONS

First Consultation

The application was advertised on site and in the press. A number of neighbouring and nearby properties were also consulted. SIXTEEN LETTERS OF OBJECTION (including a letter from Pontlliw and Tircoed Community Council) were received which may be summarised as follows:

1. The roads are busy and can get gridlocked.
2. It is not fair for existing residents who have to cope from the noise pollution from extra traffic.
3. Can the sewers and drains cope with the development? There was a flood in 2006 when the drains in the entire village were blocked.
4. The site is on a floodplain. It is on a lower level, this is bound to cause flooding. More concrete adds to flooding problems.
5. Concerns regarding the impacts on wildlife and the tranquillity of the village. 88 Dwellings is far too many.
6. The school has been extended to accommodate Y Llanerch and is nearly full again.
7. The village can only cope with small infill developments.
8. Concerns regarding visibility at the site entrance.
9. Residential and commercial traffic would mix resulting in delays and frustration. If Seetall decided to close it would result in a loss of a significant source of employment.
10. The development would be isolated from the rest of the village forming a colony that would intrude into the countryside.
11. Concerns regarding capacity at Pontlliw Primary.
12. Concerns the site is inconsistent with the draft UDP. The site is not an identified housing site.

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ITEM 5 (CONT'D)

APPLICATION NO.

2008/0912

13. The development site extends into the countryside and is an unwarranted intrusion into the countryside.
14. The application recognises a development of this scale will have an impact on infrastructure in terms of roads, sewers, drainage, school and park facilities yet it fails to adequately deal with how it would assist in alleviating that impact.
15. Concerns regarding the potential impacts on the neighbouring factory in terms of flooding, leaching of harmful substances, Japanese knotweed, vehicular conflict at the access, conflict between residential and industrial/commercial uses.
16. The site was withdrawn from consideration in the UDP there are no changes in circumstance that would now support the development.

Other consultation responses are summarised below:

Health and Safety Executive (HSE) 1.05.08

Does not advise on safety grounds against the granting of planning permission in this case.

Planning Ecologist 15.05.08

Please request an extended phase 1 ecological survey.

Environment Agency (EA) 28.05.08

The proposed site lies partly within zone C2 and partly within zone B, as defined by the development advice maps (dam) referred to under TAN 15, Development and Flood Risk (July 2004). We also understand that the factory site at Oaks End Industrial Park is liable to flooding. As a result they have had to raise the slab level of the buildings in order to remain operational.

Residential development is regarded as 'highly vulnerable' and should not be permitted within zone C2.

A Flooding Consequences Assessment (FCA) has been submitted but is out of date.

Due to the requirement for a revised FCA and Hydraulic model, we would ask that determination of the application be deferred.

Given the historic use of the site and the potential for contamination to be present a geotechnical report has been provided. We would strongly recommend this report is updated. **Ideally an updated report should be submitted prior to determination.**

We would request a development free buffer of at least 4m wide is maintained along either bank to facilitate access for maintenance and to provide some protection to habitats and wildlife that may be present along the river corridor.

We would again request that determination of the application be deferred. If however your Authority are unable to defer consideration or the requested FCA is not forthcoming this constitutes a reason for refusal under TAN 15.

Environment Officer 10.06.08

Recommends standard condition is included for a scheme for the eradication of Japanese knotweed.

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Planning Ecologist 3.06.08

The ecological report has within it a series of recommendations and suggestions for mitigation measures. These should be followed during the development. It seems very unlikely that there are any bats in any of the buildings. Would it be possible to retain the boundary hedge and trees? These are the habitats of most value on the site.

Pollution Control Division 20.06.08

Having looked at what's been submitted we're not inclined to disagree with their opinion on road traffic noise from the M4, despite their reliance on only 3 hours of data which doesn't necessarily give the strongest basis for such a conclusion.

However, this was never our principal concern which, as you know, is the potential noise issue arising from the adjacent scrap yard which I believe is still in operation. Even if operations should cease here, while the site still has permission for such operations then the potential problem will remain, as will our objection to residential development on this site.

Urban Design Comments 10.07.08

As the scheme stands I would recommend refusal on design grounds on the basis that the scheme is overdevelopment in this village context and does not work as a place in its own regard, contrary to policies EV1 – Design, EV2- Siting, EV4 – Public Realm, EV17 – Large Villages of the UDP, plus TAN12: Design and the Model Design Guide for Wales.

Highways Comments 3.07.08

There are some issues that have arisen that require amendments prior to highways support being given.

The principle of the access point is acceptable and the Transport Assessment indicates that the traffic generated by the proposal can be accommodated safely on the highway network. Parking provision appears to be acceptable too. However, the layout of the internal road gives cause for concern and the status of the extensive parking areas.

Urban Design Comments (following amended layout) 17.11.08

Whilst the concept is welcomed and the revised scheme is a significant improvement on the original submission, it is still too tight as demonstrated by the amenity issues.

Countryside Council for Wales (CCW) (29.03.10)

CCW objects to the proposal, because there is not enough information to assess possible effects on interests in the Carmarthen Bay and Estuaries Special Area of Conservation (SAC), Bury Inlet Special Protection Area (SPA) and Bury Inlet Ramsar.

We would look to the applicants to supply a bat survey of the buildings.

We note the Hawkswood report recommends that otter surveys are carried out. We would support this recommendation.

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There are some habitats identified on the site which are listed in the Swansea Local Biodiversity Action Plan. We would refer you to your authority's ecologist for advice on protecting and enhancing these important LBAP habitats.

We can give further views when provided with the information requested above. In the meantime, CCW objects to the proposals.

Housing Department 27.04.15

There is a demand for affordable housing in the area and the Housing Service would be seeking a 30% provision of affordable housing on the development site, subject to standard negotiation. It is envisaged that the Affordable Housing units would meet DQR and be a mixture of family size accommodation (2/3/4 bed houses) & affordable tenure, and ideally pepper-potted throughout the development.

Environment Agency 11.04.11

We note your query as to whether there is still a need for a revised Flood Consequences Assessment (FCA) and hydraulic model to be provided given that the site is now shown on the Council's flooding constraints map to be outside of the flow model.

Our original modelling of the River Lliw, which we used to formulate our response in May 2008, was a catchment wide model and did not include any in-river structures. In November 2009, we re-modelled the River Lliw in more detail.

The old Mill Leat runs closer to the application site but was not included in this revised model. Additionally, our flood maps do not take into account climate change allowance or blockages of in-river structures.

Furthermore, an ordinary watercourse runs through the centre of this site, which our flood maps does not take into account. There may also be culverts located both within the site and/or in close proximity to it that our flood maps don't consider.

We would therefore advise that the above points would need to be considered as part of a full FCA.

Planning Ecologist 9.06.11

The bat surveyor found no evidence of bats using the site, a bat and bird informative will be sufficient.

The otter survey found evidence of otters using the small watercourse on the site. Otters are protected under the Wildlife and Countryside Act and the Habitats Regulations, I think that a WAG licence may be required. The best way to resolve this is to consult with CCW.

EA 20.06.11

We are pleased to note that an FCA will be carried out. This should consider all potential sources of flooding to the site (e.g. the stream running through the site and culverts) as well as the potential impact the development may have in terms of flood risk on existing property/land in the vicinity of the site, as required by TAN15.

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CCW 15.07.11

We welcome the submission of the submitted bat and otter surveys.

We note the conclusions of the report on the buildings surveyed and consider that the proposed development will not result in any detriment to the favourable Conservation Status of bats in their natural range. Based on the level of use by bats observed at the site the CCW are of the opinion that a licence from Welsh Government will not be required.

The recommendations in the report are appropriate and should be conditioned as part of any permission your Authority may issue.

We note the otter report found no signs of breeding or resting places and as such consider that the development will not result in any detriment to the Favourable Conservation Status of otter in their natural range. The CCW are of the opinion that a licence from Welsh Government will not be required. The recommendations in section 8 of the report are appropriate and should be conditioned as part of any permission your authority may issue.

EA 8.10.12

Our stance remains the same on this application; therefore, if a FCA is not submitted or any subsequent FCA fails to show that the consequences of flooding can be acceptably managed over the lifetime of the development, then the application should be refused.

Second Consultation

Following the submission of amended plans indicating 65 dwellings the application was advertised on site and 21 properties were consulted. NINE LETTERS OF OBJECTION (including a letter from Pontlliw and Tircoed Community Council) AND ONE LETTER OF COMMENT have been received which are summarised below (note that those points raised in the first consultation have not been repeated):

1. Would it be possible to have the culvert adjacent to Forge Cottages enlarged as part of this planning application?
2. The development of the site would increase runoff, remove part of the flood plain and add to existing flooding problems.
3. Concerns regarding the contents of the submitted FCA.
4. A development of this scale would have an adverse environmental impact on the local community and its residents.
5. The development in the countryside would create pressure for further releases which could result in the loss of the rural character of Pontlliw.
6. There are more suitable alternative sites.
7. Concerns regarding the loss of habitat for wildlife.
8. Concerns regarding contamination from the adjacent scrap yard.
9. Developments within Pontlliw and the surrounding area are straining both the environment and infrastructure.
10. Concerns regarding the contents of the submitted Transport Statement.

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11. Concerns regarding the inadequacy and unsuitability of the access to the Walters Yard site to cope with the type and volume of traffic that exists and would be generated by the proposal.
12. Concerns regarding the elderly and children being able to pass the site and conflict between proposed residents and the traffic generated by the proposal.
13. Concerns regarding dangers to road safety by vehicles tailing back on Swansea Road.
14. Concerns regarding wider traffic impacts arising from the development in relation to the M4 slip road and other access roads onto the roundabout at Junction 47.
15. Concerns the increase in the number of residents would have a detrimental effect on Pontlliw's viability as a 'natural Welsh community'.
16. Additional youngsters could lead to anti-social behaviour.
17. The removal of the railway embankment would open up the industrial park to the detriment of the existing housing.
18. The proposal would have a devastating effect on the character and ethos of the community. This development would pose a significant threat and harm to the way of life of the village due to a large influx of new residents.
19. Concerns Pontlliw has limited local facilities, the development should be low priority for housing as the nearest district centre is 3km away.
20. Concerns regarding the capacity of the local school to cope with the development.
21. Concerns the development would increase parking problems and congestion at the school.
22. Concerns the development would create demand for new facilities such as takeaways that would not be welcomed by local residents.
23. The potential for blockages to the culvert running through the site increase the risk of localised flooding.
24. There is a right of way through the site and steps should be taken to make sure it is preserved.
25. Concerns that the development should provide adequate parking for the residents of the development.
26. In the event planning permission is granted the layout should ensure that the proposal is for rounding off with no ability for future development through the site and into the countryside.
27. If the site is developed the Community Council would ask that consideration is given to requiring the developer to make a contribution to the improvement of the amenities in the area. A possible area for improvement would be Pontlliw Park.
28. Concerns the proposed increase in the slab levels of the dwellings may increase surface water runoff and flooding into the neighbouring adjacent factory premises.
29. Comment from Edwina Hart AM that due consideration should be given to the comments and queries of Seetall Ltd.

Education 20.11.12

The development will generate, in accordance with the agreed Supplementary Planning Guidance (SPG) policy, the following pupils with the associated cost:

Primary: 20.15 (£208,996)

Secondary: 14.3 (£226,626)

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Primary

The development will generate 20.15 primary pupils. This will impact on Pontlliw Primary school (the natural catchment) as the school has currently very little capacity (10 places in September 2012) and pupil numbers for September 2018 is estimated to be 17 places.

Pontlliw Primary school is on a very restricted site (1.4 acres) with little scope for expansion. This development, together with the cumulative affect of other small developments in the area will push the school beyond its physical capability; there is already pressure on core facilities and additional pupils will exacerbate this.

There is also little capacity at the Welsh Medium Primary school of YGG Bryniago, currently 34 but in September 2018 the estimated figure will be that of **over capacity by 32**. In this instance, we would therefore request a developer's contribution for this school at this time and not for Pontlliw Primary School itself.

Secondary

This development will create a requirement for 14.3 secondary places in Pontarddulais Comprehensive. This school currently (September 2012) has only 2 surplus capacity places, which is expected to rise to 70 places in September 2018 but this surplus has been allocated to another approved development and therefore cannot be credited in this case. The cost for creating the required number of additional places is £226,626.

Conclusion

Any extra housing within this catchment area of Pontlliw will result in additional demand for places.

In summary, therefore, the request is for Developer's contributions of £208,996 towards enhanced facilities at Y.G.G Bryniago and also £226,626 for enhanced facilities at Pontarddulais Comprehensive; both amounts being indexed – linked

Drainage and Coastal Management 26.11.12

The FCA discusses the management and disposal of surface water drainage and indicates separate solutions for the road runoff and the private plots. The engineer drawings indicate the likely layout of the drainage for the site however no calculations have been submitted to demonstrate the performance of the system during the 1 in 100 year critical storm including 30% allowance for climate change.

We would also expect to see the run-off rates for the existing hard standing and greenfield areas on site in line with the principles established at the site meeting.

The contributing areas for the two discharge points should be established and the runoff rates pro-rata accordingly based on the positively drained contributing areas.

In regards to the management of surface water from the private plots the drawings indicate that porous fill will be used to create storage volumes, the principle of which are acceptable. The drawing also seems to indicate that there will be an overflow from the system.

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The drawings must show where the water will be going and at what rate, if it is proposed to discharge to the watercourse via the attenuation systems the discharge rate will need to be carefully controlled to avoid increasing runoff volumes from the greenfield portions of the site.

We have only considered the site from a surface water management perspective, we are expecting EAW to comment on the fluvial flood risk aspects assessed within the FCA.

EA 27.11.12

As raised in previous responses, we have requested deferral of the application pending the submission of an appropriate FCA which can demonstrate that the consequences of flooding can be acceptably managed over the lifetime of the development.

The FCA dated October 2012 does not sufficiently demonstrate that the proposed site complies with TAN 15.

We would continue to request deferral of the application pending the submission of an appropriate FCA.

Pollution Control Comments 19.12.12

The areas of concern were as follows:

1. Griffin Stringer Scrap Yard – This business is eligible for T9 – Recovery of scrap metal Exemption. The exemption enables the site to treat scrap metal by sorting, grading, shearing by manual feed, baling, crushing or cutting it with hand-held equipment to make it easier to handle and to help with its recovery. This exemption allows the site to store or treat up to 1,000 tonnes at any one time.

The exemption, unlike an environmental permit, would not contain conditions relating to noise or hours of operation. At present there are no times or operating restrictions on the current business.

The operations listed above are inherently noisy and have the potential to generate complaint from the residents of the proposed residential development.

However, since the application first came to the attention of the Division in 2011 there have been no complaints from the existing housing development in Heol Y Waun as regards the Griffin Stringer Scrap Yard. There is doubt as to whether the business is in operation.

Following discussions with the applicant and his consultants the amended development plan does take into consideration the views of the Division by using the preferred method of mitigation which is through design and layout. There is a landscaped area between the development and the Scrap yard and the buildings have been positioned so as to minimise any noise disturbance.

Given this information it would be unreasonable to object to the proposed housing development.

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2. Commercial Freight Line – Noise measurements were taken during a train by-pass and although the level of noise generated would not constitute a statutory nuisance there was a concern that if, according to a senior Route Manager of Network Rail there was an increase in the number of freight trains then there would be potential for complaints.

This Department have not received complaints about freight train noise or of any increase in freight movements since the application first came to the attention of the Department in 2011.

The amended plans have used design and layout to mitigate this potential problem by using landscaping and positioning of the proposed houses away from the freight line bridge over the A48 Swansea Road.

Given this information it would be unreasonable to object to the proposed housing development.

3. Seetall Furniture Ltd – This is a light industrial and manufacturing business. This premises currently accepts and delivers from 06.00hrs until 18.00hrs six days per week, although there are no formal time restrictions on the operating hours.

The noises associated with this business include noise from transfer processes i.e. vehicle movement of HGVs and fork lift trucks, including the use of reversing alarms; unloading and loading of materials; washing, cleaning and maintenance operations; and use of on-site compressors and generators.

The applicant has used the amended layout of the buildings to reduce the effects of noise disturbance on those residents closest to the business. This Department have not received noise complaints about this light industrial and manufacturing business.

Given this information it would be unreasonable to object to the proposed housing development.

Parks Department 14.01.13

With regard to the above mentioned Planning Application, having looked at the attached site plans of the proposed development, I wish to make you aware of the following observations which I wish to be taken into consideration by the Parks Service which are as follows:

- A commuted sum will be required from the developer for any future maintenance of POS carried out by The Parks Service.
- The provision of an appropriate planting schedule which will list the proposed species of trees and shrubs to be planted prior to approval where we can determine any maintenance or safety implications involved, although I do appreciate, that as this is an outline planning application we would not require a full planting scheme at this stage.
- Areas of POS to be in an acceptable and maintainable condition prior to adoption for future maintenance and to be accepted only upon whole completion of the development and not in phasing.

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- Provision of a copy of an up to date Tree Survey of existing trees which are to be retained and which will be included on any areas of POS within the development prior to any adoption for future maintenance.
- Protection of watercourse required – either by fencing or by piping/culvert, extending the existing culvert area by approx. 200 metres. Further comments required from CCS Drainage engineers.
- Future maintenance liability and responsibilities required for an open watercourse which would be subject to regular maintenance i.e. removal of leaves/debris falling from surrounding trees/shrubs.
- Confirmation required for the future maintenance liability and responsibilities of any boundary walls and fences adjoining POS.
- As a result of this new development we envisage additional use on an existing play facility at neighbouring Pontlliw Park, I therefore propose we seek to enter into a planning obligation to secure an offer of a financial contribution from the developer for the upgrading of the play surfacing at this facility. In line with the SPG, Parks would be looking for a financial contribution in the region of £31,774.06 (2010 costs plus inflation) for the provision of a tarmac base with appropriate safety surfacing.
- The Parks Service would not be in a position to adopt the POS if the roads were to remain in private ownership and only upon adoption by the highway authority.

EAW 25.01.13

It is our understanding that the combined sewage infrastructure which serves the location of the proposed development is hydraulically overloaded. This has manifested itself in the number of spills from a downstream combined sewer overflow (CSO) at Bach Y Gwereddyn Farm. This CSO has an indirect impact on the designated shellfish waters and should not spill on more than 10 occasions per annum, averaged over a 10 year period.

In the light of this information EAW has 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 a possible infraction in relation to the Urban Waste Water Treatment Directive. Hence any further deterioration must be avoided. The spills from the Bach Y Gwereddyn Farm CSO discharge into the River Lliw which then enters the Burry Inlet. The Burry Inlet, in addition to the shellfish waters designation also constitutes part of the Camarthen Bay Estuaries European Marine Site, which is a sensitive receptor.

Dwr Cymru/Welsh Water (DCWW) is aware of the capacity issues on this part of the Swansea 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. We would therefore recommend that the development be allowed to go forward under a Grampian condition:

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'No development shall take place until the DCWW works to upgrade the relevant local sewerage infrastructure provisionally programmed for AMP 7 (2020-2025) have been completed and adequate capacity made available. If however the aforementioned works are satisfactorily completed prior to these dates then the development can commence at that earlier time'.

If the developer is not able to wait until these works have been duly completed then they may propose works which will free up adequate capacity in the system to avoid any detriment from their connection. This could take the form of their removal of existing surface water which currently enters the system in the vicinity of the development. Alternatively they may enter into a legal agreement with DCWW to undertake relevant works on their behalf that will free up local capacity on a suitable timescale.

It should be noted that the volumes of clean surface water will need to be in excess of the volumes of foul which the development will generate in order to prevent the load increasing (concentration of pollutants in the system will increase, so the spills need to decrease to compensate). The actual volumes of surface water removal may be constrained by other factors and will require final agreement on their appropriateness from DCWW upon submission to the local planning authority.

If however, 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 we would object to the application and recommend your authority refuse the application.

CCW 1.02.13

CCW has no objection in principle to the proposal.

Carmarthen Bay and Estuaries Special Area of Conservation (SAC), Burry Inlet Special Protection Area (SPA) and Burry Inlet Ramsar site

We refer to the following document:

'Habitats Regulations Assessment of the effects of wastewater associated with new development in the catchment of the Carmarthen Bay and Estuaries European Marine Site (Final Report David Tyldesley and Associates, 17 April 2012)'.

We have previously confirmed that we are content with the approach that you will be using this report as the Habitats Regulations Assessment for all planning applications in Swansea that fall within the drainage catchment area for the Burry Inlet and Loughor Estuary (unless there are other ecological concerns that fall outside the water quality issues covered by this final report). This enables you to complete the assessment (TLSE) under the Conservation of Habitats & Species Regulations 2010 for this development.

Site drainage/hydraulic capacity

We understand that you are discussing this application with EAW and DCWW, and we would refer you to the advice of EAW and DCWW on hydraulic capacity and the planning conditions/surface water removal requirements for this application.

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We would also refer you to the EAW and DCWW for advice regarding the separation of surface water drainage from the site and any attenuation requirements. While it has been demonstrated that this is no longer an 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 Waters Directives. Therefore, we recommend that the schemes should be provided to the satisfaction of the EAW and DCWW prior to determination.

EAW 7.03.13

An FCA has been prepared by Mr Chris Dartnell, Land Drainage and Flood Defence Consultant and is dated 13th February 2013.

Note – detailed comments on the FCA are contained within the EAW response.

We would again ask that determination of the application be deferred until all our concerns raised and within previous letters have been fully addressed.

Natural Resources Wales (NRW) 18.04.13

Further to our response of 7 March 2013, we have received correspondence from the Land Drainage and Flood Defence Consultant, Mr Chris Dartnell (dated 28 March 2013).

Based on the content of this letter, we can confirm that we are now satisfied with the information submitted regarding the ordinary watercourse that runs through the proposed site, providing the post development dimensions are adhered to.

With regards to the comments from Mr Dartnell concerning the new flow calculations, we accept his observations and are satisfied that in this instance the flows used are acceptable. However, as the impact of the latest 0.1% flows has not been considered, we cannot confirm that there will be no increased flood risk elsewhere.

With regard to surface water management on site, we note that on-site underground attenuation storage has been proposed. This is to have capacity for the 100yr storm including an allowance for climate change. We would prefer to see overground storage used as underground storage can result in future/long term maintenance issues. The applicant should also be encouraged to investigate other sustainable drainage systems (SUDS), which could be implemented as part of the development for example grassed swales, attenuation pond, grey-water recycling, permeable paving etc.

It is also not clear whether the attenuation tank is intended to manage surface water run-off during construction. Experience has shown that pollution of surface water drains and attenuation tanks with sediments during the construction phase of this type of development is common. These issues can be difficult and expensive to resolve and again, an above ground system would be preferable to manage surface water during construction.

However, if your Authority is satisfied that underground storage is appropriate then an agreement must be in place to ensure the long term maintenance of the surface water system.

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No storage calculations etc have been provided to support the proposed attenuation system. However we accept that the detailed design of the storage tank (or any other attenuation system), is a matter for Welsh Water and your Authority's Drainage Engineers to advise on as the adopting authorities. Prior to determination your Authority should be satisfied that the surface water management scheme is adequately designed so as not increase flood risk elsewhere or result in pollution of controlled waters during construction.

If your Authority is minded to approve the application, then we would strongly recommend that a full surface water management plan is undertaken and submitted in writing for approval by your Authority. This must be agreed in writing prior to any development commencing on site.

Conditions are recommended (set out in the letter) in relation to: surface water drainage; a scheme to treat and remove suspended solids from surface water runoff during construction works; the provision of a construction method statement; and land contamination/remediation conditions.

Within our response of 28 May 2008, we also noted that the existing watercourse was to be enhanced and utilised as a focal space. We would again recommend that this is incorporated into the site design in its current form and the channel is not routed through the boundaries of properties to prevent any issues of riparian ownership arising. If planning permission is secured, we would ask that a development free buffer zone of at least 4 metres is maintained along either bank. This is to enable long term access for maintenance and also to provide some protection to habitats and wildlife that may be present along the river corridor.

Please note that any culverting of this ordinary watercourse will require the prior consent from the Lead Local Flood Authority (LLFA) which in this instance is Swansea Council. We have concerns with culverted watercourses due to the adverse ecological and flooding effects that are likely to arise. We also have concerns with culverted watercourses within the curtilage of domestic dwellings due to the burden of riparian ownership. In our experience, developers and private sellers do not always declare culverted watercourses and they are often not picked up on legal searches. This can result in future maintenance responsibilities coming as a surprise to owners, the financial implications of which are unlikely to be covered in standard insurance policies.

Rights of Way Officer 3.07.13

Are you are aware of the public right of way affecting this site and that if they are planning to divert (as the plan indicates) they will need to apply officially?

Dwr Cymru Welsh Water (DCWW) 26.07.13

We would request that if you are minded to grant planning consent for the above development that the conditions and advisory notes provided are included within the consent to ensure no detriment to existing residents or the environment and to DCWW assets.

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A key fundamental issue associated with any proposed development located on both the Carmarthenshire and Swansea side of the Estuary is the potential impact additional water discharges, either foul or surface water, will have on the local drainage systems and ultimately the designated waters. DCWW is contributing towards improving the water quality in the Estuary by undertaking key infrastructure improvements at its Northumberland Avenue and Llanant Waste Water Treatment Works which are designed to improve arrangements for dealing with surface water, provide ultra violet treatment and phosphate removal.

Equally developers too can play a significant part in mitigation measures by incorporating sustainable drainage features within their proposals. It is essential therefore that as a pre-requisite of any development being considered for approval that such matters are effectively controlled through planning conditions.

Therefore we seek you Authority's co-operation in imposing the following condition to any grant of planning permission:

No development shall take place until full details of a scheme for the foul and surface water sewerage disposal (incorporating sustainable drainage principles) of the whole site has been submitted to and approved in writing by the local planning authority and thereafter implemented in accordance with the approved details.

Note: DCWW have also recommended other standard conditions and advisory notes.

The proposed development site is crossed by a 9" public surface water sewer and a 300mm storm overflow. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times. No part of the building will be permitted within 3 metres either side of the centreline of the public sewerage assets.

No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site.

DCWW has no objection to the proposed development on water supply grounds.

Tree Officer Comments 30.04.13

I have a number of significant concerns regarding the accuracy of the submitted tree report. Many of the trees that I inspected were considerably larger than that stated within the report produced by Julian Wilkes of Treescene dated 13th November 2013. These inaccuracies have led to many trees above ground (Canopy spread) and below ground (Root protection area) to be shown incorrectly on the tree plan...

....Out of the trees I inspected many were inaccurately measured, some by a large margin. Further to this all inaccuracies were smaller than the measurements taken on site. Measuring stem diameter correctly is extremely important in determining the constraints the trees have to a development site. The stem diameter is used to calculate the root protection area (RPA) of a tree. The RPA of a tree is the area of rooting environment around a tree that needs to be protected to ensure the continued health of that tree. For example the stem diameter of T33 was recorded as a multi stemmed tree of 0.4 metres which would calculate to give a 4.8 metre RPA radius.

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T33 was a single stemmed tree that measured as having a 0.65 metres stem diameter which would calculate to give a 7.8 metre RPA radius. These methods are clearly detailed within the *British Standard 5837:2012 Trees in relation to design, demolition and construction. Recommendations*.

Due to my significant concerns regarding inaccuracies within this tree survey a full tree survey including a clear and accurate scaled tree constraints plan, Arboricultural Impact Assessment and Tree Protection Plan/Method to *British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations* must be submitted. Please ensure that all trees individually surveyed are tagged with tree identification tags.

Following the submission of further tree information by the applicant:

Tree Officer comments 28/05/2013

This information still does not meet the BS5837:2012 standard. As previously requested a clear and accurate scaled tree constraints plan, Arboricultural Impact Assessment and Tree Protection Plan/Method to *British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations* are required. Also if possible please can the applicant ensure that all trees that are individually surveyed are tagged with tree identification tags. Comments also made on individual trees.

Third Consultation

Following the submission of amended plans indicating 67 dwellings the application was advertised on site and 28 properties were consulted. SIX LETTERS OF OBJECTION (including a letter from Pontlliw and Tircoed Community Council) AND ONE LETTER OF COMMENT have been received which are summarised below (note that those points raised in the first and second consultations have not been repeated):

1. Concerns that the development would result in additional congestion at the roundabout at Penlleger between 7.30am and 9:00am. Other housing developments who have conducted traffic surveys at Penlleger roundabout have stated that it is 'operating at capacity'.
2. Concerns that the contents and conclusions of the Traffic Survey do not accurately reflect traffic movements in the area throughout the day.
3. Concerns Hospital facilities cannot cope with the numbers in the area and there is a lack of GPs.
4. Concerns schools in the wider area are at capacity.
5. The position of the foul pumping station so close to the adjacent land is not acceptable and will place unwanted restriction on this parcel of land.
6. A 5m maintenance corridor for the watercourse cannot be delivered as part of the corridor would not be within the ownership of the applicant.
7. A full bat survey of the existing buildings should be carried out and mitigation measures will have to be proposed for their relocation.
8. In relation to contamination no bore holes were taken in the embankment which runs most of the length of the site. There is a concern this is a deliberate omission as this area may contain batteries, oil drums etc from when the site was used as a scrap yard.

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Urban Design Comments 5.01.15

The revised plan (ref 1526/100 rev B) addresses all my concerns from email of 18th November plus the house type revisions are acceptable too.

Drainage and Coastal Management 3.3.15

We have reviewed the amended plans and while we have no concerns with the drainage plans, we are concerned with respect to the Planning Layout. It illustrates that trees are to be planted over the attenuation and adjacent to the culvert, this should not occur as it will create a maintenance hazard due to root ingress over time. We recommend that the planting plan is altered so the area is grassed over only.

Drainage and Coastal Management 16.09.15

Having reviewed the information we can consider it satisfactory and does demonstrate that 1 in 1000 year flows from this watercourse/culvert are contained within channel through the site.

Please also be aware that any alterations to this watercourse as part of the development will require separate permission irrespective of any planning permission granted under section 23 of the Land Drainage Act 1991 (as amended).

Pollution Control Comments 12.03.15

I have no comments to make about the amendments

Planning Ecologist 20.03.15

You sent me a consultation for the amended plans for the Walters Yard development. Broadly I think they look fine, my only comment is that the intention was to maintain a functional wildlife corridor along the small watercourse that runs through the site the new plan shows that the watercourse has been culverted for a longer length than in the original plan. The stream should be kept open for as much as possible and should be planted up with semi natural vegetation on at least one side.

Planning Ecologist 24.04.15

I've visited the Walter's Yard site. I don't think any of the trees marked to be felled have any features that are likely to be used by bats. At this point I don't think there is any need for further survey work. Some of the trees that are to be retained do have possible roost features as a precaution I think we should add a condition or informative requiring the developer to survey any tree for bat roosts that is to be felled if it has a suitable feature that could be used by bats.

Planning Ecologist 1.07.15

The trees that have bat potential are covered by TPOs so if work was to be carried out on these we would get an application on which we could comment, so a bat informative would be sufficient.

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Planning Ecologist 7.07.15

The suggested culvert diameter of 1200mm is fine the length though is too long at 40m culverts suitable for otter use should be shorter than about 15m.

NRW 17.04.15

We note that this current consultation relates purely to an amended site layout and the submission of the following reports.

- Letter dated 25 November 2014 - Ecology Inspection on 20 November 2014. Land at Walters Yard, Pontlliw, Swansea. Prepared by Barry Stewart & Associates Ecological Consultants.
- Remediation Strategy Report. Hywel Walters. Walters Yard, Pontlliw. Referenced 10857-3/MJE/14/RSR. Dated November 2014. Prepared by Integral Geotechnique.

Whilst our detailed comments on the above reports are provided below...please note that the comments and requested conditions provided by our legacy bodies are still applicable (i.e. EAW response dated 18 April 2013 and 2 September 2013 and CCW response dated 15 July 2011).

Ecology

We welcome the submission of the aforementioned letter and note that this has been produced in discussion with your Planning Ecologist.

With regard to European Protected Species we note that the searches of targeted fauna specifically for Otter signs and roost sites for bats, proved negative. We therefore continue to refer your Authority to our legacy body's comments dated 15 July 2011. In addition, we note from the report that the trees around the boundary of the site have the potential to support bat roosts. As no indication has been provided that these trees will be felled as part of the proposed development we offer no objection to the proposal. However, as highlighted in the report further surveys would be required if works are to be carried out on the larger boundary trees.

We also note from the report that a number of invasive species were highlighted on site, including Japanese Knotweed. The developer should be mindful that if not treated properly, Japanese Knotweed will continue to grow and spread and can easily compromise the structural integrity of all hardstanding areas and built structures of the development. We therefore advise the developer to produce a detailed method statement for the removal or the long-term management/control of invasive species on site.

Land Contamination

As your Authority will be aware from previous correspondence from our legacy body, EAW, controlled waters at this site are of high environmental sensitivity and contamination is known/strongly suspected due to its previous industrial uses. In addition, we note that the site has residual structures including basements therefore it is anticipated that further investigation is required to understand if these are areas of contamination that may pose a risk to controlled waters.

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We are satisfied that there are remedial options available to deal with the risks to controlled waters posed by contamination at this site. However, further details will be required in order to ensure that the risks are appropriately addressed prior to development commencing. We therefore consider that planning permission should only be granted subject to the inclusion of planning conditions (see letter for full details) to address this matter. Without these conditions, the proposed development would pose an unacceptable risk to the environment. Please note that we would need to see the information outlined in the recommended conditions before we can make comment on any remediation strategy.

NRW 16.09.15

Thank you for forwarding the additional information in respect of the above development, which we received on 25 August 2015. We have reviewed the FCA addendum submitted by WYG, in which they have utilised Mannings calculations to estimate the capacity of both the culvert which runs underneath the railway and the downstream ordinary watercourse which runs through the proposed development site. We are satisfied that the flows are suitable for use and that the calculations indicate that the ordinary watercourse running across the site has capacity to carry both the 1% plus climate change and 0.1% flows. However, we also advise that the Local Authority Drainage Engineers are consulted with regards to this additional information as they are the responsible authority for the watercourse in question.

DCWW 9.04.15

No issues raised over and above those highlighted in DCWW's letter of 26.07.13.

Parks Department 14.01.15

Parks commented on this proposed development on the 14/1/2013 with a view to obtaining a £31,774.06 contribution.

Tree Officer 27.04.15

I had a look at this site with the planning ecologist. I'm in agreement with most of the things picked up in the tree survey. The only things I disagree with are the felling of the small oak, T7, and the felling of the goat willow, G2, G3, G39 and G43. The oak is in reasonable condition and the goat willow is in good condition, it is in the nature of goat willow that it grows in a low multi-stemmed form. G39 forms part of the hedge at the south-west corner of the site and G39 and G43 will screen the site from the M4.

I note that some of the trees along the edge of TPO567:W001 are earmarked for felling, this will be ok as long as it is restricted to the small semi-mature trees which have encroached onto Walters Yard. The planning layout seems to differ from the tree survey in the details of what trees are to be removed and retained. This needs to be clarified.

An Arboricultural Method Statement needs to be submitted detailing how the trees will be protected during development, what the proposed building methods for any encroachment into the root protection area are and the extent of any tree works such as crownlifting.

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Pollution Control Comments (Noise) 7.07.15

I have considered the information in the Appeal Decision David Wilson Homes vs Ryedale District Council 2012. The points made relate to a much larger general industrial estate with many different noise sources from different business with varying hours of operation. It is acknowledged that there will be periods when the light industrial and manufacturing business (Seetal Furniture Ltd) will be audible to future residents but I refer to my memo dated 19th December 2012 and still have the same views that it would be unreasonable to object to the proposed housing development. The layout of the proposed dwellings will assist in reducing the effects of noise disturbance on those residents closest to the business. In order to reduce these effects further the applicant should construct a close boarded 2.2m fence on the Eastern side of the development adjacent to the light industrial and manufacturing business.

Pollution Control Comments (Land Contamination) 15.07.15

The report IGG Remediation Strategy Report [10857-3/MJE/14/RSR] addresses all the issues of concern. The site itself doesn't appear to be grossly contaminated though there is some contamination that will require remediation.

I'm happy with the assessment process and with the proposed remediation strategy.

Section 5 of the report details the proposed Remediation Verification process and I'm happy with this as well.

The requirements for a Phase 1 report: Desk Top Study, Phase 2: Detailed Investigation and Phase 3: Remediation Strategy Options Appraisal, which would normally be the subject of a condition, have been met by the contents of the IGG Remediation Strategy Report [10857-3/MJE/14/RSR] already submitted.

However, conditioning the application is appropriate as follows on the premise that ALL the works specified in the above mentioned report are undertaken as detailed, including "the provision of suitable hydrocarbon vapour resistant gas membranes to all buildings pending the findings of the supplemental grid sampling" [IGG Remediation Strategy Report [10857-3/MJE/14/RSR] 2.7 para.5].

Please note that my comments do not extend to issues relevant to controlled waters which come under the jurisdiction of Natural Resources Wales.

Highways Observations

1. Introduction

- 1.1 This application is for full consent for the construction of 67 dwellings with associated access and parking. The site has previously been used for transport, storage yard and haulage and hence had a certain level of HGV activity and traffic movements associated with it. The planning application was first submitted in 2008 and due to issues mainly regarding the Land allocation the application has been in abeyance since then. A number of amendments and redraws have been forthcoming and it is now considered by the applicant that the outstanding issues have been addressed with this current layout.

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- 1.2 In order to assess the impact of the development on the adjacent Highway Network, a Transport Assessment was submitted with the application in 2008. Highways were consulted again more recently regarding the validity of otherwise of the 2008 TA and we advised that a 12 hour count needed to be undertaken and if the results were within 10% of the previous document then we would accept that without requiring a new updated document.
- 1.3 The site is currently used as haulage yard with an operator licence (in 2008) for 17 HGV'S and 27 Trailers. There were no limitations on hours of operation although mainly movements were between 4am and 8pm.
2. Transport Assessment (TA).
 - 2.1 The TA was submitted in support of the planning application for land on Walters Yard. Originally there were 88 dwellings proposed but subsequently this number has reduced to 67. The document has been produced following National Guidelines and using the TRICS database which is the universal standard for the UK
 - 2.2 The site is accessed off the main road- Swansea Road which is between 7.5m to 8m width with footways on both sides.
 - 2.3 Access amendments have been agreed in principle with the Highways Section that provide a safer access for all users than that currently at the site. The works will be undertaken under a Section 278 Agreement with the Highway Authority. The revised access will give the required visibility when leaving the site.
 - 2.4 Personal injury statistics showed only two accidents in the three year period up to December 2007. Within the last three years there have been no new accidents in the vicinity of the site junction (which is as existing).
 - 2.5 A 12 hour survey was undertaken in April 2008. This showed approx. 6000 daily movements with 600 and 700 in the am and pm peak respectively with an average % of 6% of HGV's.
 - 2.6 The TRICS database provided a trip rate of 8.5 movements daily (based on survey sizes for between 50 and 200 houses) with between 0.6 and 0.7 movements per dwelling in the peak houses. These are as expected from dealing with other sites in the Swansea Area. In the morning peak the site was expected to generate 53 movements- less than one per minute, similarly in the afternoon peak the figure was 61 with a total of 756 for a 24 hour day.
 - 2.7 When compared to the existing uses there is an increase in traffic movements associated with the residential use. However the priority junction access has been tested using PICADY and was found to be working well within capacity with a maximum wait of 11 seconds when egressing the site.
 - 2.8 Given the length of time delay for determination a request was made for another 12 hour traffic count. This was undertaken in December 2014 and showed 580 in the morning peak and 704 in the afternoon peak so overall very little change, if anything a slight reduction.

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An intermediate traffic count was undertaken in 2012 by CCS and this showed flows of 454 in the morning peak, 617 in the afternoon peak and 24 hour flows of 5933. The applicant was subsequently advised that a new TA was not required.

2.9 It is worth noting that the original TA was written for 88 dwellings and now the scheme has been reduced to 67 so any trip generation impacts can be further reduced by 23%.

2.10 The conclusions of the TA were that the scheme (subject to the usual conditions, legal agreements and amended access) could be accommodated without any detriment to the Strategic Highway Network

3. Vehicular Access and Traffic

3.1 The only vehicular access to the site is gained directly off Swansea Road Pontlliw. The application proposed an amended access, splitting off the Seetall access from the residential/scrap yard access and the design was drawn up in consultation with Highways who have in principle approved the access design. The proposed access will allow safe access to the residential site, and the existing scrapyards and furniture factory which are being retained.

3.2 The amended access will have to be constructed under a Section 278 agreement with the Highways Authority. The Transport Assessment indicated that the Highway Network could cope with the additional traffic generated by the proposal.

3.3 The layout of the site accords with our adopted standards and the pinch point when entering the site would act as a natural traffic calming feature. Most of the carriageways have footways/service strips associated with them. Thus the layout is suitable for adoption under a section 38 Agreement with the Highway Authority. There is a watercourse also being traversed and the design of this culvert/bridge will need to be designed to HA standards and be subjected to an independent verification process.

3.4 The small parking courtyards dotted throughout the site, the access to the substation (between plots 18/19) and the shared drive adjacent to plot 32 will not be adopted and will remain in private ownership.

4. Car Parking

4.1 The development has been assessed against adopted parking guidelines. Residential parking is in accordance with the standards for zones 2-6.

4.2 The parking is largely provided on drives within the private curtilage, in garages and also there are forecourt areas when shared provision is available. Where garages form part of the parking provision the permitted development rights will be removed by condition to ensure that adequate parking is retained.

4.3 Notwithstanding the boundary treatments indicated on the submitted plans the boundary wall of any boundary fronting any highway or parking area shall be kept below 1m in the interests of visibility. This can be secured via condition.

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- 4.4 The majority of the roads within the site should not require any on street controls as the parking meets the standards. However, should any Traffic Regulation Orders (TRO's) be deemed necessary during the Section 38 process then they will be included at the applicant's cost at this point. This may include Double Yellow Lines or keep clear hatching where turning for deliveries/refuse lorries may take place. These should keep the highway free from parking and maintain the routes obstruction free.
5. Pedestrian and Cycle Access
- 5.1 Pedestrian and cycle facilities are to be enhanced by the development. The footways are 2m in width and run throughout the site on at least one side of the road at any point. Whilst no dedicated cycle parking is available the availability of garages will allow safe secure parking to take place. The nature of the estate road being a no- through road should ensure low speeds to encourage on road cycling to take place.
6. Public Transport
- 6.1 There is public transport provision that runs along between Pontlliw and Pontarddulais (going from Ammanford to Swansea and vice versa) the service X13. This runs at 20minute frequency and the site is considered to be well served by public transport as an alternative means to the car.
- 6.2 Pontlliw is served by local amenities such as primary school, post office, hair salon, garage, local shop and pubs.
- 6.3 The TA makes reference to a section 106 contribution (clause 4.7 of the TA) towards bus stops upgrades and following discussion with the relevant officer I have been advised that sum of £2000 will be sufficient for remarking/repainting.
7. Conclusions
- 7.1 The Transport Assessment demonstrated the scheme can be developed without detriment being caused included with the outline consent indicated that the main access junction can accommodate the increased traffic and remain within its capacity.
8. Recommendations
- 8.1 No highway objection subject to the following;
- i. All adoptable highway works including the internal road layout and amended access being completed to Highway Authority Standards and Specification under section 38/278 Agreements. The culvert/bridge over the watercourse will require separate approval/verification from the Bridges and structures section.
 - ii. Garages shall remain for parking purposes only incidental to the residence only and not for any other use.

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- iii. Notwithstanding the submitted details the boundary walls along the estate road boundary shall be kept below 1m in the interests of visibility to ensure that adequate visibility is maintained for accessing/egressing vehicles and pedestrians.
- iv. A sum of £2,000 to be made payable under a section 106 agreement for upgrades associated with the two closest bus stops of Swansea Road Pontlliw.
- v. The applicant be required to submit a Travel Plan for approval within 12 months of consent and that the Travel Plan be implemented prior to the beneficial use of the building commencing.
- vi. Prior to any works commencing on the site, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved traffic management plan shall be implemented and adhered to at all times unless otherwise agreed by the Local Planning Authority.
- vii. No development shall be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

Note 1: All off-site highway works are subject to an agreement under Section 278 of the Highways Act 1980. The design and detail required as part of a Section 278 Agreement will be prepared by the City and County of Swansea. In certain circumstances there may be an option for the developer to prepare the scheme design and detail, for approval by the City and County of Swansea. However, this will be the exception rather than the rule. All design and implementation will be at the expense of the developer.

The Developer must contact the Highway Management Group , The City and County of Swansea , Penllergaer Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Senior Engineer (Development), e-mails to : or the Team Leader , e-mails to, tel. no. 01792 636091

Note 2: The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary.

Note 3: All direction signage on the highway is subject to separate consent and further information on this aspect should be sought from The Traffic Management Group, City and County of Swansea, Tel: 01792 636168.

APPRAISAL

This application has been called to Committee for decision by Councillor Gareth Sullivan in order to consider the impact on the surrounding area and infrastructure.

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APPLICATION NO.

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This application seeks planning permission for the construction of 67 houses with associated access, roads, parking and landscaping at Walter Yard, Swansea Road, Pontlliw.

The application site, which is elongated and irregular in shape, is currently used as a haulage yard with access derived off Swansea Road which is shared with the adjacent furniture factory and scrap yard. The site is bound by a scrapyard and rail line to the north east which are separated from the site by a high embankment. The neighbouring furniture factory is located to the south east and is separated from the site by a line of conifer trees. To the west is open countryside.

There is one large single storey building on the site with the residual areas covered in a mix of, scrub, bare ground and various hard surfaces. Lorry parts, other vehicles and containers are scattered around the site. The site is generally level with a change across the site of approximately 1.5-2m. The site is surrounded by mature shrubs and trees which along the northern and north western edge are covered by a Tree Preservation Order (TPO). There is a culvert which runs in a south westerly direction through the site beyond which the site is less well used. There is an 11KV overhead line crossing the site which is proposed to be diverted across the site or grounded. The Local Planning Authority has already been consulted on the diversion under Planning Ref: 2013/1005 and offered no objection to the proposals, which would divert the line along the alignment of the access road.

The north western parcel of land that forms the site is identified in the UDP proposals maps as being within the open countryside, as such the proposal has been advertised as a departure to the provisions of development plan. Policy EV20 states that in the countryside new dwellings will only be permitted where justification is proved in terms of agriculture, forestry or the rural economy; there is no alternative existing dwelling in nearby settlements; and the proposed dwelling is located close to existing farm buildings etc. (City & County of Swansea Unitary Development Plan 2008). This land, however, benefits from a Lawful Development Certificate issued in 1988 which has established that the use of this land and the residual areas of the site, save for the access, as a haulage contractors business is lawful. Moreover, visually and spatially this land is considered to more closely relate to the wider brownfield site rather than the open countryside. It is considered that this should be given significant weight in the determination of this application, notwithstanding the countryside boundary indicated in the UDP proposals maps, subject to other planning policy and technical requirements which are discussed below.

Main Issues

The main issues to consider in the determination of this application relate to the acceptability of the residential development at this site in terms of its impact on visual and residential amenity, highway safety, ecology, drainage and water quality issues, and compatibility with adjacent land uses, having regard to the prevailing provisions of the relevant UDP Policies and National Policy guidance. There are considered to be no additional issues arising from the provisions of the Human Rights Act.

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Policy considerations/ Principle of development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined 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 10th November 2008.

The application site was put forward as a housing site in the draft Interim Housing Land Policy Statement 2002-2009 (IHLPS) but was withdrawn from consideration in 2004 following unresolved issues relating to flooding, access and the proximity of the adjacent scrap yard.

In terms of the emerging Local Development Plan (LDP), the site has been promoted for housing through the LDP and was included as a housing site within the Pre-Deposit Draft.

The north western parcel of land that forms the site is identified in the UDP proposals maps as being within the open countryside, as such the proposal has been advertised as a departure to the provisions of development plan. This land, however, benefits from a Lawful Development Certificate issued in 1988 which has established that the use of this land and the residual areas of the site, save for the access, as a haulage contractors business is lawful. Moreover, visually and spatially this land is considered to more closely relate to the wider brownfield site rather than the open countryside. Given this planning history, and notwithstanding countryside boundary indicated in the UDP proposals maps, there is no objection in principle to the use of this parcel of land as housing subject to other planning policy and technical requirements which are discussed below.

In line with the objectives of Planning Policy Wales 2014 (7th Edition) and TAN 12: Design (2014), UDP policies EV1 and EV2 seek to ensure 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. These Policies are expanded upon and supported by the Supplementary Planning Guidance (SPG) document 'Places to Live: A Design Guide' adopted in 2014.

The current proposal needs to be considered in the context of the surrounding area. The natural environment of this site is further supported by Policy EV30 which particularly seeks to protect and improve woodlands.

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, development and flood risk.

Affordable Housing provision on a site of this scale should be provided in accordance with Policy HC3 and 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.

Visual Amenity

The proposal has been the subject of significant negotiations in order to ensure that the density, layout and design of the development has sufficient regard to its location at the edge of the countryside. Significantly the number of dwellings has been reduced from 88 dwellings as originally proposed to 67 dwellings.

In visual and spatial terms, the site is somewhat isolated from the main road which runs through the village due to access being derived from a dedicated road which runs between the scrap yard access and railway embankment to the north and the grounds of the furniture factory to the south. A pedestrian link will be provided from the main part of the site to Swansea Road. The link would be relatively pleasant as there are trees on both sides of the access, however, the palisade fence boundary treatment with the factory should be screened where possible and street lighting would be required as the portion of the link closest the Swansea Road is not overlooked.

Once into the main part of the site the spine road meanders through the development which is characterised in the main by detached and semi-detached dwellings fronting directly onto the road with small front gardens. Other good design principles incorporated into the development include the effective use of corner buildings, side parking to limit the visual impacts of parked cars, and frontages onto the watercourse, which will provide a focal point in the central part of the development.

The majority of mature trees around the site perimeter are indicated to be retained which will provide some screening to the development from surrounding views to the west and will ensure the site reflects its sensitive location at the edge of the village. In this regard it will also be necessary to ensure that suitable boundary treatments are provided along the western edge of the site to ensure a soft edge to the perimeter of the development. In this respect it is noted that a new native hedge is indicated along the rear of plots 12-26 to define the boundary. The provision of suitable boundary treatments can be addressed by condition.

In terms of the house types proposed there is a good mix of 2 bed (10), 3 bed (32) and 4 bed (25) dwellings. Again the provision of satisfactory house types has been the subject of negotiations as has the mix of materials. The three storey properties previously proposed have been deleted resulting in the whole development being two storey, thus reflecting the scale and character of the properties within the village. The majority of the dwellings (50) would be in facing brick with rendered dwellings generally used on important corners facing the access road. This will provide the variety in the street scene that reflects the variety of facing materials found within the wider context of Pontlliw.

A landscaping plan has not been submitted with the scheme, however, there is scope within the development to provide planting within both public and private areas of the site. It will also be important that the boundary treatments facing the road are robust and of good quality design.

As stated earlier there is a pedestrian link through the development to Swansea Road. There is also a public right of way which crosses the north western part of the site. This will be re-aligned to follow the line of a new path. The provision of a satisfactory treatment for this path can be secured by condition and an informative note will be included advising the applicant to contact the Rights of Way Team to discuss the re-alignment of this path.

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In light of the above the proposal is considered to represent a satisfactory form of development in terms of its impacts on the character and appearance of the area. The layout and design of the development would create a good quality and distinctive streetscape and would accord with the provisions of Policies EV1, and EV2.

Residential Amenity

In terms of residential amenity impacts, the nearest existing residential property to the development is Lliw Forge sited over 60m to the south west as such there would be no material residential amenity impacts to this property.

The layout has been amended to improve the separation distances between dwellings within the development. Back to back and back to side separation distances now generally accord with the guideline separation distances outlined in the adopted SPG. In addition for the vast majority of the plots a standard 10 metre separation distance would be maintained where first floor windows would overlook neighbouring private amenity space. In this respect the development is considered to be satisfactory.

The site is surrounded by mature trees. Following officer concerns the layout has been amended to pull the dwellings away from these trees particularly in the north westernmost corner of the site where plot 42 is sited. The amended plans have now addressed previous concerns with regard to the potential conflict between the development and the canopies and root systems of the trees in this area. Furthermore, it is not considered the siting of the dwelling on plot 42 would give rise to any significant overbearing or overshadowing impacts from the surrounding trees.

The eastern boundary with the furniture factory is defined by high conifer trees, which will result in some overshadowing and overbearing impacts to the occupiers of those plots nearest to this boundary (plots 1, 11 and 12). To mitigate these impacts the plots have been orientated with their side gables facing this boundary which will ensure the front and rear elevations of these properties benefit from sufficient outlook and would not experience any significant overbearing impacts from these trees, despite their height. In terms of overshadowing impacts the main impacts would be to plots 1 and 11. These plots would be overshadowed by these trees for part of the day, however, it is considered that sufficient natural light and outlook would be afforded to these properties to ensure that their siting in proximity to these trees would not result in any significant residential amenity impacts to the occupiers of these properties.

UDP Policy EV2 requires new development to have regard to the physical character and topography of the site and its surroundings and under criteria xiii, development must have full regard to existing adjacent developments and the possible impact of environmental pollution from those developments, as well as the creation of any environmental pollution to the detriment of neighbouring occupiers (including light, air and noise).

Additionally, UDP Policy EV40 states that 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. The amplification to the policy states: where proposed development is to be located in close proximity to a source of noise pollution, or includes possible noise conflicts within the proposed site, proposals will be required to incorporate design, landscaping and other measures to minimise the effects on future occupants.

The layout of buildings can frequently be designed or modified to reduce the effects of noise disturbance. Similarly schemes can be designed to incorporate materials, features and landscaping which reduce the impact of noise on the surrounding buildings. Where there are potential noise implications, developers may be required to provide an assessment of noise impact, together with proposals for mitigation in support of planning applications. Planning permission will be refused if the Council is not satisfied with the results of the assessment and proposed mitigation measures. Notwithstanding the use of good design and materials, there will be some instances where new residential and other noise sensitive uses such as hospitals and schools will not be acceptable in close proximity to existing noise generating uses or activities.

In terms of noise generated from the scrap yard, the proximity of the scrap yard some 15 metres to the nearest of the proposed dwellings would have the potential to result in noise disturbance to these properties by virtue of the nature of the activities taking place at the site typically for such uses this would involve receiving and treating scrap metal by sorting, grading, baling, crushing or cutting. However, the Pollution Control Division is satisfied that the intervening embankment and the design and layout of the scheme would be sufficient to address any significant impacts to the occupiers of the development. Whilst this may be the case, there is a residual concern that this use does have the potential to generate high levels of noise that would be incompatible with the residential use proposed. This view is consistent with the earlier comments from the Pollution Control Division and one of the fundamental reasons why the site was withdrawn from the IHLPS. The scrap yard is currently vacant, and has now been acquired by the applicant in order to provide satisfactory access and egress from the site. This provides an opportunity to ensure that the use of the scrap yard ceases which shall remove the possibility of any significant noise or disturbance impacts to the occupiers of the proposed development arising from this land use. The applicant has indicated that they would be willing to surrender the use of the scrap yard and this can be achieved through a S106 planning obligation.

There is an operating commercial freight rail line to the north of the scrap yard which will have the potential to result in noise disturbance to the future occupiers of the development. In commenting on the application in 2013 the Pollution Control Division reported there may be a potential increase in the number of trains that would be using the line. Noise surveys have been taken during a train bypass which confirmed that the noise levels would not constitute a statutory nuisance. Furthermore the noise survey submitted in support of the application confirmed that the noise generated from the operation of the rail line did not cause any increase in the noise levels on the site over and above the noise of the M4 to the west. The rail line is a similar distance to the proposed dwellings as it is to the existing dwellings on Heol Y Waun. The Pollution Control Division has not received any complaints about freight noise and as such, within the noise context of the site, it is not considered that the noise arising from the proximity to the operational rail line would result in any significant noise disturbance to the future occupiers of the proposed development.

Turning to the noise impacts from the adjacent furniture factory, Seetall Furniture have made representations concerning the potential impact of the proximity of the residential use upon the operation of the business. It is important to consider not only the impact of the proposal on the amenity that can reasonably be expected by residents of the proposed development but also the impact on neighbouring commercial operations by the proposed noise sensitive residential use.

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Seetall consider that the proposed residential use is not compatible with the manufacturing processes taking place at the factory. The factory comprises a fully automated metal production plant, a foundry and upholstery factory. Its manufacturing operations take place six days a week between the hours of 07:00 and 17:00, although it is noted that deliveries may be received from 06:00am. Seetall's concern is that their manufacturing operations could be curtailed should residents not wish to live next to a busy factory, which may result in noise nuisance complaints to the Pollution Control Division which could undermine the ability of the factory to operate and, in a worst case scenario, result in closure and job losses. These legitimate concerns have been raised and are an important material planning consideration.

An acoustic report has been submitted with the application conducted in 2008 which reported no noise from the furniture factory, however, it is considered that little weight should be given to the findings of this report given the limited hours the site was surveyed (between 14:15 and 17:00) and the distance of the survey points from the factory premises. Notwithstanding this, the Pollution Control division has considered the impact of the existing operations at the furniture factory on the future occupiers of the development and are satisfied that the layout of the proposed dwellings, with their side elevations facing the application site would mitigate any significant impacts to the amenity of the future occupiers. It is noted that there are residential properties on the eastern side of the factory including a property located in close proximity to the factory access and buildings. If the premises were operating in a manner which resulted in excessive noise it would be reasonable to expect that complaints may be received on noise nuisance grounds, however, the Pollution Control division has received no noise complaints relating to the furniture factory site.

Seetall's has cited an appeal in England that was dismissed on the grounds that introducing housing adjacent to an established industrial area would prejudice the ability of the businesses to operate. Comparisons can be drawn with this decision in terms of the issues that are relevant to the consideration of this proposal, however, each application is considered having regard to the specific circumstances of the application.

On site, some intermittent noise from the factory was audible from machinery within the buildings and delivery lorries, as such it is acknowledged that whilst there will be periods when the activities within the site will be audible to future residents, as is no doubt the case for the current residents near the premises, it is considered, on balance, that these effects would not have a significant adverse impact on the living conditions of the future occupiers. It is acknowledged there is a potential for the factory premises to be occupied by a different operator, however, it is considered that the siting of the factory within a village context would not appeal to operators undertaking inherently noisy or dirty manufacturing activities. It is considered the mitigation proposed in terms of the orientation of the dwellings would address any significant noise impacts to the occupiers of the dwellings and further mitigation has been requested by the Pollution Control division in the form of a 2.2m high fence along the eastern boundary with the factory. This can be secured by a condition.

In the absence of any significant harm to the future occupiers of the proposed development from the activities taking place at the factory, it follows therefore that the future occupiers would be unlikely to raise concerns either to the factory operators or the Council regarding noise or disturbance. As such it is not considered that the proposed development would undermine the ability of the factory to operate its business.

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In view of the above the proposed development is considered to be acceptable in residential amenity terms and would accord with UDP Policies EV2, EV40 and HC2.

Parking, Access and Highway Safety

Responses to the public consultations have raised concerns regarding the suitability of the access for commercial and residential use together with the impact of additional traffic on: Swansea Road; the roundabout and slip road at J47 of the M4; and the Penllergaer Roundabout near the Primary School. Concerns have also been raised that the parking provision would not be sufficient within the development. Moreover concerns have been raised regarding the accuracy and findings of the transport assessment.

A transport assessment was submitted with the application for 88 dwellings in 2008. Given the time that has passed, an additional traffic count has been undertaken in 2014 and this has been cross referenced with CCS counts undertaken in 2012. The counts indicate a slight overall reduction in traffic since 2008.

The TRICS database which is the universal standard traffic database for the UK has been used to determine traffic flows to and from the site. In the morning peak the site was expected to generate 53 movements - less than one per minute, similarly in the afternoon peak the figure was 61 with a total of 756 for a 24 hour day.

The proposed development would result in an overall increase in the volume of traffic movements at the junction, however, the priority junction access has been tested and was found to be working well within capacity with a maximum wait of 11 seconds when egressing the site. This indicates that the development would not result in any significant delays for commercial traffic exiting the furniture factory.

The access onto Swansea Road is proposed to split the traffic arising from the proposed development and scrap yard with that arising from the furniture factory. The access has been designed in consultation with the Highways Department and the Head of Highways and Transportation considers that the revised access will give the required visibility when leaving the site access and will provide a safer access for all users than currently exists.

In term of the impacts on the surrounding road network, the conclusions of the TA were that the scheme, subject to conditions, legal agreements and amended access could be accommodated without any detriment to the Strategic Highway Network. In terms of the impacts of the development on the Penllergaer Roundabout and Junction 47, the TA has not assessed impacts on these areas. Notwithstanding this, in view of the trip rates described above the development is not considered to result in such a significant increase in traffic in these areas that further detailed analysis would be required to quantify this impact which, it is considered, would not be significant.

Turning to the development layout the access road through the site accords with adopted standards and the design provides a natural traffic calming feature when entering the site. There is a watercourse also being traversed and this culvert/bridge will need to be designed to satisfactory standards. This can be secured by condition.

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Parking within the development is largely provided on drives within the plots, in garages and also on forecourt areas when shared provision is available. The provision accords with adopted standards however, it is recommended that where garages form part of the parking provision this parking is retained by condition to ensure that adequate parking is available.

The Head of Highways and Transportation has confirmed the majority of the roads within the site should not require any on street controls as the parking meets adopted standards. However, it is recommended that an informative is included to advise that if any Traffic Regulation Orders (TRO's) are deemed necessary during the Section 38 process, then they will be included at the applicant's cost at this point. This may include Double Yellow Lines or keep clear hatching where turning for deliveries/refuse lorries may take place. These should keep the highway free from parking and maintain the routes obstruction free.

In view of the scale of the development within the village it is recommended that further information is required to be submitted to inform how vehicle movement will be managed during the construction phase. This information can be secured by an informative note.

In light of the above the development is considered to be acceptable in terms of parking, access and highway safety subject to a contribution of £2,000 for upgrades to the existing bus stops in Pontlliw, this is considered to be reasonable and necessary in order improve these facilities in the interests of promoting sustainability.

Ecology and Trees

Several objections have been received with regard to the impact of the proposal on wildlife.

In terms of trees, a tree survey has been submitted which has been considered by the Council's tree officer. The majority of the boundary trees are proposed to be retained, however, some 21 individual trees or groups of trees have been indicated to be removed. These trees have been described as 'U' category trees which are in such condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years. The majority of the trees proposed to be removed are located along the northern boundary. Those trees located outside of the application site which are indicated to be removed and are covered by TPOs, will need to be the subject of a separate TPO application.

Following initial concerns regarding the accuracy of the survey and the impact of the development on the protected trees surrounding the site, the layout has been amended to mitigate the impact on existing trees and the tree officer has offered no objection to the proposal subject to the submission of further information to indicate how the trees will be protected during development, the proposed building methods for any encroachment into root protection areas and confirmation of the extent of any tree works such as crown lifting to the trees located within the application site. This information can be secured by condition. Within the context of the vegetated embankment and the overall tree coverage around the perimeter of the site, it is considered that the loss of the trees identified would not have a significant detrimental visual impact on the character and appearance of the area.

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The application was accompanied by an ecological assessment in 2008 which has been subsequently updated in consultation with the Council's planning ecologist. Separate bat and otter surveys have also been submitted. In terms of bats, the surveyor found the main building is unlikely to support bats, however, a single common pipistrelle may use the ridge on an intermittent basis. No specific mitigation measures were identified as being required and the Planning ecologist has recommended a standard bat informative as mitigation, should planning permission be granted. The Council's planning ecologist has inspected the trees which are indicated to be removed within the applicant's tree survey for features that are likely to be used by bats. The planning ecologist is satisfied that currently no further bat survey of these trees is required. However, some of the trees that are to be retained do have possible roost features and as a precaution the planning ecologist has recommended an informative note is included with any planning permission to advise the developer of the potential for bats in the boundary trees.

The otter survey noted evidence of otters using the site, however, no signs of breeding or resting places, as such, in line with the comments of CCW (now NRW) it is not considered that the proposed development would result in any detriment to the Favourable Conservation Status of otters in their natural range.

Following discussions with the Council's planning ecologist, there is a concern that the proposed culvert measuring some 40m in length would be excessive for otter use. It is recommended that the culvert is reduced in length to some 15m, which would remove the majority of the small central open space area on the site. The removal of this open space area is not considered to raise any wider planning concerns as there is access to the surrounding countryside from the site and the proposals will also include improvements to the existing play facilities within Pontlliw. The details of the revised culvert can be secured by a condition.

The proximity of the dwelling on plot 30 to the watercourse has reduced the available buffer strip to the watercourse. In order to rectify this, the dwellings on plots 30 and 31 will need to be re-designed / amended to address this requirement. It is considered this matter can be addressed by a condition.

The features of the site of most ecological value are the boundary trees, hedges and the watercourse. These features will for the most part be retained and have been incorporated into the development.

In terms of ecology CCW and more recently NRW have offered no objection to the proposal subject to the recommendations in the applicant's ecological report and otter report being conditioned as part of any planning permission. The mitigation requirements can be addressed by conditions and informatives and are considered to be necessary in order to ensure the development would not have a detrimental impact on the ecology of the site or the wider area.

Land Contamination

The application has been accompanied by a site investigation report and remediation strategy report. Site investigations carried out across the site to date have identified contamination within the shallow soil profile as a likely result of the historic use of the site and the nature/composition of the made ground.

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Screening indicates exceedences of arsenic, total chromium, lead, a single concentration of zinc and polyaromatic hydrocarbon (PAH) compounds. Asbestos cement was also detected within one sample and there is likely to be locally elevated hydrocarbons in the vicinity of the above ground diesel tanks. Leachate and groundwater tests have also been undertaken. It was concluded that the development would not increase the potential for leachate generation and migration. There are potential localised sources identified within the site however these areas are proposed to be remediated or verified to a satisfactory level. Based on the investigations to date no significant groundwater contamination was identified.

NRW has considered the contents of the site investigation report and remediation strategy and recommended a series of land contamination conditions which will require the submission of further information and the formalisation of the remediation and validation strategy at the site. These conditions are considered to be necessary in order to demonstrate the risk of contamination to controlled waters can be appropriately managed. However, in principle, NRW are satisfied that there are remedial options available to address the risks posed by contamination at the site.

The Pollution Control Division has also considered the contents of the applicant's remediation strategy and are satisfied that sufficient information has been provided to address the requirements for Phase 1, Phase 2 and Phase 3 site investigation and remediation reports, subject to the remedial works specified within the reports taking place. This can be controlled by a condition.

In light of the comments of NRW and the Pollution Control Division, therefore, it is considered that, subject to satisfactory remediation, the site can be developed for the intended residential use without having a harmful impact on the environment and without any unacceptable risks to the future occupiers. The development is therefore considered to be in accordance with UDP Policy EV38.

Flooding

When the application was originally submitted NRW (then the EA) commented that the proposed site lies partly within zone C2 and partly within zone B, as defined by the development advice maps (dam) referred to under TAN 15, Development and Flood Risk (July 2004). Residential development is regarded as 'highly vulnerable' under TAN 15 and should not be permitted within zone C2. NRW also noted that the furniture factory site is liable to flooding.

The applicant has submitted an FCA which has been amended several times and comments have been received to these amendments from NRW.

Since the application was submitted the flood zone in relation to the site has changed and it now lies within flood zone B relating to areas known to have flooded in the past.

EV36 states that 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.

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The most recent response from NRW to the flooding issues raised in their previous letters confirms that they are satisfied with the information submitted regarding the ordinary watercourse that runs through the site; the calculations indicate that the ordinary watercourse running across the site has capacity to carry both the 1% plus climate change and 0.1% flows. As such NRW has raised no objection on flooding grounds provided the post development dimensions specified are adhered to. This matter can be secured by condition.

The Council's drainage officer has also considered the FCA information and is satisfied that the 1 in 1000 year flows from the watercourse/culvert are contained within channel through the site.

In view of the comments of the Council's statutory adviser on these matters and the comments of the Council's drainage engineer it is considered that the development would be in accordance with Policy EV36.

Drainage

This application is one of a number of major planning applications that have been held in abeyance, due to ongoing concerns raised by Europe and the 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 NRW (formerly CCW) towards all development that drains into CBEEMs, and carried out the following habitat assessment.

It is generally accepted that the combined sewerage system serving this area is working at full capacity (Gowerton STW). Any increase in surface water in the sewerage catchment would increase the number of untreated sewage discharges to the Burry Inlet in times of overflow. It was therefore determined that it is imperative that no surface water be allowed to enter the sewerage infrastructure.

To accord with the agreed and signed Memorandum of Understanding (MoU), foul connections should only be allowed when compensatory surface water removal has been implemented within the same catchment and agreed relevant details recorded on the LPA's register of compensatory surface water disposal.

Concerns have been raised that the development may increase surface water flooding in the area. The proposed surface water drainage strategy will discharge surface water from the highways and plots into the watercourses within the site via attenuation. A surface water strategy encompassing attenuation to restrict discharge rates has therefore been proposed and discussed with the Drainage officer. Foul water would be discharged to the mains sewer on Swansea Road via a pumping station located on the western boundary of the site. The Council's drainage engineer has confirmed that there are no objections in principle with the proposed drainage strategy, however, the detailed design of the scheme will be agreed by a condition.

DCWW has not raised concerns regarding the capacity of the existing drainage infrastructure to accommodate the foul flows arising from the development. However, this issue has been raised in consultation responses received from EAW.

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In accordance with the MoU, it is necessary to remove surface water from the combined sewer to provide betterment in the system. In accordance with the hierarchical approach the applicant has confirmed that there are no existing surface water connections available on site, as such it will be necessary for the applicant to fund through a Section 106 planning obligation a surface water removal scheme to offset the foul flows connecting into the main system.

Local opportunities for surface water removal from the combined system to offset the proposed development flows have been investigated but have proven not to be viable. It is therefore necessary to utilise a donor site to remove surface water from the combined sewer within the same WWTW catchment.

The potential for using a donor site within the catchment has been discussed with DCWW and CCS on several other housing sites. A scheme at Denver Road, Fforestfach has been identified and if implemented would provide sufficient surface water removal within the catchment to compensate for the foul flows arising from this development that would discharge to the mains sewer. A financial contribution to fund the Denver Road scheme can be secured through a S106 planning obligation. As such, it is considered that the proposed approach would be acceptable provided a financial contribution is secured by a S106 agreement requiring a contribution of £35,000 to undertake these works.

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 and 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 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 the LPA 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 as 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 statutory 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 former Environment Agency (now NRW) 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, as it is considered that the relevant parts of the earlier parts of the assessment remain robust and have not become outdated by further developments.

The overarching Statement of Water Quality identified two areas of concern where development could potentially affect water quality in the estuary. The first point of concern related to the hydraulic load on the existing combined sewerage systems. The discharge of surface water to the combined system is the main cause of the problem and the MoU has addressed this by stipulating that no surface water from new developments shall discharge to the combined sewer. The second concern relates to nutrient loading on the Estuary. Certain nutrients are removed from the sewage by appropriate treatment at the WWTW but it has been determined that WWTW effluent discharges contain the highest percentage of phosphates when compared with other nutrient sources. Whilst surface water would drain into the combined sewer, it does currently and it is not considered that the proposals would exacerbate this situation as it would be attenuated to greenfield rates.

The removal of any surface water from the combined system would be greatly beneficial in that its removal would result in fewer CSO spills, reducing bacterial and nutrient impact on the controlled waters. The removal of surface water from combined sewers generally would reduce the volume of flow (even within developments) such that storage facilities at the pumping stations would more efficiently cater for more frequent storm events or greater population equivalence.

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

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The Local Planning Authority has therefore satisfied its obligations as the 'competent authority' under the Habitats Directive and associated Habitats 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

The former EA previously 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 responses 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 NRW have since agreed to the Council's adopted Habitat Regulations Assessment that covers all development in the drainage network area up to the end of 2018. As explained above this HRA is based on objective information available from the Agency's own Review of Consents of Gowerton WwTW, 2010.

The Council has been working with the Agencies of the Welsh Government who are seeking to resolve this problem in 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 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 Improvement works for Gowerton WwTW catchment (AMP 7), and are currently indicating that schemes will be brought forward where necessary to facilitate development.

Drainage Conclusion

In conclusion, DCWW has not objected to this scheme, and the Council's HRA which has been adopted for all development in the Gowerton WwTW drainage network area runs up until the end of 2018 when it is understood that DCWW has planned upgrading works to this WwTW. The HRA has been agreed with NRW 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 would 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 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.

Viability / Section 106 Issues

Policy HC17 allows the Local Planning Authority to enter into negotiations with developers to deliver planning obligations, which can enhance the quality of the development and enable proposals to go ahead which might otherwise be refused. Any proposed obligation must be necessary to make the development acceptable in planning terms, directly related to the development, fair and reasonable in scale and kind to the proposed development.

The Planning Obligations SPG notes that where developers contend that Section 106 requirements would render a scheme unviable, developers will be expected to submit a breakdown of development costs and anticipated profits on properly sourced evidence.

In accordance with these requirements the developer has submitted a viability appraisal for the site using an industry recognised appraisal model (Three Dragons). The assessments highlights the need for significant remediation of the site to facilitate the development proposed and incorporates a detailed breakdown of the abnormal costs required to bring the site forward for development in accordance with the proposed scheme totalling some £2.4m. An independent assessment of the applicant's viability appraisal has been carried out by a consultant who found that the assumptions and conclusions of the assessment were sound. It is therefore accepted that any contribution requests arising from the development must be considered from the viewpoint that the development is marginally viable. Notwithstanding this the applicant has indicated that £50,000 would be available to contribute towards any justified contributions, however, owing to the marginal viability of the development no affordable housing is being proposed despite a need for affordable housing within the area and a request for 30% affordable housing on site from the Housing department.

Other financial contribution requests are discussed below:

Recreation Provision

In accordance with Policy HC24, all new housing will be required to make provision for areas of open space either within the site or at an appropriate location where the level and nature of open space provision in the locality is inadequate to meet the demands of the future occupiers together with the needs of the existing population.

As part of the LDP process, the Council has prepared an Open Space Assessment to identify the existing situation in the County. Within the Llangyfelach ward, there is an undersupply of open space provision according to the Fields in Trust guidelines. Pontlliw has been identified as having adequate provision in the north but a deficiency in the south. The access to the site would be over 300m to Park Pontlliw and the Pontlliw trim trail which is the normal distance used to indicate whether a facility is readily accessible to the public.

The nearest formal play areas are some 500m from the centre of the application site and according to the assessment these areas are in 'good' condition. Notwithstanding this the Parks Department have requested £31,774.06 for upgrades to this facility in accordance with the SPG document entitled 'Planning Obligations'.

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The open space within the site indicated on the drawings will not be provided owing to the need to significantly reduce the size of the culvert, as such it is considered reasonable and necessary in this instance to require a full contribution, as set out above, for upgrades to Pontlliw Park to take account of its increased use by the future residents of the proposed development. This can be secured by a S106 planning agreement.

The residual areas of open space within the site will need to be appropriately managed and maintained, however, no details of this have been provided. It is therefore recommended that details of its future management are required by condition.

Education

In terms of an Education contribution the proposed development would generate the equivalent of 20.77 primary school places and the cost of providing these places is estimated to be £215,426. It would also generate an equivalent of 14.74 secondary school places and the cost of providing these places is estimated to be £233,600.

The English medium catchment schools for the development are Pontlliw Primary feeding Pontarddulais Comprehensive and in terms of Welsh medium, Ysgol Gynradd Gymraeg Bryniago (YGG Bryniago) feeding Ysgol Gyfun Gwyr.

As of 2014, approximately 14% of pupils attended a Welsh primary school and 11% attended a Welsh secondary school. These levels are expected to rise to 17% and 15% respectively by 2021 according to Education's projections. However, based on the current distribution of pupils attending Welsh medium schools, it is considered reasonable to apply a figure of 12.5% to allow for an increase in the Welsh medium participation rate. When applying these figures to the current proposal it has been calculated that the development would generate 2.59 Welsh primary school places and 1.84 Welsh secondary school places.

Based on current figures Pontlliw Primary presently has spare capacity of 10 unfilled spaces reducing to 7 unfilled spaces in 2022. According to the figures the development would generate 18 English medium primary pupil spaces. The Council's Education department has advised that Pontlliw Primary school is on a very restricted site with little scope for expansion. This development, together with other small developments in the area may push the school beyond its physical capability. It is noted that Education have not requested a contribution for this school, instead favouring a contribution for YYG Bryniago (see below) and in view of the limited funds that would be available to contribute to any alterations/extensions to this school, it is not considered that a request for a contribution should be required in this instance.

Turning to Pontarddulais Comprehensive, this school currently has 9 unfilled spaces projecting to rise to 54 unfilled spaces in 2022. It is noted that other developments in the area may consume some of this projected surplus capacity, for example, the proposed development of 200 dwellings at Llewellyn Road Penlleger. However, even taking these into account it is considered that this school could accommodate the 13 pupils arising from this development. As such it is not considered necessary to provide a contribution for this school.

Turning to the Welsh medium schools, YGG Bryniago currently has 35 unfilled spaces and this is projected to decrease to 4 in 2021. Ysgol Gyfun Gwyr currently has 182 unfilled spaces and this is set to alter significantly to the extent that it is estimated the school would be oversubscribed by 192 spaces by 2022.

YGG Bryniago currently has sufficient existing capacity to accommodate the 3 pupils arising from the development, however, the significant decrease in the projected capacity indicates that, with other approved developments, this site may take the school over its capacity. Notwithstanding this in view of the limited number of pupils that would be generated by the development and the current existing capacity, it is not considered necessary in this instance to require a developer contribution for upgrades to the school in this instance.

Turning to Ysgol Gyfun Gwyr, the projected capacity at 2022 is evidence that this school would experience capacity issues within the timeframe of any planning permission granted for this development. Under the provisions of the Council's adopted Planning Obligations' SPG a contribution of some £29,200 to fund extensions/improvements to this school could be required but must be justified, however, given the limited secondary school places generated (1.84 pupil spaces) it is not considered that the impact of this development would be sufficient to justify a recommendation of refusal in this instance. As a consequence it is not considered necessary in planning terms for the development to provide an education contribution in this instance.

Viability / S106 Conclusions

The SPG highlights that any reduction in the requirement for Section 106 contributions is only likely to be justified where there is planning merit and/or public interest in developing the site. In this respect the site forms a relatively large (within the context of the village) brownfield site within a sustainable location. The removal of both the haulage yard and scrap yard uses would, it is considered, provide a wider benefit to the community by removing uses which have the potential to cause noise, disturbance and environmental pollution through site activities and the types of heavy goods traffic associated with these uses. The development also provides an opportunity to remediate a site which has experienced contamination through its historic uses. Moreover, the development will bring benefits to the locality in terms of providing a mix of good quality new housing within a well designed layout.

The marginal viability of the site has led to no affordable housing provision within the development. The question therefore is whether the absence of this provision would make the development unacceptable in planning terms. Clearly the provision of affordable housing within sites is desirable to sustain rural communities and provide a socially balanced mix within new developments. HC3 explains that the Council will seek affordable housing provision where this is not ruled out by exceptional development costs. In this instance the development costs associated with bringing forward this mainly brownfield site would render the development unviable. As such, having regard to Policy HC3, despite the lack of affordable housing provision within the development, this would not be a sustainable reason for refusing this development, particularly when considering the positive aspects of developing the site within the balancing exercise.

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Other Matters

Concerns have been raised in letters of objection regarding the impact of the development on local health services, however, the local health authority has not identified any capacity issues at local medical practices.

Concerns that there are better sites to develop housing in Pontarddulais have been given little weight. Whilst this may or may not be the case, this planning application has been considered on its own merits having regard to UDP planning policies.

It is acknowledged that the proposal will increase vehicular traffic on local roads. However, given the relatively low volumes of traffic arising from the development, the noise impact on existing residents would not be so significant that the application should be recommended for refusal for this reason. Furthermore the removal of the haulage use and scrapyards would potentially reduce the volume of larger vehicles on the local roads.

The development of this site would not, it is considered, result in the release of further sites in the countryside around Pontlliw. However, it is noted there are other housing sites in Pontlliw which have been identified for housing in the LDP draft proposals maps.

Concerns have been raised that the proposal would have a detrimental impact on Pontlliw's viability as a Welsh community. Whilst this concern is noted there is a need for around 4,600 homes within this strategic housing policy zone over the next plan period. There is scope for additional dwellings in Pontlliw, as services and facilities are available in close proximity and will meet sustainability objectives. The need to provide new housing is considered to carry significant weight and in the absence of any identified harm the development is considered to be in accordance with both national and local planning policies.

Concerns have been raised regarding the proximity of the foul pumping station to neighbouring land. The neighbouring land is located within the open countryside and is covered by mature trees and shrubs. In these circumstances it is not considered the siting of the pumping station in relation to this land would raise any material planning concerns that would justify refusal of the application.

Concerns have been raised that a maintenance corridor cannot be provided as part of the corridor would be within land outside the applicant's ownership. A maintenance/wildlife corridor has been indicated on the plans and subject to conditions specified above, would be satisfactory. The requirements to provide a corridor would not extend to neighbouring land, which is outside of the application site.

Concerns raised in relation to increased incidents of anti-social behaviour arising from the development of this site are unsubstantiated and carry little weight in the determination of this planning application.

Concerns have been raised that no site investigation work has taken place within the railway embankment. The scheme to remediate the site relates to the application site only and would not extend to neighbouring land. Both NRW and the Council's Pollution control division are satisfied in principle that the site contamination can be satisfactory addressed, subject to the submission of further information.

Any residual matters raised in letters of objection have been addressed within the above report.

Conclusion

The proposal is for a residential development of 67 dwellings on a mainly brownfield site within Pontlliw. Part of the application site is located within the open countryside, however, the development of this portion of the site is considered to be acceptable given the existence of a lawful development certificate for this land that both visually and spatially more closely relates to the application site, rather than the open countryside beyond.

The proposed development is considered to be acceptable in terms of its impacts on the character and appearance of the area. On balance, the relationship with the neighbouring furniture factory is considered to be acceptable and the proposed development is considered to be satisfactory in terms of its impacts on ecology, trees, drainage, access and highway safety. The impact of the development on existing infrastructure and services has been considered and subject to contributions in respect of upgrades to a local park and a bus stop, is considered to be satisfactory.

In light of the above the development is considered to be an acceptable departure from UDP Policies and conditional approval is therefore recommended.

RECOMMENDATION

APPROVE, subject to the following conditions and the applicant entering into a S106 Planning Obligation to provide:

- 1) £31,774 for upgrade works to Pontlliw Park.**
- 2) £2,000 for bus stop upgrades in Pontlliw**
- 3) £35,000 contribution towards off-site drainage works at Denver Road**
- 4) £3,768 contribution towards ongoing management and monitoring fees (based on 20% of the planning fee as set out in the SPG).**
- 5) That the land adjacent to the site known as the former Bridge Metals shall not be used as a scrapyard in perpetuity.**

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.

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- 2 The development shall be carried out in accordance with the following approved plans and documents: 150 - Alnwick Floor Plans and Elevations Brick, 151 - Hansbury Floor Plans and Elevations, 152 - Rufford Floor Plans and Elevations, 153 - Hatfield Floor Plans and Elevations, 154 - Hatfield Floor Plans and Elevations, 157 - Roseberry Floor Plans and Elevations Brick, 158 - Roseberry Floor Plans and Elevations, 159 - Chedworth Floor Plans and Elevations Brick, 160 - Chedworth Floor Plans and Elevations, 161 - Corfe Floor Plans and Elevations Brick, 162 - Corfe Floor Plans and Elevations, 163 - Garages Floor Plans and Elevations, 164 - Enclosure details Sheet 1, 165 - Enclosure details Sheet 2, 166 - Enclosure details Sheet 3, received 30th October 2015. Site location plan received 2nd March 2015. 100 Rev B - Planning Layout, 103 Rev C - Materials Layout, 155 Rev A - Clayton Floor Plans and Elevations Brick, 156 - Clayton Floor Plans and Elevations, received 5th January 2015. 201 Engineering Layout received 17th February 2015. 106 Rev A - Street Scenes, received 24th February 2015.

Reason: To define the extent of the permission granted.

- 3 Prior to the commencement of development on the application site (including all access roads) a Construction Pollution Management Plan (CPMP) shall be submitted to and approved in writing by the Local Planning Authority. The CPMP shall be implemented in accordance with the approved details and is to include the following as a minimum:
- a) Construction programme and timetable;
 - b) Detailed site plans to include details of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas for site operatives and visitors etc;
 - c) Proposed working hours;
 - d) Principal Contractor details, which will include a nominated contact for complaints;
 - e) Details of all on site lighting (including mitigation measures) having regards to best practicable means (BPM) and avoidance of statutory nuisance impacts;
 - f) Details of on-site dust mitigation measures having regard to BPM;
 - g) Details of on-site noise mitigation measures having regard to BPM;
 - h) Details of waste management arrangements (including any crushing/ screening operations);
 - i) Identification of surrounding watercourses and potential pollution pathways from the construction site to those watercourses;
 - j) How each of these watercourses and pathways will be protected from site run off during construction;
 - k) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by Principle Contractor on the Local Authority.

Reason: To ensure the safety of other road users and protect residential amenity during the construction phase.

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- 4 Before any dwelling hereby approved is occupied, details of street lighting for the development, including a phasing scheme for implementation, shall be submitted to and approved in writing by the Local Planning Authority . The street lighting shall be designed to prevent light spillage onto the watercourse and shall be implemented in accordance with the approved details.
Reason: In the interests of ecology, pedestrian and highway safety.
- 5 No development shall take place until full details of the proposed arrangements for future management and maintenance of the proposed streets and open spaces within the development, have been submitted to and approved in writing by the Local Planning Authority. The streets and open spaces shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
Reason: In the interests of highway safety and to ensure that the highways within the development are provided at an appropriate time and maintained thereafter.
- 6 No development shall take place until full engineering details of the highways and footpaths located within the development, including details of the phasing of the highways and footpath construction, have been submitted to and approved in writing by the Local Planning Authority. The highways and footpaths shall be completed in accordance with the approved details.
Reason: In the interest of highway safety.
- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (as amended) (or any order revoking or amending that order), no development falling within Classes A, B, D, E and F of Part 1 of Schedule 2 shall be carried out without the prior, express planning permission of the Local Planning Authority.
Reason: To protect the integrity of the chosen surface water management system from additional impermeable areas that the surface water system is not designed to accommodate and in the interests of visual amenity and residential amenity.
- 8 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. The submitted details shall include the provision of a 2.2m high close board timber fence on the eastern boundary of the site.
Reason: In the interests of visual amenity and residential amenity.
- 9 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 in accordance with the approved details prior to the commencement of work on site.
Reason: In the interests of the ecology and amenity of the area.

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- 10 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 be carried out in accordance with the approved details, and no dwelling shall be beneficially occupied before it is served by the approved foul water, surface water, land drainage and the systems shall be retained in perpetuity.

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.

- 11 Prior to the occupation of any dwellings hereby approved either:
- a) a surface water removal strategy delivering sufficient compensation for the foul flows from the development shall have been implemented in accordance with details which have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of development
 - or,
 - b) Works to upgrade the sewage infrastructure at Gowerton WwTW have been implemented in full and written confirmation of this has been issued by the Local Planning Authority.

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

- 12 No development shall take place until a scheme for the landscaping of the site, including details of the phasing of the landscaping, has been submitted to and agreed in writing by the Local Planning Authority. The landscaping scheme shall be carried out in accordance with the approved scheme. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously diseased within five 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.

- 13 Prior to the commencement of development approved by this planning permission the following components of a scheme to deal with the risks associated with contamination of the site with specific regard to its impacts to controlled waters shall each be submitted to and approved, in writing, by the Local Planning Authority:

1. A preliminary risk assessment which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

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- 13
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The scheme shall be implemented as approved and any changes to these components require the express consent of the local planning authority.

Reason: The controlled waters at this site are of high environmental sensitivity, being on Secondary A Aquifer and contamination is known/strongly suspected at the site due to its previous industrial uses.

- 14
- Prior to occupation of any part of the development hereby permitted, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

Reason: To demonstrate that the remediation criteria relating to controlled waters have been met, and (if necessary) to secure longer-term monitoring of groundwater quality. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

- 15
- Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. Within two months of completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that longer term remediation criteria relating to controlled waters have been met. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

- 16
- 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, for an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: Given the size/complexity of the site it is considered possible that there may be unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated.

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- 17 No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority.
Reason: There is an increased potential for pollution from inappropriately located infiltration systems such as soakaways, unsealed porous pavement systems or infiltration basins.
- 18 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority.
Reason: There is an increased potential for pollution of controlled waters from inappropriate methods of piling.
- 19 Unless arising from the requirements of condition 13, the remediation of the site and the remediation verification process shall be carried out in accordance with the Remediation Strategy Report [10857-3/MJE/14/RSR].
Reason: In the interests of the health and safety of the future occupiers of the development and to protect the environment.
- 20 The materials used for the external surfaces of the development shall be in accordance with details to be submitted to and approved in writing by the local planning authority before the development is commenced.
Reason: In the interests of visual amenity.
- 21 Prior to the commencement of development a scheme for the upgrading and development of the ordinary watercourse running through the site, including the provision of a maintenance/wildlife buffer and a timescale for implementation, shall be submitted to and approved in writing by the local planning authority. The watercourse shall be developed in accordance with the approved scheme and timescales and shall be developed in accordance with the following dimensions: at least 0.5m bed width, 1.5m depth and 1:1 side slopes, with a bed gradient not less than the gradient of the ground along the top of the bank.
Reason: To ensure the post development dimensions of the watercourse accord with the dimensions specified within the flooding consequences assessment.
- 22 No development including any demolition works or site clearance works shall take place until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of trees shown to be retained within the tree survey and plan dated 13th November 2012. The approved scheme shall be in place throughout the course of the development and shall include:
- a) a plan, showing the position of every tree on the site and on land adjacent to the site that could influence or be affected by the development, indicating which trees are to be removed;

- Continued -

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- 22 b) and in relation to every tree identified a schedule listing:
- information as specified in paragraph 4.4.2.5 of British Standard BS5837:2012 - Trees in Relation to Design, Demolition and Construction - Recommendations;
- any proposed pruning, crown lifting, felling or other work;
- c) and in relation to every existing tree identified to be retained on the plan referred to in (a) above, details of:
- any proposed alterations to existing ground levels, and the method of construction for any works that might affect the root protection area;
- Reason: To secure the protection of trees growing on the site whilst the development is being carried out in the interests of visual amenity and ecology.
- 23 Notwithstanding the details indicated in the approved plans, prior to the commencement of development the following information shall be submitted to and approved in writing by the local planning authority:
- (i). A scheme for the reduction in the length of the culvert over the ordinary watercourse to some 15m unless
- (ii). A scheme for the re-design of plots 30 and 31 in order to provide a maintenance and wildlife corridor along the ordinary watercourse.
- (iii). A timescale for implementation of the schemes in (i) and (ii) above
- The development shall be implemented and retained in accordance with the approved details.
- Reason: To ensure the development would not adversely impact on otters or other wildlife along the watercourse.
- 24 Prior to the commencement of any drainage works on site a scheme for the management and maintenance of the surface water system shall be submitted to and approved in writing with the local planning authority. The surface water system shall be managed and maintained in accordance with the approved details for the duration of the use hereby approved.
- Reason: To ensure the satisfactory long-term operation of the surface water management scheme to prevent the increased risk of flooding to the development itself and surrounding third parties.
- 25 An otter underpass shall be constructed under the new road crossing over the watercourse in accordance with details to be submitted to and approved in writing by the local planning authority prior to any works commencing on the watercourse. Unless otherwise agreed in writing, the approved underpass shall be constructed prior to the completion of the new road crossing.
- Reason: To ensure the development does not have an adverse impact on otters using the watercourse.
- 26 The development shall be completed in accordance with the reptile mitigation methodology set out in the Hawkeswood Ecology survey received 20th April 2008.
- Reason: In the interests of ecology.

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- 27 Any garages hereby approved within the development shall be used for the parking of vehicles and purposes incidental to that use and shall not be used as or converted to domestic living accommodation.
Reason: To ensure adequate on site parking provision in the interests of visual amenity and highway safety.
- 28 A Travel Plan for the development shall be submitted to and approved in writing by the local planning authority prior to the beneficial occupation of any dwelling hereby approved. The Travel Plan shall be implemented in accordance with the approved details.
Reason: In the interests of promoting alternative modes of transportation.
- 29 Prior to the occupation of the first dwelling on site, details of the design and surface treatment of the public right of way footpath, which traverses the site, together with a timetable for implementation of the works, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
Reason: To provide satisfactory access to the open countryside from the development.

INFORMATIVES

- 1 The majority of the roads within the site should not require any on street controls as the parking meets the standards. However, should any Traffic Regulation Orders (TRO's) be deemed necessary during the Section 38 process then they will be included at the applicant's cost at this point. This may include Double Yellow Lines or keep clear hatching where turning for deliveries/refuse lorries may take place. These should keep the highway free from parking and maintain the routes obstruction free.
- 2 The development is crossed by a 9inch surface water sewer and a 300mm storm overflow. DCWW has rights of access to its apparatus at all times. No part of the building will be permitted within 3 metres either side of the centreline of the public sewerage assets.
- 3 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV3, EV20, EV30, EV33, EV34, EV35, EV36, EV38, EV40, HC3, HC17, AS1, AS2 and AS6
- 4 Construction Noise. The following restrictions should be applied to all works of demolition and construction carried out on the development site. All works and ancillary operations which are audible at the site boundary shall be carried out only between the hours of 08:00 and 18:00 hours on Mondays to Fridays and between the hours of 08:00 and 13:00 hours on Saturdays and at no time on Sundays and Public Holidays and Bank Holidays. The Local Authority has the power to impose specified hours by service of an enforcement notice. Any breaches of the conditions attached to such a notice will lead to formal action against the person(s) named on said notice.

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- 5 Note: All highway works outside the site are on adopted highways and therefore are required to be covered by an Agreement under Section 278 of the Highways Act 1980. The Developer must contact the Highway Management Group , The City and County of Swansea , Penllergaer Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Senior Engineer (Development), e-mails to: jim.marshall@swansea.gov.uk or the Team Leader , e-mails to mark.jones@swansea.gov.uk , tel. no. 01792 636091.
- 6 This notice does not give authority to destroy or damage a bat roost or disturb a bat and trees located on the site have the potential to house bats. All 16 British bat species are protected under Regulation 39 of the Conservation (Natural Habitats &c) Regulations 1994 (as amended), and the Wildlife and Countryside Act 1981 (as amended). It is a criminal offence to damage or destroy any bat roost, whether occupied or not, or disturb or harm a bat. If you suspect that bats might roost in the tree(s) for which work is planned you should take further advice from Natural Resources Wales, or an ecological consultant, before you start. If bats are discovered during the work you must stop immediately and Natural Resources Wales for advice before continuing.
- 7 Birds may be present. 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 is 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 Dwr Cymru/ Welsh Water have advised that if a connection is required to the public sewerage system, the developer is advised to contact Dwr Cymru Welsh Water's Developer Services on 0800 917 2652.

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 we request the applicant contacts our Operations Contact Centre on 0800 085 3968 to establish the location and status of the sewer. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

The Welsh Government have introduced new legislation that will make it mandatory for all developers who wish to communicate with the public sewerage system to obtain an adoption agreement for their sewerage with Dwr Cymru Welsh Water (DCWW). The Welsh Ministers Standards for the construction of sewerage apparatus and an agreement under Section 104 of the Water Industry Act (WIA) 1991 will need to be completed in advance of any authorisation to communicate with the public sewerage system under Section 106 WIA 1991 being granted by DCWW.

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- 8 Welsh Government introduced the Welsh Ministers Standards on the 1st October 2012 and we would welcome your support in informing applicants who wish to communicate with the public sewerage system to engage with us at the earliest opportunity. Further information on the Welsh Ministers Standards is available for viewing on our Developer Services Section of our website - www.dwrcymru.com

Further information on the Welsh Ministers Standards can be found on the Welsh Government website - www.wales.gov.uk

SEWAGE TREATMENT

No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site.

WATER SUPPLY

A water supply can be made available to serve this proposed development. The developer may be required to contribute, under Sections 40 - 41 of the Water Industry Act 1991, towards the provision of new off-site and/or on-site watermains and associated infrastructure. The level of contribution can be calculated upon receipt of detailed site layout plans which should be sent to the address above.

The developer is advised to contact us at the above address or on telephone 0800 9172652 prior to the commencement of any site work.

Finally we note that the outline drainage strategy is reliant on an offsite surface water removal scheme in the vicinity of Denver Road. This is a necessary part of the proposal that has influenced the recommendations we provide above. We therefore ask that its provision be secured through an obligation under section 106 of the Town and Country Planning Act should you decide to grant planning permission for the proposed development.

- 9 Please note that the development site is traversed by a public right of way. Prior to the commencement of development you are advised to contact the Council's Rights of Way officer to discuss any requirements in relation to the diversion of this public footpath.
- 10 Please note that this planning permission does not give consent for any works to trees covered by tree protection orders which lie outside of the application site area. Any works to these trees would require a separate planning application for works to protected trees.
- 11 Log and stone piles present on site should be disassembled by hand. If other signs of other use are uncovered, work should cease immediately and Natural Resources Wales should be contacted for advice.
- 12 **INFORMATIVE NOTE:**
The site of this application is crossed by high voltage overhead electricity lines. Please contact Western Power Distribution prior to any works commencing on site.
- 13 Prior to any works commencing on the site, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved traffic management plan shall be implemented and adhered to at all times unless otherwise agreed by the Local Planning Authority.

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ITEM 5 (CONT'D)

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- 14 All off-site highway works are subject to an agreement under Section 278 of the Highways Act 1980. The design and detail required as part of a Section 278 Agreement will be prepared by the City and County of Swansea. In certain circumstances there may be an option for the developer to prepare the scheme design and detail, for approval by the City and County of Swansea. However, this will be the exception rather than the rule. All design and implementation will be at the expense of the developer.

The Developer must contact the Highway Management Group , The City and County of Swansea , Penllergaer Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Senior Engineer (Development) , e-mails to : jim.marshall@swansea.gov.uk or the Team Leader , e-mails to mark.jones@swansea.gov.uk , tel. no. 01792 636091

- 15 The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary.

- 16 All direction signage on the highway is subject to separate consent and further information on this aspect should be sought from The Traffic Management Group, City and County of Swansea, Tel: 01792 636168.

- 17 The Council is responsible for the naming and numbering of streets within the administrative area. All new property addresses or changes to existing addresses arising from development for which planning consent is sought must be cleared through the Council's Street Naming and Numbering Officer as soon as building work commences. Street naming and numbering proposals must be agreed with the Council prior to addresses being created or revised. Please note that there is a charge for the provision of some street naming and numbering services.

For further information please visit www.swansea.gov.uk/snn or contact the Council's Street Naming and Numbering Officer, City & County of Swansea, Room 2.4.2F, Civic Centre, Swansea, SA1 3SN. Tel: 01792 637127; email snn@swansea.gov.uk

- 18 All adoptable highway works including the internal road layout and amended access being completed to Highway Authority Standards and Specification under section 38/278 Agreements. The culvert/bridge over the watercourse will require separate approval/verification from the Bridges and structures section.

- 19 Notwithstanding the submitted details the boundary walls along the estate road boundary shall be kept below 1m in the interests of visibility to ensure that adequate visibility is maintained for accessing/egressing vehicles and pedestrians.

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20 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

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com

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

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ITEM 6

APPLICATION NO.

2015/0217

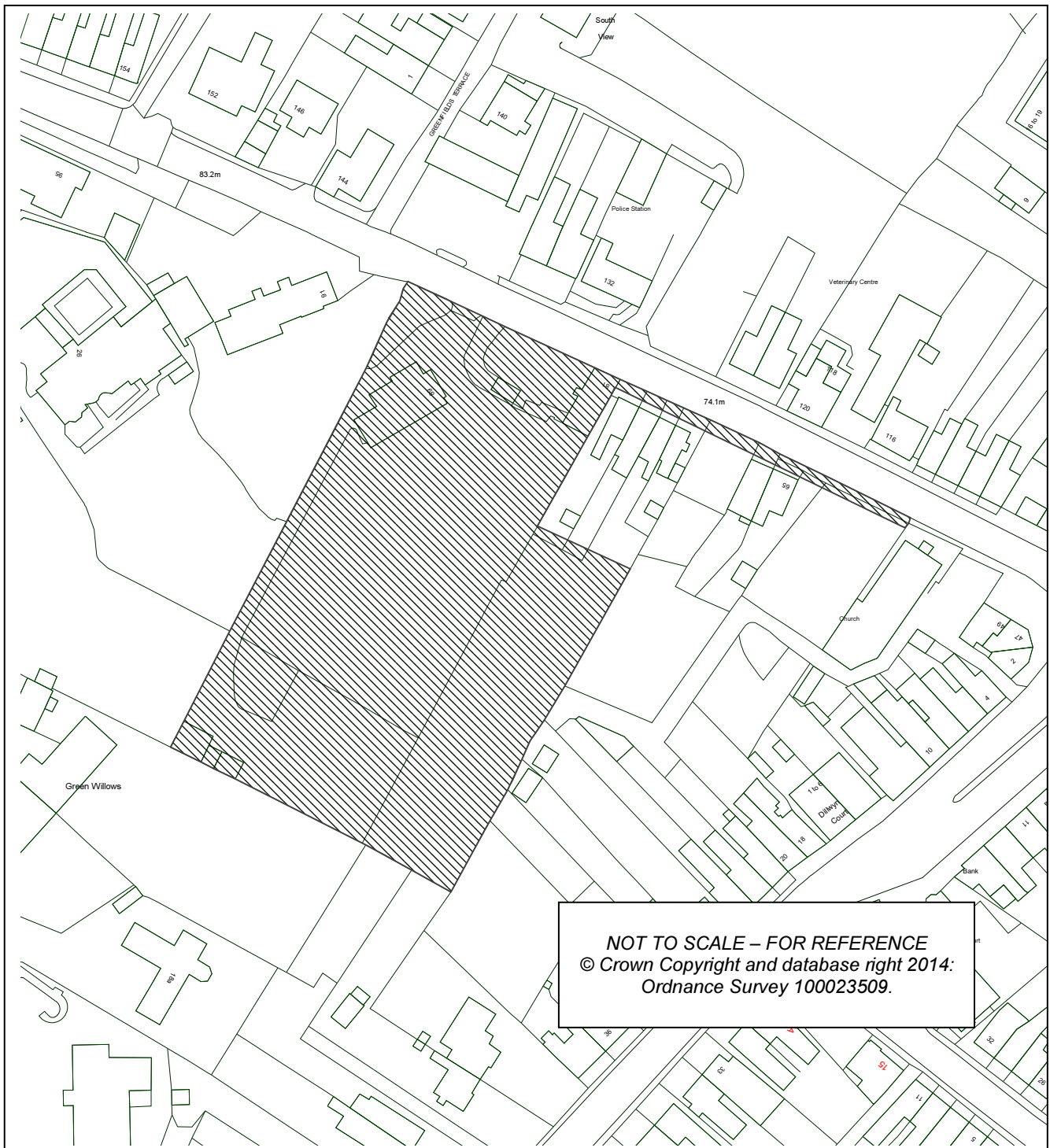
WARD:

Sketty

Location: 81 Gower Road, Sketty, Swansea, SA2 9BH

Proposal: Redevelopment of the site to form 45 retirement living apartments for the elderly with associated communal facilities, car parking, landscaping and additional pavement to Gower Road frontage. (Amended plans and additional information received) (amended description)

Applicant: McCarthy & Stone Retirement Lifestyle Limited



BACKGROUND INFORMATION

POLICIES

Policy	Policy Description
Policy AS1	Accessibility - Criteria for assessing location of new development. (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 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 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 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)

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- Policy HC2 Housing development within the urban area will be supported where the site has been previously developed, its development does not conflict with other policies, does not result in ribbon development, and the coalescence of settlements, overintensive development, significant loss of residential amenity, significant adverse effect on the character and appearance of the area, loss of urban green space, significant harm to highway safety, significant adverse effects to landscape, natural heritage, security and personal safety, infrastructure capacity, and the overloading of community facilities and services. (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)

SITE HISTORY

App No.	Proposal
2014/0740	Replacement single storey side extension, replacement front porch with terrace above, car port roof to the front elevation, pitched roof to two storey front elevation, rear balcony to first floor level, rear terrace, roof lights, replacement roof covering, fenestration alterations and re-cladding of walls including external wall insulation Decision: Grant Permission Conditional Decision Date: 14/07/2014
99/0064	REDEVELOPMENT OF SITE FOR RESIDENTIAL PURPOSES (OUTLINE) (COUNCIL DEVELOPMENT REGULATION 4) Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 28/05/1999
2003/1716	To reduce the crown of 1 Copper Beech tree covered by TPO no 257 Decision: Grant Tree Pres Order Consent (C) Decision Date: 10/11/2003
2013/0852	To lop one copper beech tree covered by TPO 257 Decision: Grant Tree Pres Order Consent (C) Decision Date: 24/07/2013

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99/0065 REDEVELOPMENT OF SITE FOR SINGLE DETACHED DWELLING HOUSE (COUNCIL DEVELOPMENT REGULATION 4) (OUTLINE)

Decision: *HGPC - GRANT PERMISSION CONDITIONAL

Decision Date: 28/05/1999

2013/0835 New nurses centre off existing covered walkway, pitched roof to walkway and new entrance lobby area, side dormer extension and additional windows

Decision: Grant Permission Conditional

Decision Date: 12/09/2013

RESPONSE TO CONSULTATIONS:

Neighbours: The application was advertised in the press and on the site in the form of a site notice as development which in the view of the City and County of Swansea, may have a substantial impact on the amenity of the area. In addition to this all adjoining neighbouring properties were consulted and 3 letters of objection and 1 letter of comment were received which raised concerns relating to:

1. Loss of trees.
2. Impact on ecology.
3. Traffic issues.
4. Pedestrian footpaths should be improved.
5. Increased pollution from additional vehicles.

In addition to this four letters of support were received.

Pollution Control: No objection subject to conditions/informatives.

Highways:

1 Background

1.1 This proposal is for the construction of a development of 47 retired living apartments on the site of 81 Gower Road, Sketty. The developer is McCarthy and Stone, who are providers of specialist retirement apartments and have a number of similar development throughout Swansea.

1.2 The existing house is to be demolished and a new complex constructed in its place with a direct access from Gower Road and footway link providing a continuous footway down to Sketty Cross.

2. Traffic Generation

2.1 A Transport Statement has been submitted with the application which seeks to quantify the likely traffic movements generated by the development. The assessment predicts 9 two-way movements in the am peak and 10 two-way movements in the pm peak. This is based on data held at other McCarthy and Stone developments nationally and compares favourably with independent data on sheltered/assisted living developments in national databases.

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2.2 The number of predicted movements is minimal compared to existing traffic movements on this part of Gower Road and is unlikely to present any congestion issues.

3 Site Access and Layout

3.1 The site access junction has been tested to ensure suitability to accommodate the largest vehicle type likely to use it, in this case being a refuse vehicle. Visibility at the access junction will accord with nationally recommended standards to ensure safety for all traffic.

3.2 The layout of the site accommodates parking for 39 cars with the recommended 2 accessible spaces all in accordance with parking policy and sufficient room is available for all vehicles, including service and refuse vehicles to enter and leave the site in a forward gear.

4 Conclusions and recommendations

4.1 Safe access to sufficient parking is proposed and traffic generation is unlikely to present any safety or congestion issues. Improvements to footway provision is included to ensure safe access to Sketty district centre.

4.2 I recommend no highway objection subject to the following

- i. Prior to any works commencing on the site, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved traffic management plan shall be implemented and adhered to at all times unless otherwise agreed by the Local Planning Authority.
- ii. The site shall not be brought into beneficial use until the footway connecting the site to Sketty Cross has been completed and ready for use.
- iii. The car parking area shall be completed and ready for use prior to beneficial occupation of the development.

Note1: The Developer must contact the Highway Management Group , The City and County of Swansea , Penllergaer Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Senior Engineer (Development) , e-mails to : jim.marshall@swansea.gov.uk or the Team Leader , e-mails to mark.jones@swansea.gov.uk , tel. no. 01792 636091

Note 2: Access and footway works are required to be subject to formal agreement with the Highway Authority under Section 38/278 of the Highways Act 1980.

Coal Authority: No objection.

Dwr Cymru/Welsh Water: No objections subject to conditions/informatives.

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Glamorgan Gwent Archaeological Trust: No objection subject to condition.

FOLLOWING CONCERNS EXPRESSED BY THE LOCAL PLANNING AUTHORITY WITH RESPECT THE PROPOSED SCHEME IN TERMS OF THE DESIGN AND IMPACT OF THE DEVELOPMENT UPON THE RESIDENTIAL AMENITIES OF THE NEIGHBOURING PROPERTIES, AMENDED PLANS WERE SOUGHT BY THE LOCAL PLANNING AUTHORITY. THE APPLICATION WAS READVERTISED ON SITE IN THE FORM OF A SITE NOTICE AND ALL ADJOINING AND PREVIOUS OBJECTORS/CORRESPONDENTS WERE INDIVIDUALLY CONSULTED. THE FOLLOWING RESPONSES WERE RECEIVED:

Neighbours: Four letters of objection and a petition of 26 objectors were received which raised the following comments:

1. Consultation process.
2. Neighbouring properties not receiving letters.
3. Traffic movements associated with this development.
4. Highway safety.
5. Lack of parking.
6. Residents will have cars.
7. Boundary concerns.
8. No capacity at local services such as Doctors.
9. Construction issues.
10. Council own the land and as such there is a conflict of interest.
11. Concern the advertisement consent has been granted and hoarding erected from the 1st April 2015 for 3 years.
12. Application does not comply with planning policies.
13. Unjust that the development seems to have been agreed.
14. Overdevelopment of the site.

Pollution Control: There has been no change to the residential footprint with the revised application so my comments remain as previously stated.

Highways: Amended Plans.

No additional comments to make, previous observations still stand.

APPRAISAL

This application is reported to Committee as the number of units proposed is in excess of 20 units and therefore meets the threshold.

Description

Full planning permission is sought for the construction of a detached four storey building to provide 45 retirement living apartments for the elderly with associated communal facilities, car parking, landscaping and additional pavement to Gower Road frontage at 81 Gower Road, Sketty, Swansea. The development will provide 15 one bedroom units and 30 two bedroom units.

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The site comprises of No's 81 and 89 Gower Road and the former rear garden areas of No's 73, 75, 77 and 79 Gower Road. The site is flanked to the south, west and east by the curtilages of residential properties and the north by Gower Road. comprising of both hedgerows and trees. The site also includes some green areas and existing trees within its interior.

The site levels fall significantly to the south and the main developable part of the site forms an almost bowl like feature. The proposal takes advantage of the falling topography and incorporates a lower ground floor, ground floor, 1st and 2nd floor level in and almost 'L' shaped design property.

The development will provide 2 one bedroom units, 6 two bedroom units and large communal lounge and kitchen on the lower ground floor level, 6 one bedroom units, 10 two bedroom units, refuse store, mobility scooter store, main entrance and guest suite on the ground floor, 4 one bedroom units, 9 two bedroom units on the 1st floor and 3 one bedroom units and 5 two bedroom units on the 2nd floor. The development would also enjoy a significant amount of landscaped private garden area to the rear and side with parking to the front.

Main Issues

The main issues for consideration during the determination of this application relates to the principle of residential development at this location, the visual impact of the proposal upon the area and the wider street-scene, the impact of the proposal upon the residential amenities of the neighbouring occupiers, highway safety, Section 106 contributions, ecology of the site, archaeology and drainage issues having regard for National and Local Planning Policies and the Supplementary Planning Guidance documents entitled 'Planning Obligations', 'City and County of Swansea Parking Standards' and 'Residential Design Guide'. It is not considered that the provisions of the Human Rights Act raise any additional issues.

Principle of Development

This is a brownfield site which falls adjacent to the designated District Centre of Sketty as identified on the Swansea Unitary Development Plan (UDP) Proposals Map. The site is within the urban area and as such in land use terms this proposal is an acceptable form of development in principle. Furthermore the introduction of the proposed development at this edge of District Centre Location could also facilitate an increase in footfall to the benefit of the vitality and viability of this important centre..

The site is therefore acceptable for redevelopment in land use terms, however, it is essential that any scheme seeks to respect the character and appearance of the area in terms of siting, scale, design and materials and its respect ecology, residential amenity, and highway safety in accordance with the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Residential Design Guide'.

Planning Obligations

As stated above the site is located within the Swansea West Strategic Housing Policy Zone where there is large demand for affordable housing.

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Policy HC3 of the Swansea UDP requires housing development on sites for 10 or more dwellings or sites in excess of 0.4ha to include negotiations for the inclusion of up to 30% affordable housing. There is normally a requirement on sites in excess of 10 units to provide an education contribution, however in light of the fact the development is for retirement units no education contributions were sought. No other Section 106 requirements were considered necessary.

On the issue of affordable housing the application is supported by a viability assessment which has been subject to protracted discussion and negotiation with officers, following which, an off-site contribution of £425,000 towards the provision of affordable housing has been proposed by the applicant.

The Council's adopted Supplementary Planning Guidance entitled 'Planning Obligations' adopted in March 2010 provides that off-site provision or the payment of a commuted sum will only be agreed in exception circumstances.

The proposed development comprises of secure retirement living apartments for the elderly with associated communal facilities incorporated within one building which, in this instance, is considered incompatible with the provision of general needs affordable housing, particularly given the constraints of the site, the extent of facilities and services offered and the service charges levied in such circumstances.

Whilst there remains some disagreement over the detail of the viability assessment, on balance subject to an offsite contribution towards the provision of affordable housing of £425,000 being secured by way of a S106 Planning Obligation, it is not considered that a recommendation of refusal could be justified in this instance under the provisions of Policy HC3 of the Swansea UDP.

Visual Amenities

The proposal will involve the re-development of the north-western part of the site with the south and eastern parts of the application site retained as garden areas. The proposal will result in the demolition of the existing properties which whilst of a traditional design are not protected. The site plan clearly demonstrates that the site is of a sufficient size to accommodate the footprint of the development, however, careful consideration has to be given to the height, size, scale and massing in visual terms and its relationship with the street-scene.

Overall the proposed scheme exhibits underlying principles of good design with good definition of public and private realms, a high density central core with subservient wings extending off from this which gives the impression the building has evolved over time. The proposal incorporates an attractive area of private space to the rear and sides whilst providing a large area of parking to the front which is naturally surveyed by the proposed units. Whilst it is acknowledged the proposed building is high in places the use of subordinate elements including dormers and the fact the design utilises the falling land levels and existing topography to accommodate the subterranean lower ground floor help ensure the scheme would not appear an overdevelopment of the site.

The site lies just outside the commercial core of Sketty and the main bulk of the building is set back from Gower Road. The existing street-scene is mixed in appearance comprising a range of building forms, styles and materials.

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The street-scene is made up of primarily two storey and three storey properties and as such in terms of its built form and height the proposal would not be out of keeping with its context. The main bulk of the building will be set back from the main road and it is considered that the proposed landscaping will help soften the impact of the building along Gower Road. As such the proposal is not considered to be overtly dominant or prominent when viewed from the adjacent street-scene.

The falling land levels and existing topography of the site gave the opportunity for a development to incorporate a subterranean level, which this proposal fully utilises through the provision of a lower ground floor. Whilst the building is technically set over 4 floors it would appear from the public domain to be two storey with accommodation in the roof space. The main four floored element has three storey and two storey elements which extend from the either side of the development and their subordinate nature helps break up the size, scale and massing of the building and helps the main bulk of the building retain its visual prominence and integrity.

The proposal seeks to retain as much of the boundary trees on site as possible as well as landscaped garden areas to the west, south and east which helps create a sense of space around the building and an established maturity to the scheme.

In principle the traditional design concept is considered an acceptable response to the constraints of the site as the proposal respects the overall scale and massing of the adjacent properties and reflects the character and design of this in a traditional manner. The predominate use of brick and render and slate roof helps the building reflect its local context and the buildings which it will replace. Furthermore the incorporation of projecting gables, dormer windows and subordinate 3 storey and two storey elements helps break up the massing of the development fronting Gower Road whilst also having regard to the design of the dwellings this building will replace.

The proposal incorporates vertical emphasis to the fenestration which is welcome and complements the traditional design concept. Furthermore the main entrance is both legible and adds a focal point to the primary elevation fronting Gower Road.

In order to break up the massing of the building to the rear, the design was altered and some units removed from the scheme. The proposal now includes a glazed link which helps to reduce the scale and massing of this rearward projection and helps the building respond to its context.

The site measures approximately 0.7 ha and the scheme would have a density of approximately 65 units per hectare. The density is considered necessary in order to fully utilise the sites accessibility and development potential. In this respect a well designed scheme of this density proposed will help utilise the maximum potential of the site whilst helping conserve land resources in accordance with Planning Policy Wales 2014. As such the proposal is considered to relate to the scale of adjacent residential properties. Therefore the scale of the proposal is considered to accord with the character of the area.

In view of the above, it is considered that the proposal would respect the visual amenities of the area in compliance with Policies EV1, EV2 and HC2 of the Swansea UDP.

Impact upon the Residential Amenities of the Neighbouring Properties

The proposed building will be sited on the north western part of the application site. The street-scene elevation indicates that the scheme will be in scale with the plot and the adjacent properties.

The proposal will mainly affect the residential amenities of No's 91, 79, 77, 75 and 73 Gower Road, Green Willows and No 26 Sketty Park Drive. In light of the orientation of the building, its siting and its separation distances from the boundaries with the properties along Dillwyn Road it is not considered that the proposal would have a negative impact upon the residential amenities of these properties and as such they are not considered in any further detail during the consideration of this application.

No 91 Gower Road is sited to the immediate northwest of the application site. The main bulk of the primary frontage of the new development will primarily affect No 91 Gower Road, however it is sited some 22.5m from the boundary of the application site and approximately 35m from the new building itself which is considered a sufficient distance to ensure the proposal would not result in unacceptable overbearing or overshadowing upon the residential amenities of this property. In terms of the garden area of No 91 Gower Road, the proposed building will be sited a minimum of 10m from the boundaries of this property and as such it is not considered that the proposed development would have an impact on the private amenity space of No 91 Gower Road to such an extent which could warrant the refusal of this application. With respect overlooking, ground floor overlooking would be mitigated via the existing boundary treatment which will be ensured via an appropriately worded condition. 1st floor windows in this elevation are all sited in excess of 10m from the boundary of No 91 Gower Road which is considered a sufficient distance in order to mitigate unacceptable overlooking. The 2nd floor windows and balcony area of flat No 35 would be within 12m from the boundary with this property, however it is considered that given the existing boundary treatment and the fact No 91 Gower Road and its grounds are at a higher level than the proposed building this is considered sufficient in order to mitigate unacceptable overlooking.

Furthermore the existing dwelling No 89 Gower Road is much closer to the boundary than the proposed building and as such it is not considered that the proposed building would have an impact on private amenity space over and above what is currently experienced.

In terms of the impact of the proposal on No 26 Sketty Park Drive, this property itself is sited a significant distance from the proposed building which will ensure it will not have an unacceptable impact upon the residential amenities of this dwelling. The proposed building will be sited a minimum of 10m from the boundary with No 26 Sketty Park Drive which is considered sufficient to ensure the proposal will not result in unacceptable overbearing or overshadowing upon the private amenity space. With regard overlooking the element of the proposed building which affects this property is primarily two storey in appearance and sited a sufficient distance to mitigate harmful overlooking. Ground floor overlooking will be mitigated via the boundary treatment and the habitable room windows would be sited a minimum of 10m from the boundaries with this property and as such the developments impact upon No 26 is considered acceptable.

Green Willows is sited to the immediate south of the application site and the design, scale and height of the development within close proximity to this property was reduced in order for the scheme to have more acceptable relationship with this property.

The proposed building will be situated at a lower level than Green Willows and the proposal will primarily be single storey in appearance along the boundary with this property and this coupled with a separation distance of a minimum of 8m will ensure the proposal will not result in unacceptable overbearing or overshadowing upon the residential amenity space of this property which could warrant the refusal of this application. In terms of overlooking, there are no habitable room windows within 10m of the boundary of this property and as such the development would have no impact on the level of privacy enjoyed by this property. There a number of mature trees situated on the boundaries between the two properties, however having consulted the Councils Tree Officer it is considered that adequately worded planning conditions would ensure that these remain unaffected by the development.

With respect the impact of the proposal upon Numbers 73, 75, 77 and 79 Gower Road which are the row of terraced properties sited on the north-eastern boundary of the application site, the proposed building will be sited a sufficient distance from the boundaries of these properties and the structure been carefully designed at a lower level to ensure the proposal will not give rise to unacceptable overbearing or overshadowing upon the rear garden areas of these properties. The properties themselves are considered a sufficient distance from the proposed building to ensure the proposal will not impact upon the living conditions of these dwellings to such an extent which could warrant the refusal of this application. Turning to overlooking the relationship of the building with the garden areas of this property will only afford overlooking from oblique angles and given the urban location a certain degree of mutual overlooking is inevitable and common in such areas. The building will be primarily two storey in design and at a lower level on the boundary with these properties and as such will not afford direct overlooking into the rear garden areas of these properties, furthermore additional planting along the boundary will mitigate the impact of the development upon the level of privacy enjoyed by these properties.

In terms of noise and disturbance created by the proposal to future and existing residents, pollution control have commented on the application and raised no objection subject to a number of planning conditions. Therefore the proposal is considered to respect the residential amenities of existing and future residents to the satisfaction of the Local Planning Authority and in compliance with the provisions of Policies EV1 and HC2 of the Swansea UDP.

Highway Safety

Having consulted the Head of Transportation and Engineering it is acknowledged that the proposal is for the construction of a development of 45 retired living apartments on the site of 81 Gower Road, Sketty. A Transport Statement has been submitted with the application which seeks to quantify the likely traffic movements generated by the development. The assessment predicts 9 two-way movements in the am peak and 10 two-way movements in the pm peak. This is based on data held at other McCarthy and Stone developments nationally and compares favourably with independent data on sheltered/assisted living developments in national databases.

The number of predicted movements is minimal compared to existing traffic movements on this part of Gower Road and is unlikely to present any congestion issues.

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The site access junction has been tested to ensure suitability to accommodate the largest vehicle type likely to use it, in this case being a refuse vehicle. Visibility at the access junction will accord with nationally recommended standards to ensure safety for all traffic.

The layout of the site accommodates parking for 39 cars with the recommended 2 accessible spaces all in accordance with parking policy and sufficient room is available for all vehicles, including service and refuse vehicles to enter and leave the site in a forward gear.

Safe access to sufficient parking is proposed and traffic generation is unlikely to present any safety or congestion issues. Improvements to footway provision is included to ensure safe access to Sketty district centre. Therefore the proposal is considered acceptable in highway terms subject to appropriately worded conditions.

Planning Policy Wales 2014 promotes sustainable higher dense forms of development such as this which are situated along main traffic routes and close to community facilities. The site is situated along the main bus route to Swansea and is within close proximity to Sketty local shopping centre and as such the future residents would not be overly reliant on private car as a method of transport and is in a highly sustainable location.

Ecology

Having consulted the Councils Ecologist it is considered that sufficient information has been submitted by the applicant to satisfy the Local Planning Authority. As such there are no objections from an ecology perspective subject to informatives.

Archaeology

Having consulted the Glamorgan Gwent Archaeological Trust it is acknowledged that the proposed work has been subject to an archaeological desk based assessment provided by CGMS (ref RB/PB/17664, July 2014). Whilst this report suggests that there is low potential for buried archaeological resource of any period on the site and that further archaeological mitigation measures are unnecessary, Glamorgan Gwent Archaeological Trust has confirmed that the structures on the site have been extant from before 1879. It is known that at least one of these structures is built in the Arts and Crafts style and therefore may be of local significance. There are also outbuildings associated with the dwellings on the site that provide us with an opportunity to record a suite of functional buildings that will be lost to us once the development starts.

There is no objection from Glamorgan Gwent Archaeological Trust to the positive determination of the current application, but they have confirmed that they would want a condition attached to any consent requiring a record of these buildings be made. Therefore it is recommend that a condition should be attached to any planning consent requiring a photographic record of the standing buildings on the site, including the two dwellings (no 81 and 89 Gower Road) and the coach house should be made prior to demolition. This will ensure the buildings' preservation by record to mitigate the negative impact of the development.

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Drainage

The application proposes the use of mains drainage. Policy EV33 of the UDP suggests that planning permission will only be granted where development can be served by the public mains sewer. Dwr Cymru/ Welsh Water have been consulted and they have not objected in terms of connecting to the sewer.

Concern has been raised by a number of residents with regard surface water issues in the area. Rainfall will remain unaffected by this development, so the only effect will be to introduce impermeable surfaces like roofs, footpaths and drives which will prevent rain soaking into the ground where it falls. Drives, paths and footways will be conditioned to be permeable which will allow the rain to soak away locally and an informative added suggested the use of further Sustainable Urban Drainage Systems.

Consultation with Natural Resource Wales was not deemed necessary in this instance with regard the proposed development.

Response to Consultations

Notwithstanding the above a number of individual letters of response and a petition of objection were received which raised concerns in respect of the highway safety, ecology, trees, congestion, contrary to policies, parking and overdevelopment. The issues pertaining to which have been addressed above.

In addition to this concern was raised in respect of additional noise being generated from the site. A development would obviously generate some additional noise during construction, however this is a temporary inconvenience associated with development. The long term noise implications of the site would be minimal and any noise nuisance would be covered under environmental health legislation.

Concern was raised with respect the consultation process, however our records indicate all adjoining residents and previous objectors have been individually consulted a number of times and in addition to this a site notice has also been erected on site on two separate occasions and advertised in the press as major development. Therefore the Council has more than complied with its requirements under the General Development Procedure Order 1995.

In addition to this, concern has been raised that the Local Planning Authority own part of the site and that there is a conflict of interest. The Local Authority owns a lot of land within the City and County of Swansea, however as with all applications considered it has been undertaken in a fair, open and transparent manner and therefore this is not considered material to the consideration of this application.

Concern has been raised that a concurrent application for advertisement has already been granted planning permission, however this statement is untrue. Planning application Ref: 2015/0402 is still under consideration by this Authority and is pending the decision made by the Local Planning Authority making its decision. Therefore there is no basis of the comment that the Council have pre-judged this current application currently before members.

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Further concern has been raised with respect boundary treatment and what will be put back, this will be ensured via an appropriate condition. Issues relating to land ownership are a civil matter and not material to the consideration of this application. If consent is granted a Party Wall Informative is considered appropriate to attach to any permission.

Conclusion

Therefore it is considered that this amended scheme has addressed the concerns raised by the Local Planning Authority and the applicant has now demonstrated to the satisfaction of the Local Planning Authority that the re-development of this site subject to conditions would have an acceptable impact upon the visual amenities of the area and the character and appearance of the street-scene, the residential amenities of the neighbouring properties, highway safety, ecology, adjacent trees, drainage and the archaeology of the site. As such the application is considered to comply with the provisions of Policies EV1, EV2, EV3, EV40, EV33, EV35, HC2, HC3, HC17, AS1, AS2 and AS6 of the Swansea UDP and the Supplementary Planning Guidance documents entitled Residential Design Guide and Swansea Parking Standards and as such is recommended for approval.

RECOMMENDATION

APPROVE, subject to the following conditions and to the developer entering into a Section 106 Obligation in respect of £425,000 off site contribution for affordable housing and a S106 management and monitoring fee equating to 20% of the planning application fee:

- 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 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.
- 3 No development or other operations shall take place except in accordance with the guide on "The Protection of Trees on Development Sites" attached to this planning permission. No trees, shrubs, or hedges shall be felled or cut back in any way, except where expressly authorised by the landscaping scheme as approved by the Local Planning Authority until two years after the completion of the development. Any trees, shrubs or hedges removed without such authorisation, or dying, or being seriously damaged or diseased before the end of that period shall be replaced by plants of a size and species as may be agreed with the Local Planning Authority.
Reason: To secure the protection of trees growing on the site whilst the development is being carried out.

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- 4 Samples of all external finishes shall be submitted to and approved by the Local Planning Authority in writing before the development is commenced. The scheme shall be implemented in accordance with the approved details.

Reason: In the interests of visual amenity.

- 5 The development shall be carried out in accordance with the following approved plans and documents: [SW-2007-03-AC-66-* - Proposed Demolition Plan received 30th Jan 2015, SW-2007-03-AC-001-B - Amended Site Location Plan received 8th June 2015, SW-2007-03-AC-027-H - Amended Lower Ground and Ground Floor Plan, SW-2007-03-AC-029-F - Amended First, Second and Roof Plans, SW-2007-03-AC-035-D - Amended Elevations 01 (B&W), SW-2007-03-AC-037-D - Amended Elevations 01 (Presentation) received 24th June 2015, 50807-07 REV F - Amended Drainage Plan received 24th September 2015 and SW-2007-03-AC-026 Rev F - Amended Site Location Plan, SW-2007-03-AC-036 Rev D - Amended Elevations 02 (B&W), SW-2007-03-AC-038 Rev D - Amended Elevations 02 (Presentation), SW-2007-03-AC-039 Rev D - Amended Site Sections 01, SW-2007-03-AC-040 Rev C - Amended Site Sections 02 received 28th September 2015].

Reason: To define the extent of the permission granted.

- 6 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.

- 7 No demolition shall commence until an appropriate photographic survey of the existing buildings on the site has been carried out in accordance with details to be submitted to, and agreed in writing by the Local Planning Authority. The resulting photographs should be deposited with the adopted Rhondda Cynon Taff Historic Environment Record, operated by the Glamorgan-Gwent Archaeological Trust (Heathfield House, Heathfield, Swansea, SA1 6EL. Tel: 01792655208).

Reason: As the building is of historic and cultural significance the specified records are required to mitigate the impact of the development.

- 8 The fenestration to be installed for all room types shall have a sound insulation value .Rw 31dB and no window frame trickle vents shall be installed unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that the future occupants exposure to external noise is reduced.

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ITEM 6 (CONT'D)

APPLICATION NO.

2015/0217

- 9 If, during the course of development, contamination not previously identified within the ground investigation report is found to be present no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a detailed strategy for dealing with said contamination.

Reason: To ensure that the safety of future occupiers is not prejudiced.

- 10 Prior to the commencement of demolition of the existing properties an Asbestos Survey shall be carried out by a suitably qualified contractor, details of which shall be submitted to and agreed in writing by the Local Planning Authority. The demolition shall be carried out in strict accordance with these agreed details.

Reason: To ensure harmful materials are properly disposed of in the interest of environmental health.

- 11 Prior to the commencement of demolition/construction works on the application site (including all access roads) a Construction Pollution Management Plan (CPMP) shall be submitted to and approved in writing by the LPA. The development shall be undertaken in strict accordance with the agreed details. The CPMP is to include the following:

- a) Demolition/Construction programme and timetable
- b) Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas etc
- c) Traffic scheme (access and egress) in respect of all demolition/construction related vehicles;
- d) An assessment of construction traffic generation and management in so far as public roads are affected, including provisions to keep all public roads free from mud and silt;
- e) Proposed working hours;
- f) Principal Contractor details, which will include a nominated contact for complaints;
- g) Details of all on site lighting (including mitigation measures) having regard to best practicable means (BPM);
- h) Details of on site dust mitigation measures having regard to BPM;
- i) Details of on site noise mitigation measures having regard to BPM;
- j) Details of waste management arrangements (including any proposed crushing/screening operations); and
- k) Notification of whether a Control of Pollution Act 1974 (Section 61)

Notice is to be served by Principle Contractor on Local Authority.

Note: items g – j inclusive need to take particular account of the potential for statutory nuisance arising from site related activities [see Informatives].

Note: If, during the writing of the CPM, any specific issue needs to be discussed/clarified the applicant should contact the Pollution Control Division, Housing and Public Protection Service, Rm 401 Guildhall

SA1 4PE 01792 635600

Reason: To ensure minimal nuisance impact on local residents/businesses from construction activities.

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ITEM 6 (CONT'D)

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- 12 Notwithstanding the submitted plans, further details of the proposed external lighting shall be submitted to and agreed in writing by the Local Planning Authority prior to the development being brought into beneficial use. The agreed lighting shall be implemented in strict accordance with these agreed details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of residential amenity.

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (EV1, EV2, EV3, EV30, E40, EV33, EV35, HC2, HC3, HC17, AS1, AS6)
- 2 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
- 3 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 e.g. live or dead animals or droppings, work should cease immediately and the advice of the Natural Resources Wales sought before continuing with any work (01792 634960).
- 4 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 particularly during the bird nesting season March-August.
- 5 Conditions Foul water and surface water discharges shall be drained separately from the site. Reason: To protect the integrity of the public sewerage system. No surface water shall be allowed to connect, either directly or indirectly, to the public sewerage system unless otherwise approved in writing by the Local Planning Authority. Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system. Reason: To prevent hydraulic overload of the public sewerage system and pollution of the environment.

- Continued -

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 by the Local Planning Authority. Reason: To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system. Advisory Notes If a connection is required to the public sewerage system, the developer is advised to contact Dwr Cymru Welsh Water's Developer Services on 0800 917 2652. 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 we request the applicant contacts our Operations Contact Centre on 0800 085 3968 to establish the location and status of the sewer. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times. The Welsh Government have introduced new legislation that will make it mandatory for all developers who wish to communicate with the public sewerage system to obtain an adoption agreement for their sewerage with Dwr Cymru Welsh Water (DCWW). The Welsh Ministers Standards for the construction of sewerage apparatus and an agreement under Section 104 of the Water Industry Act (WIA) 1991 will need to be completed in advance of any authorisation to communicate with the public sewerage system under Section 106 WIA 1991 being granted by DCWW. On the 1st October 2012 the Welsh Government introduced the Welsh Ministers Standards and we would welcome your support in informing applicants who wish to communicate with the public sewerage system to engage with us at the earliest opportunity. Further information on the Welsh Ministers Standards is available for viewing on the Developer Services Section of our website - www.dwrcymru.com Further information on the Welsh Ministers Standards can be found on the Welsh Government website - www.wales.gov.uk

SEWAGE TREATMENT

No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site.

WATER SUPPLY

Dwr Cymru Welsh Water has no objection to the proposed development.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

If you have any queries please contact the undersigned on 0800 917 2652 or via email at developer.services@dwrcymru.com

ITEM 6 (CONT'D)

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6 Construction Noise

The following restrictions should be applied to all works of demolition/construction carried out on the development site

All works and ancillary operations which are audible at the site boundary shall be carried out only between the hours of 08.00 and 18.00 hours on Mondays to Fridays and between the hours of 08.00 and 13.00 hours on Saturdays and at no time on Sundays and Public Holidays and Bank Holidays.

The Local Authority has the power to impose the specified hours by service of an enforcement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

2 Smoke/ Burning of materials

No burning of any material to be undertaken on site.

The Local Authority has the power to enforce this requirement by service of an abatement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

3 Dust Control:

During construction work the developer shall operate all best practice to minimise dust arisings or dust nuisance from the site. This includes dust and debris from vehicles leaving the site. The Local Authority has the power to enforce this requirement by service of an abatement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

4 Lighting

During construction work the developer shall operate all best practice to minimise nuisance to locals residences from on site lighting. Due consideration should be taken of the Institute of Lighting [www.ile.org.uk] recommendations

o Air Quality

The location of the residential exposure is a suitable distance from the existing traffic source and so the Air Quality Objectives associated with traffic emission is unlikely to be a concern. The additional vehicles that will be a part of the proposed development is unlikely to have an effect on the air quality in the area.

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PLANS

001 rev A site location plan, 002 existing site layout plan, 026 rev A proposed site layout plan, 027 rev B lower ground & ground floor plans, 029 rev A 1st, 2nd & roof plans, 035 rev A elevations 01, 036 rev A elevations 02, 037 rev A elevations 01, 038 rev A elevations 02, 039 rev A site sections, 058 existing elevations - 81 Gower Road, 065 existing elevations - 89 Gower Road, 066 proposed demolition plan, 068 site signage, 069 rev A proposed perspective, SW-1191-03-DE-001 drainage layout, site survey, 8475/01 rev A tree constraints plan, SW-2007-03-LA-002 landscape strategy plan, 034.0056.102 visibility splays, 034.0056.103 refuse tracking, 034.0056.104 proposed footway received 30th January 2014

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ITEM 7

APPLICATION NO.

2013/1522

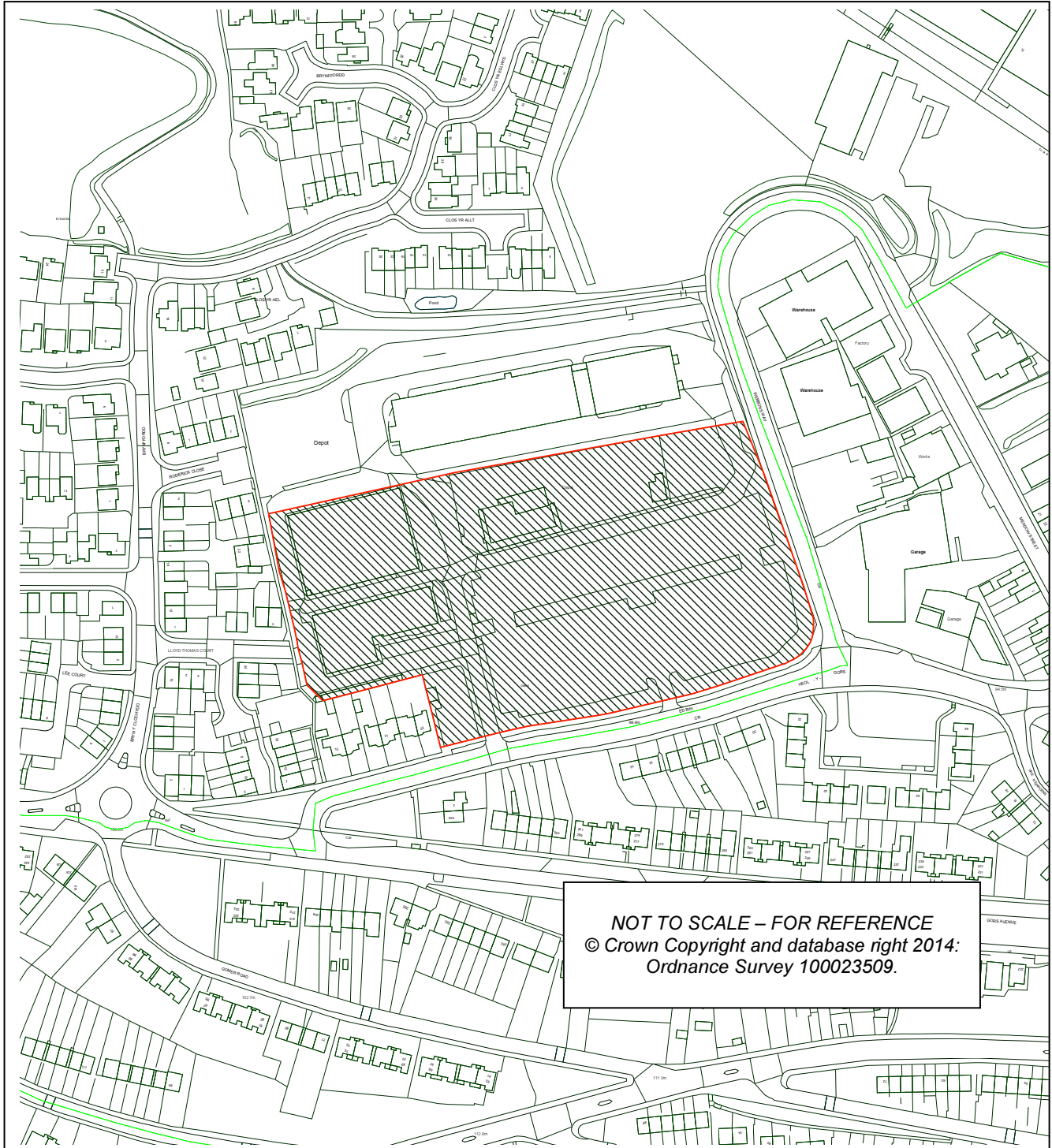
WARD:

Cockett

Location: Swansea Gors TEC site Heol y Gors Cockett Swansea SA1 6SB

Proposal: Residential development for up to 73 dwellings (outline)

Applicant: c/o agent



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BACKGROUND INFORMATION

POLICIES

Policy	Policy Description
Policy AS1	Accessibility - Criteria for assessing location of new development. (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 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 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 EV39	Development which would create, affect or might be affected by unstable or potentially unstable land will not be permitted where there would be a significant risk. (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)

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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 HC3 Provision of affordable housing in areas where a demonstrable lack of affordable housing exists. (City & County of Swansea Unitary Development Plan 2008)

SITE HISTORY

App No.	Proposal
2009/0236	Single storey side extension Decision: Grant Permission Conditional Decision Date: 30/03/2009
2013/1832	External alterations to block 4 building, new pallisade perimeter fencing, 12 8m high floodlight columns, compound, new access and automated entrance gates Decision: Grant Permission Conditional Decision Date: 13/05/2014
84/0343/03	ERECTION OF SECURITY FENCING (PAGODA PALISADE). Decision: *HGPCU - GRANT PERMISSION UNCONDITIONAL Decision Date: 26/04/1984
79/0582/03	TEMPORARY OFFICE ACCOMMODATION Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 28/06/1979
79/1410/04	RENEWAL OF TEMPORARY PERMISSION TO USE A BUILDING TO HOUSE PERSONNEL ASSEMBLING FURNITURE Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 29/11/1979
2014/1147	External alterations to block 4 building, new pallisade perimeter fencing, 12 8m high floodlight columns, 21 1m high lighting, compound, new access and automated entrance gates (amendment to planning permission 2013/1832 granted 13th May 2014) (additional floodlight information received) Decision: Grant Permission Conditional Decision Date: 30/10/2014

ITEM 7 (CONT'D)

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RESPONSE TO CONSULTATIONS

Neighbours: The application was advertised on site in the form of a site notice and in the press as development which in the view of the City and County of Swansea may have a substantial impact on the amenity of the area. In addition to this all neighbouring properties were individually consulted. One letter of objection was received which is summarised below:

1. Conflict between the new residential development and the retained BT Depot.
2. Noise and disturbance.
3. Proposal is in conflict with the adopted Development Plan Policy.
4. New access does not have a right of way over Webbons Way.
5. Without access onto Webbons Way this proposed application would not be deliverable.
6. The current applications for this site and the depot to the north (2013/1832) should not be considered in isolation.
7. LPA should resolve ownership issue prior to the determination of the applications to ensure implementation is possible.
8. BT should engage with owner of Webbons Way.
9. Proposal may not go forward as part of LDP as Inspector may decide it is not deliverable due to owner objection.

Education: The catchment area for this development is Gors and the catchment schools are:

English Medium Primary	Gors Primary
English Medium Secondary	Dylan Thomas Comprehensive
Welsh Medium Primary	YGG Y Login Fach
Welsh Medium Secondary	YG Y Gwyr

The development will generate, in accordance with the agreed Supplementary Planning Guidance (SPG) policy, the following pupils with the associated cost:

Primary: 22.63 (£234,718) Secondary: 16.06 (£254,519)

Rationale

Primary:

There is sufficient surplus capacity at Gors Primary School, the English medium primary school to accommodate additional pupils. In January 2013, the surplus capacity stood figure stood at 146, with the forecasted figures for September 2019 showing a reduction to 73.

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However, there is concern over the condition of the school as Gors Primary was formerly 2 schools (Infant and Junior) and does not meet the aspirations of 21st Century Schools.

There is no capacity for growth in the Welsh Medium Primary schools, namely YGG Y Login Fach in this instance. In January 2013, YGG Y Login Fach had a surplus pupil capacity of 11. Furthermore, the estimated figures for September 2019 show the Welsh Medium school being reduced to a surplus capacity of only 3.

In order to accommodate any pupils from this development, the Welsh Primary school will require a developer's contribution for new build and the full figure generated for primary schools i.e. £234,718 in this instance.

Secondary:

Whilst the development will generate 16.06 secondary pupils there will be a request for a specific contribution towards secondary provision at this time as there will not be sufficient capacity within either the English or the Welsh medium catchment schools.

1. Dylan Thomas Comprehensive, in January 2013 has currently a surplus capacity of 81 places, with an estimated figure for September 2019 of being 56.
2. All of the secondary schools in the west of Swansea are currently under review as part of the ongoing Secondary Stakeholder Forum. There is no surplus capacity at the school and has no scope to extend.

However, although the Welsh medium secondary school, YG Y Gwyr, in January 2013 had a surplus capacity of 199, the projection figure for September 2019 showed an over capacity of 168. It must be remembered that this site also has a number of temporary demountable buildings (i.e. two double classrooms), and on this basis this temporary accommodation can be removed for purpose of calculations which would then put Y Gwyr even more over capacity and at an earlier date.

(Please see table below).

In order to accommodate any pupils from this development, the Welsh Medium secondary school element, will require a developer's contribution for new build and this would mean claiming the full figure generated for secondary schools i.e. £254,519 in this instance.

One has to bear in mind that there is a number of other proposed developments for the area which are still under consideration by Planning and the results of these would further exasperate the situation. The construction timeline of this proposed new development would also, of course, have to be taken into consideration.

However, there are also other Planning Applications which have already been agreed, and some currently still under consideration, by Planning which would have an effect on the Secondary Welsh Medium catchment school involved here, and on the pupil numbers being then even more over capacity than those stated in the table above.

Conclusion

Within the Welsh Medium sector, currently both YGG Y Login Fach and YG Y Gwyr are full and any extra housing within their catchment area will result in additional demand for places.

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N. B. Should any further sites be submitted for Planning consideration for proposed development in the area then we would, of course, want to reconsider the accumulative effect on this particular application alongside any new ones received in the near future.

In summary, in order to accommodate any pupils from this development The Authority would seek a Developer's contribution of £234,718 plus inflation for Welsh Medium Primary school enhancements at YGG Y Login Fach and would also be seeking the full £254,519 plus inflation for Secondary School enhancements at YG Y Gwyr.

The Education Department would welcome feedback on this initial request and a follow up meeting to clarify any issues you may have.

Coal Authority: The Coal Authority Response: Fundamental Concern

I have reviewed the proposals and confirm that the application site falls within the defined Development High Risk Area.

The Coal Authority records indicate that within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application, specifically one mine entry, actual shallow coal workings, coal outcrops.

The Coal Authority objects to this planning application, as a Coal Mining Risk Assessment Report has not been submitted as part of the application.

It is a requirement of Planning Policy Wales, paragraph 13.9 that the applicant demonstrates to the satisfaction of the LPA that the application site is safe, stable and suitable for development.

Drainage and Coastal Management: We have reviewed the application and the Drainage Strategy contained therein carried out by Waterman Transport and Development Ltd, dated August 2013, Rev 2 which we find acceptable. Based on the information submitted we recommend conditions are appended to any permissions given.

Dwr Cymru/Welsh Water: No objection subject to conditions and informatives.

Parks Department: With regard to the above mentioned Planning Application, having looked at the attached site plans of the proposed development, I wish to make you aware of the following observations which I wish to be taken into consideration by the Parks Service which are as follows:

- A 20 year commuted sum will be required from the developer for any future maintenance of POS carried out by The Parks Service.
- The provision of an appropriate planting schedule which will list the proposed species of trees and shrubs to be planted prior to approval where we can determine any maintenance or safety implications involved.
- Areas of POS to be in an acceptable and maintainable condition prior to adoption for future maintenance and to be accepted only upon whole completion of the development and not in phasing.

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- Provision of a copy of an up to date Tree Survey of existing trees which are to be retained and which will be included on any areas of POS within the development prior to any adoption for future maintenance.
- The future responsibility of the existing trees on the development which have been identified as being retained.
- If these existing trees have TPO's on them will they be included in the private gardens of the development or will the individual garden fence lines be erected to exclude the trees? If any of these trees remain outside of the private gardens will there still be access to the trees for inspections or to carry out work depending on the ownership of the land on which they will remain?
- Confirmation required for the future maintenance liability and responsibilities of any boundary walls and fences adjoining POS.
- The Parks Service would not be in a position to adopt the POS if the roads were to remain in private ownership and only upon adoption by the highway authority.

Crime Prevention Officer: Following comments:

(i).Site layout.

Pedestrian routes must be designed to ensure that they are visually open, direct, overlooked and well used. They should not undermine the defensible space of neighbourhoods. Design features can help to identify the acceptable routes through a development, thereby encouraging their use, and in doing so enhance the feeling of safety. Routes must be lit.

Routes for pedestrians, cyclists and vehicles should not be segregated from one another. Networks of separate footpaths to unsupervised areas facilitate crime and anti-social behaviour and should be avoided.

Public footpaths should not run to the rear of, and provide access to gardens, rear yards or dwellings as these have been proven to generate crime.

I have concerns in relation to the paths that run at the rear of plots 1-9 and 33-34. Also in relation to the proposed paths between the properties at plots 2 and 3, 43 and 44. In my opinion these paths must be designed out or they will result in crime/anti social behaviour occurring.

Entry onto the estate must also be restricted to the designated routes

(ii).Lighting.

Lighting on the estate must meet the British Standard 5489.

(iii).Boundary identification.

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Defensible space using symbolic barriers e.g. change of surface colour or texture, should be built into the design to encourage a feeling of territoriality amongst users especially at the entrances to the development.

There should be a symbolic feature or change of surface, i.e. colour or texture at the entrance to the estate and to identify public areas from private or semi private areas e.g. the footpaths from the driveways/front gardens.

Preferably front boundaries would be identified by a low wall and gates.

(iv).Landscaping and planting.

There should be clear lines of sight across the development.

Trees should be bare stemmed up to 2 metres from the ground and not interfere with lighting. They must not be located to provide an assist for criminals to climb over walls. Plants or bushes should only grow to a maximum height of 1 metre.

There should be clear unobstructed views of the parking bays from the properties.

(v).Side and rear boundaries.

Robust fencing or walls at least 1.8 metres high (2 metres high if they back onto a rear lane or open land) must protect the rear and sides of the properties. Gates must be robustly constructed, be the same height as the adjacent fencing and be lockable. Gates, fencing and walls must be designed to be difficult to climb over.

Gates preventing access to the sides and rear of the properties must be sited as near to the front building line of the properties as possible.

There must be nothing adjacent to walls or fencing to assist criminals in climbing over them.

Unlawful access to the rear of all properties must be prevented/made difficult.

(vi).Vehicle parking bays.

Parking bays and the driveways must be overlooked by rooms in the properties that are usually occupied i.e. living rooms. This is especially important where there is side parking.

Parking bays and the driveways to the garages must be well illuminated and there must be no obstruction and clear lines of sight from rooms overlooking the parking bays.

(vii).Garden sheds.

Garden sheds must be sited away from the rear and side fencing/walls to prevent assisting people in climbing over them.

(viii).Bin security.

Bins must be kept in secure areas e.g. the rear gardens.

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(ix).Security lighting.

Security lighting must be installed controlled by PIR detectors, photo electric cells or time switches. They must protect the rears and sides of the houses, the parking bays and the driveways to the garages.

Callers at the front doors of the properties must be lit during the hours of darkness by appropriate lighting.

(x).Drainpipes.

If the drainpipes are not within the fabric of the buildings or behind locked gates, they should be designed so that they do not offer an assist to climbing.

(xi).Public utilities.

Meter boxes must be fixed to, or as near to, the front building lines of the properties as possible.

(xii).Blank walls.

Windowless elevations or blank walls adjacent to space to which the public have access, should be avoided and provide at least one window to a habitable room wherever possible. Where blank flanking walls are unavoidable, a 1 metre 'buffer zone' should be created.

(xiii).Door security.

All external doors to the individual properties should meet the SBD standard PAS 24 2012 or equivalent.

Wooden doors must have mortice locks fitted (up to the British Standard 3621) two thirds of the way down the individual doors. The front door in addition to the British Standard mortice lock must have a British Standard rim lock fitted a third of the way down the door. Rear doors, in addition to the mortice locks, must have mortice bolts fitted 6 inches from the top and bottom of each door.

UPVC doors must be multi point locking.

Glass in door panels or adjacent to door panels must be laminated.

Doors in recesses of more than 600mm must be avoided.

The letter plate apertures must be no larger than 260mm x 40mm and be located at least 400mm away from any locks to stop access to the lock operating system through the aperture. An internal deflector must be fitted over the letter plate to restrict access to the locking mechanism and to prevent letter plate burglary.

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(xiv).Window security.

All vulnerable windows fitted, i.e. ground floor windows, should meet the SBD Standard i.e. PAS 24 2012 or equivalent. They should have laminated glass and also key operated window locks fitted.

(xv).Intruder alarm system.

A 13 amp fused spur should be installed in each individual property. Ideally all properties would have an intruder alarm fitted up to the relevant British Standard.

(xvi).Identification of properties.

The individual properties must be clearly identifiable with numbers clearly displayed.

(xvii).Garage.

The external garage doors should meet the standards specified by SBD i.e. LPS1175 SR1 or PAS 24 2012.

There should be no windows installed in the garages.

The driveways to the garages must be protected by security lighting.

Consideration should be given to alarming the garages the alarm being linked to the house alarms if fitted.

Pollution Control: No objection subject to conditions.

National Resource Wales: We would have no objection to the proposed development, but would like to make the following comments.

Drainage

We note that foul water flows are to be discharged to the main public sewer. This is our preferred means of foul water discharge and is considered to be the most sustainable. We acknowledge from the Drainage Strategy Report (Waterman Transport & Development Ltd, dated August 2013) that Dwr Cymru Welsh Water (DCWW) have confirmed there is sufficient hydraulic capacity within the sewer network at this location to accommodate the flows generated without causing pollution. We would therefore have no further comment to make in this regard.

In terms of surface water drainage, we are pleased to note that the preferred option is infiltration to ground by means of soakaway. However the drainage report advises that ground information on the suitability of soakaways/other on-site infiltration is not yet available.

The use of soakaways/infiltration to ground would be our preferred option for surface water drainage from the site and we are therefore fully supportive of the approach taken within the drainage report. As such, we would encourage the applicant to explore the suitability of the ground for soakaways, as recommended in the drainage strategy.

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We would also recommend that the use of infiltration drainage is enhanced by the implementation of additional sustainable drainage techniques (SUDS) for example, rainwater harvesting, waterbutts, grassed swales etc.

We note that the drainage report has also looked at the feasibility of discharging surface water to the Burlais Brook culvert. This has been considered as an option should infiltration to ground not be possible. As there are recorded incidents of flooding on the Burlais Brook, any surface water discharge would need to be attenuated and discharged at an agreed rate by your Authority's Drainage Engineers.

As the means of surface water drainage has not yet been established, we would recommend that the following condition is included on any permission granted.

CONDITION: No development approved by this permission shall take place until details of the implementation, maintenance and management of a sustainable drainage system (SUDS) for surface water drainage has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be implemented prior to the construction of any impermeable surfaces draining to this system, unless otherwise agreed in writing by the local planning authority.

REASON: To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal.

Whatever regulation method is adopted, it is essential that the developer enters a suitable long term legal agreement to ensure satisfactory long term maintenance and future renewal.

Furthermore, whatever surface water management system is eventually implemented, this must be designed to ensure there is no increase in surface water run-off from the site in all events up to and including the 1% (1:100 year) storm with an appropriate allowance for climate change. We do acknowledge that the Drainage Report has considered this requirement as part of their consideration of discharge to the Burlais Brook.

Contaminated Land

This site is considered brownfield land and it is possible that historic uses may have led to contamination. No information has been submitted with the application on any potentially contaminative uses and any impact this may have on sensitive receptors.

Your Authority may wish to consider including a full suite of land contamination conditions on any permission. However as a minimum, we would ask that the following condition is included.

CONDITION: If, during development, contamination 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 a remediation strategy to the local planning authority detailing how this contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

REASON: To prevent pollution of controlled waters.

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Please note that with regard to land contamination, we only consider issues relating to controlled waters. You are advised to consult with your Authority's Public Health Department for advice in relation to other receptors such as human health.

Pollution Prevention

Construction and demolition activities can give rise to pollution. It is therefore important that appropriate provisions are made for dealing with dust pollutions, surface water management and waste storage during the construction phase.

We consider there to be a particular risk of causing pollution to the local ditches and watercourses during the demolition and construction phases, unless appropriate pollution prevention measures are in place. We would therefore recommend that a detailed construction management plan (CMP) is produced and submitted as part of the application. In particular, we would be seeking details on what measures are in place to reduce the risk of contaminated surface run-off from entering and pollution controlled waters. We would therefore recommend that the following condition is included on any permission granted.

CONDITION: No development approved by this permission shall be commenced until a Construction Management Plan (CMP) detailing all necessary pollution prevention measures for the construction phase of the development is submitted to and approved in writing by the Local Planning Authority. The Method Statement shall identify as a minimum;

REASON: Prevention of pollution to controlled waters and the wider environment.

As a minimum we recommend the plan should include:

- Identification of surrounding watercourses and potential pollution pathways from the construction site to those watercourses.
- How each of those watercourses and pathways will actually be protected from site run off.
- How the water quality of the watercourses will be monitored and recorded.
- What the construction company intends to do with surface water runoff from the site during the construction phase. Please note that it is not acceptable for ANY pollution (e.g. sediment/silt/oils/chemicals/cement etc.) to enter the surrounding watercourses.
- storage facilities for all fuels, oils and chemicals
- construction compounds, car parks, offices etc
- measures for dealing with dust
- measures for dealing with any contaminated material (demolition waste or excavated waste)
- identification of any buried services, such as foul sewers, so that they are protected
- details of emergency contacts, for example Natural Resources Wales' Pollution hotline 0800 807 060

Any drains laid must also be protected in a way that prevents dirty water from the construction site entering them.

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Waste Management

Given the nature and scale of this development, and as demolition works are included, we would recommend that a site waste management plan (SWMP) for the project 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).

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, we would recommend an appropriately worded condition is included on any permission granted. The following condition is suggested, but could be amended as you see fit.

CONDITION: No development approved by this permission shall be commenced until a Site Waste Management Plan has been produced and submitted in writing for approval by the Local Planning Authority.

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.

Any waste materials that are generated on site (either as a result of construction or demolition) must be stored and treated in line with relevant environmental legislation. If it is proposed to treat waste on site (i.e. production of aggregates), a relevant waste permit/exemption must be registered with NRW. More information on relevant waste exemptions can be found on our website; www.naturalresourceswales.gov.uk

The CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during development works are waste or have ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between sites.

We recommend that developers should refer to the CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) for further information and guidance. This can be found from the Environment Agency website at: www.environment-agency.gov.uk

Any waste materials transported off site must be done so by a registered waste carrier and disposed of at an appropriately licensed facility.

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Ecology and Protected Species

With regard to the ecology of the site, and protected species found there, we welcome the submission of the survey report 'Swansea Gors TEC – Ecology: Extended Phase 1 Habitat Survey' (WYG Environment, 2013). We support the recommendations for mitigation and enhancement made in the report and advise that, where appropriate, these commitments are secured by condition on any permission your authority may issue.

In addition to the above, we would ask that the attached planning advice note is provided to the applicant/developer. This provides further information and advice on matters such as SUDS, pollution prevention and waste management.

We trust the above comments will be helpful and will assist your Authority in the determination of the application.

FOLLOWING CONCERNS RAISED BY THE COAL AUTHORITY AND THE COUNCILS URBAN DESIGN SECTION, AMENDED PLANS AND ADDITIONAL INFORMATION WAS REQUESTED FROM THE APPLICANT. THIS ADDITIONAL INFORMATION WAS ADVERTISED ON SITE IN THE FORM OF A SITE NOTICE AND ALL PREVIOUS CONSULTEES WERE RECONSULTED. THE FOLLOWING RESPONSES WERE RECEIVED:

Coal Authority: Comments as follows:

The Coal Authority Recommendation to the LPA

The Coal Authority concurs with the recommendations of the Coal Mining Risk Assessment; that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site.

The Coal Authority recommends that the LPA impose a Planning Condition should planning permission be granted for the proposed development requiring these site investigation works prior to commencement of development.

In the event that the site investigations confirm the need for remedial works, to ensure the safety and stability of the proposed development, this should also be conditioned to ensure that any remedial works identified by the site investigation are undertaken prior to commencement of the development.

The Coal Authority considers that the content and conclusions of the Coal Mining Risk Assessment are sufficient for the purposes of the planning system and meets the requirements of Planning Policy Wales, paragraph 13.9, in demonstrating that the application site is, or can be made, safe and stable for the proposed development. The Coal Authority therefore withdraws its objection to the proposed development subject to the imposition of the above condition.

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Highways: Comments as follows:

1 Background

1.1 This proposal is for the redevelopment of part of the BT site at Heol y Gors. The application is in outline for up to 73 dwellings with access from Heol y Gors as currently. The rear part of the site being retained by BT will be accessed from Webbons Way and this aspect is subject of a separate application.

1.2 Whilst the development does not qualify for requiring a full transport assessment in terms of the number of dwellings (less than 100), due to traffic sensitivities in the area, an assessment has been submitted in support of the proposal.

2 Traffic Generation Impact

2.1 The transport assessment has quantified the likely traffic generation of the development as 39 two-way movements in the am peak (8-9) and 44 two-way movements in the pm peak (5-6). When compared to existing movements at the site generated by its current use the actual difference in traffic movements is calculated at 13 fewer two-way movements in the am peak and 8 more two-way movements in the pm peak.

2.2 Distribution of traffic movements to and from the site has been assigned in accordance with existing traffic movements in the vicinity. The impact at the traffic signals on Gors Avenue/Cocket Road indicates less than 0.5% impact. This level of impact is not significant and therefore will not adversely affect the efficiency of the traffic signal junction.

3 Accessibility

3.1 There is a small selection of shops within 400m walking distance of the site on Heol y Gors. This includes a newsagents and small supermarket. Footways are generally present on both sides of the road in the area and pedestrians therefore are catered for.

3.2 There is a 10-15 min frequency bus service along Heol y Gors which is well within the recommended 400m walking distance. Access to the site for bus use therefore is acceptable.

3.3 There are no dedicated cycle facilities in the immediate vicinity of the site. Cyclists therefore would be required to use on road facilities as is the case for existing adjacent residents.

4 Site Layout

4.1 As the application is in outline form, an indicative layout has been submitted for illustration purposes only. This shows how 73 units might be accommodated on the site. The layout is generally to a traditional standard with carriageway and footways both sides of the road.

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4.2 Some elements of the layout may not be suitable for adoption due to the layout and materials being proposed. This aspect is normally fine-tuned at the S38 adoption stage.

5 Conclusions and Recommendation

5.1 The assessment of traffic impact indicates that no adverse affect will result on the surrounding highway network and I am satisfied that the traffic generation can be adequately accommodated.

5.2 I recommend no highway objection subject to the following;

i. No development shall be commenced until an Estate Street Phasing and Completion Plan has been submitted to and approved in writing by the Local Planning Authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards that estate streets serving each phase of the development will be completed.

Reason: - To ensure that the estate streets serving the development are completed and thereafter maintained to an acceptable standard in the interest of residential / highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the development; and to safeguard the visual amenities of the locality and users of the highway,

ii. No dwelling shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the Estate Street Development Plan.

Reasons:- To ensure that the estate streets serving the development are completed and maintained to the approved standard, and are available for use by the occupants, and other users of the development, in the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway.

iii. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. [The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established].

iv. No development shall be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

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Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway.

Informative:

Management and Maintenance of Estate Streets - Note

The applicant is advised that to discharge condition X that the local planning authority requires a copy of a completed agreement between the applicant and the local highway authority under Section 38 of the Highways Act 1980 or the constitution and details of a Private Management and Maintenance Company confirming funding, management and maintenance regimes.

Submission of Details - Adoptable Streets - Note

The applicant is advised to obtain a technical approval for all estate street details from the Local Highway Authority prior to the submission of such approved details to the Local Planning Authority to discharge Condition X of this consent.

FURTHER VIABILITY APPRAISAL INFORMATION WAS SUBMITTED BY THE APPLICANT AND THE FOLLOWING RESPONSES WERE RECEIVED:

It is noted that Education originally requested in November 2013 a Developer's Contribution of £234,718 for YGG Y Login Fach and £254,519 for YG Y Gwyr. I understand this Education contribution was reduced to £75K between the two schools, namely YGG Y Login Fach (£35,982) and YG Y Gwyr (£39,018) in a recommendation approved at the Planning Committee Stage on 22nd December 2014; but a decision which was later contested by the applicant.

As YGG Y Login Fach is already facing accommodation pressures, a request has been made for this £75K to be awarded in total to YGG Y Login Fach as our preference for this application, in this instance. It has to be noted that the capacity figures for this school as at January 2015 were down to 8 unfilled places, with the estimated figures for January 2022 showing - 29, i.e. being well over capacity, and a definite need for additional spaces/improved facilities on site, especially bearing in mind the possible further number of pupils to be generated from this new development i.e. 22.63 Primary pupils (and 16.06 Secondary pupils) – as per SPG calculations.

As previously discussed, the site will have an impact on all provisions of education in the area, but we understand the position regarding the viability of the site and do not wish to jeopardise the site being developed as it is included in the UDP and LDP.

At this stage we therefore feel we have no option but to accept the £35K Section 106 Developer's Contribution being offered for YGG Y Login Fach.

APPRAISAL

Description

Outline planning permission is sought for the construction of up to 73 dwellings at the site of the Swansea Gors TEC site, Heol Y Gors, Swansea.

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Access is to be considered as part of this application with all other matters reserved for further consideration, however an indicative layout including plot positions and landscaping has been submitted in support of this application.

The site comprises of the former Swansea Gors Telephone Engineering Centre (TEC) site in Cockett which is a 2.14 ha area of land lying on the northern side of Heol y Gors which forms the site frontage. To the west the site abuts Webbons Way, whilst to the east it abuts the rear of existing housing development accessed off Bryn y Clochydd. To the north the site abuts a further development site comprising of the former Motor Transport Workshop (MTW) property, also under the applicant's ownership and which may form an extension to the current development at a later date. A single site access is provided from Heol y Gors. The site frontage along Heol y Gors and the southern half of the western boundary fronting onto Webbons Way incorporate a continuous planting screen comprising of both hedgerows and trees. The site also includes some green areas and existing trees within its interior.

The site is currently allocated for housing under the extant Swansea Unitary Development Plan. Planning permission has recently been granted under Ref: 2014/1147 for external alterations to block 4 building, new pallisade perimeter fencing, 12 8m high floodlight columns, 21 1m high lighting, compound, new access and automated entrance gates (amendment to planning permission 2013/1832 granted 13th May 2014) at the site to the north of this application site which will enable the existing BT operation to continue and enable the disposal of the larger southern part of the existing site for residential development.

The illustrative layout indicates that the proposal will have a mix of 30 two bed, 26 three bed and 17 four bed properties which will take up the form of a mixture of semi-detached, terraced and detached dwellings.

Main Issues

The main issues for consideration during the determination of this application relates to the principle of residential development at this location, the visual impact of the proposal upon the area and the wider street-scene, the impact of the proposal upon the residential amenities of the neighbouring occupiers, highway safety, Section 106 contributions, ecology of the site, drainage issues and land stability having regard for National and Local Planning Policies and the Supplementary Planning Guidance documents entitled 'Planning Obligations', 'City and County of Swansea Parking Standards' and 'Residential Design Guide'. It is not considered that the provisions of the Human Rights Act raise any additional issues.

Principle of Development

The site is a brownfield site which is situated within the urban area of Cockett. The site is situated within the North, East and Central Housing Zone which supports the reintroduction of residential units into the central area of the City. The site is an allocated housing site under the provisions of Policy HC1(31) of the Swansea Unitary Development Plan and as such the principle of residential development at this brownfield site is acceptable.

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Whilst it is acknowledged that BT is seeking to retain a small part of the northern element of the site in order to continue operating in the short term the approval of this application will not result in this northern part of the site becoming isolated and incapable of being developed in the future. The redevelopment of the site will create valuable employment into the area during the construction period and also the provision of much needed homes. As such Policy HC1 of the UDP in principle allows for the release of this land for residential development, however a successful scheme will also have to address other policies within the Unitary Development Plan.

Development will be required to be appropriate to its location and will only be approved where it meets the criteria set out in Policies EV1, EV2, EV3, EV33, EV35, EV38, EV39 and HC17 of the UDP. These policies seek to ensure that new developments not only follow set objectives of good design and quality but ensure that it is appropriate to its local context and does not have an adverse impact on the landscape and heritage of the area.

Given the site is an allocated housing site in land use terms it is acceptable in principle for residential development. However it is essential that any scheme should seek to respect the character and appearance of the area in terms of siting, scale, design and materials.

Planning Obligations

The developer originally agreed to the following Section 106 Contributions associated with the proposed development:

- 20% affordable housing at 70%ACG.
- £75,000 Education Contribution and
- £8,786 Open Space Contribution

The applicant in the meantime has marketed the site and conducted a Geotechnical Report which concluded that substantial capping and grouting would be required on part of the application site.

The applicant has therefore contended that the Section 106 requirements identified above are too onerous and would render the scheme unviable. To support this, the applicant submitted a number of financial viability appraisals in line with the requirements of the Supplementary Planning Guidance document entitled 'Section 106 Contributions'.

The applicant wishes consent to be granted in order to dispose of the land to a house builder. The land is currently in industrial use and therefore there is a balance to be struck for the applicant in terms of either releasing this land for much needed residential development or retaining it for employment uses. The Local Planning Authority acknowledge that there are development costs associated with the release of land for residential development which in this instance include the relocation of BT assets, historic coal mining activity, land contamination and general land clearance costs (in excess of £650,000).

The site is located within the Swansea North, East and Central Strategic Housing Policy Zone and as such Policy HC3 of the Swansea UDP requires housing development on sites for 25 or more dwellings or sites in excess of 1ha to include negotiations for the inclusion of affordable housing.

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The Local Planning Authority would not wish to see this allocated brownfield site undeveloped particularly given that the existing housing land supply within the Authority is below the required 5 years, however, this must be balanced against UDP policy requirement which seek to deliver affordable housing and other Section 106 contributions to mitigate the impact of the development.

As stated above, the applicant has provided a number of viability appraisals and whilst the Local Planning Authority would query some of its assumptions, it is acknowledged that there are some substantial costs associated with the release of this land for development.

Furthermore it must also be recognised that the development has to be viable in financial terms for the landowner to release this land for development given that it has an existing land use value.

The applicant has submitted a viability appraisal with a 15% reduction in construction costs at approximately 746m² which is substantially below the BCIS average construction costs. This provides a residual land value of £302,300 which is substantially below the existing land value (approx. £500k). On this basis it is considered that the site is not viable and in accordance with the provisions of the Council's adopted Supplementary Planning Guidance entitled "Planning Obligation" published in March 2010 it is not considered that the provision of affordable housing on this site could be justified in this instance.

UDP Policy HC17 – Planning Obligations requires the Local Planning Authority to make contributions towards (i) improvements to infrastructure, services or community facilities, (ii) mitigating measures made necessary by a development, and (iii) other social, economic or environmental investment to address reasonable identified needs. The policy goes on to say that provisions should be fairly and reasonably related in scale and kind to the individual development. Whilst the proposal does not require any highway improvements the proposal will generate a requirement for education provision. Using the above referenced Supplementary Planning Guidance this scheme would generate approximately 22.63 primary school places (£234,718) and 16.06 secondary school places (£254,519). In this respect this development is within the catchment area for Gors Primary (English Primary), Dylan Thomas Community (English Secondary), Login Fach (Welsh Primary) and Ysgol Gyfn Gwyr (Welsh Secondary). Both the English schools have significant capacity, whilst the Welsh schools have capacity issues.

Currently approximately 13% of people in Swansea speak Welsh and therefore it would be unreasonable to request the applicant to pay such large education contributions from one site. Given the % of Welsh speakers is estimated to increase to 15% it is considered that a contribution of £75,000 could potentially be required. In this instance the applicant has proposed a contribution of £35,000 towards Login Fach Welsh Primary School which has been accepted by the Education Department.

In light of this the Local Planning Authority has a decision to make as to whether it supports the redevelopment of this brownfield allocated housing site or refuses the application due to the developments unacceptable impact on Welsh Medium education. In light of the fact this proposal will bring forward an allocated housing site and result in the redevelopment of this brownfield land, on balance, it is not considered, in this instance, reasonable to refuse planning permission for the proposed development on the basis of the impact upon schools within the area.

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UDP Policy HC24 (Play Areas / Public Open Space) requires new housing developments where the level and nature of open space provision in the locality is inadequate, to: make provision for open space within or near to the development or: to contribute towards the provision or improvement of existing off-site facilities.

An appropriate area of open space is to be maintained at the entrance of the application site adjacent to Heol Y Gors, as previously referred to in this report. This open space is proposed to be managed and maintained by a private management company, which will be controlled as part of a S106 Planning Obligation.

The proposed open space provision within the application site is considered to be acceptable and complies with the provisions of Policy HC24 of the UDP.

Visual Amenities

The proposal will involve the re-development of the southern part of the site and whilst only access is for consideration at this stage, the illustrative layout demonstrates how the site could be potentially developed. The site is considered to be of a sufficient size to accommodate up to 73 dwellings and each plot will have a similar density to other dwellings within the immediate vicinity.

Overall the proposed scheme exhibits underlying principles of good design with good definition of public and private realms, corner buildings at key locations, and dwellings which close vistas. The proposal incorporates an attractive area of public space at the entrance to the site which will be overlooked by plots 59, 60, 61 and 62. Whilst the layout information is only indicative, it is essential that Plot 62 should be a corner building which responds to both the new entrance and Heol Y Gors.

The proposal seeks to retain as much of the planting on site as possible as well as the incorporation of the existing grassed area adjacent to the retained site entrance which helps create a sense of place and an established maturity to the scheme. The approach of providing good pedestrian permeability through the site in all directions via dedicated footpaths is considered appropriate, however it is important that appropriate boundary treatment is incorporated into the detailed scheme which can be considered further at reserved matters stage. All house elevations abutting footpaths should incorporate windows to habitable rooms at both first and ground floor levels, again this can be revisited at reserved matters stage.

The informal play area is welcomed as this provides recreational space for the development. However the DAS seems to suggest that the provision of equipment is limited to one children's springer seat, a timber bench and timber bin. This provision is not considered sufficient to make meaningful use of the space which would simply become a lost opportunity. This could be addressed through condition.

The houses at the eastern boundary have an inward looking orientation with rear gardens which back onto Webbons Way. Generally inward looking development should be avoided and proposals should be integrated into the existing wider context. However given the nature of Webbons Way, which comprises of part of a loop road serving commercial industrial premises fronted by dead frontages in the form of security railings or blank walls, it is considered that the proposed approach is acceptable in this instance.

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The illustrative information indicates that the proposed properties would incorporate a ridge height of approximately 7-10m. There is a variety of designed properties within the area of differing styles and ages. Whilst no details relating to design has been submitted at this stage, it is acknowledged that the redevelopment of the site could respect the visual amenities of the area. Details relating to design and external appearance would however be considered further at reserved matters stage.

The site measures approximately 2.4 ha and the indicative scheme would have a density of just over 30 dwellings per hectare which is well within the City and County of Swansea's 30-40 dwellings per hectare target which is indicated in the Supplementary Planning Guidance Document entitled 'Residential Design Guide'. The density is considered necessary in order to fully utilise the sites accessibility potential and the provision of a large area of open space for residents will provide a high level of environmental quality for residents. In this respect a well designed scheme of this density proposed will help utilise the maximum potential of the site whilst helping conserve land resources. As such the proposal is considered to relate to the scale of adjacent residential properties. Therefore the scale of the indicative layout is considered to accord with the character of the area.

In view of the above the scheme is considered to respect the visual amenities of the area and wider street-scene in compliance with Policies EV1 and EV2 of the Swansea UDP.

Impact upon the residential amenities of the neighbouring properties

The main issues for consideration in terms of the impact of the proposal on residential amenity will be whether the proposal has an acceptable impact on the residential amenity of the existing properties surrounding the application site and the residential amenities of the occupiers of the new properties.

No's 15, 17, 19, 21, 23 and 25 Heol Y Gors are sited to the southwest of the application site and front the main highway. The illustrative layout indicates that the proposal incorporates an area of open space towards the entrance which wraps around the side and rear area of No' 23 and 25 Heol Y Gors which will ensure the proposal will have an acceptable impact upon the residential amenities of these properties. The side gable and parking area of Plot 1 will side onto the rear gardens of No's 15, 17, 19 and 21 Heol Y Gors some 20m from the rear façade of these properties and 4m from the actual boundary. This coupled with its siting to the north will ensure this plot will not result in unacceptable overbearing or overshadowing upon the residential amenities of these properties. Overlooking will be addressed at reserved matters stage. As such the impact of the illustrative proposal upon these properties is considered acceptable.

Plots 1, 2, 3, 4, 5, 6, 7, 8 and 9 run along the western boundary of the application site. All these plots are sited in excess of 10m to the east of the boundaries with the neighbouring properties and where back to back with these properties are 21m from one another which is considered a sufficient distance in order to ensure the scheme will not result in unacceptable overbearing or overshadowing. Again overlooking can be addressed at reserved matters stage, however there is considered a sufficient distance in order to mitigate any potential harm.

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Plots 62 to 73 run parallel to Heol Y Gors fronting the highway. These properties will be sited a minimum distance of 18m from the boundaries with the existing properties opposite which is considered a sufficient distance to ensure they will not prove unacceptably overbearing, overshadowing or raise any issues relating to overlooking.

The development raises no residential amenity issues to the north or east of the application site as they are bounded in these directions by commercial uses.

The illustrative layout indicates that all proposed properties will have a minimum of 40m² useable amenity space which is in accordance with the Supplementary Planning Guidance Document entitled 'Residential Design Guide'.

Furthermore the illustrative layout indicates that where properties are sited back to back (10 backs onto 15, 16 / 11,12,13, 14 back onto 22, 23, 24, 25 / 26, 27, 28, 29 back onto 37, 38, 39 / 49, 50, 51, 52 back onto 69, 70, 71, 72 / 57, 58 back onto 63, 64) they are sited some 21m from one another which is in compliance with separation distance suggested in the Supplementary Planning Guidance Document entitled 'Residential Design Guide'.

In terms of side to rear relationships plot 7 to 10, 3 and 4 to 15, 20 to 59, 59 to 58, 62 to 63, 53 and 54 to 57, 57 and 58 to 31, 21 to 30 and 31, 32 to 53, 35 to 49 and 50, 41 and 42 to 40, 38 to 40 and 48 to 73 are all sited in excess of 12m from one another which again is in compliance with the Supplementary Planning Guidance Document entitled 'Residential Design Guide'.

As such it is considered that indicative layout demonstrates to the satisfaction of the Local Planning Authority that the site can be developed for up to 73 dwellings in a way which ensures the residential amenities of the neighbouring properties is maintained to a satisfactory level, whilst also ensuring the proposal will provide a suitable level of residential amenity for the future occupiers of the proposed dwellings. Issues relating to overlooking can be ensured further at reserved matters stage and it is considered necessary to remove some permitted development rights in order to ensure the long term amenity space of the neighbouring properties.

Drainage

The application proposes the use of mains drainage for foul water. Policy EV33 of the UDP suggests that planning permission will only be granted where development can be served by the public mains sewer. Dwr Cymru/ Welsh Water have been consulted and they have not objected in terms of connecting to the sewer.

Consultation has taken place with the National Resource Wales and the Council's Drainage Officer and subject to conditions they have raised no objection to the proposed drainage strategy for the redevelopment of this site.

In terms of surface water drainage, the preferred option is infiltration to ground by means of soakaways. However the drainage report advises that ground information on the suitability of soakaways/other on-site infiltration is not yet available.

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The use of soakaways/infiltration to ground would be the preferred option for surface water drainage from the site and therefore the LPA is fully supportive of the approach taken within the drainage report. As such, the applicant should explore the suitability of the ground for soakaways, as recommended in the drainage strategy. The use of infiltration drainage should be enhanced by the implementation of additional sustainable drainage techniques (SUDS) for example, rainwater harvesting, waterbutts, grassed swales etc.

The drainage report has also looked at the feasibility of discharging surface water to the Burlais Brook culvert. This has been considered as an option should infiltration to ground not be possible. As there are recorded incidents of flooding on the Burlais Brook, any surface water discharge would need to be attenuated and discharged at an agreed rate by the Local Authority.

As the means of surface water drainage has not yet been established, conditions should be included on any permission granted.

Highways

Having consulted the Head of Transportation and Engineering it is acknowledged the application is an outline submission for up to 73 dwellings with access from Heol y Gors. The rear part of the site being retained by BT will be accessed from Webbons Way and this aspect is subject of a separate application.

Whilst the development does not qualify for requiring a full transport assessment in terms of the number of dwellings (less than 100), due to traffic sensitivities in the area, an assessment has been submitted in support of the proposal.

The transport assessment has quantified the likely traffic generation of the development as 39 two-way movements in the am peak (8-9) and 44 two-way movements in the pm peak (5-6). When compared to existing movements at the site generated by its current use the actual difference in traffic movements is calculated at 13 fewer two-way movements in the am peak and 8 more two-way movements in the pm peak.

Distribution of traffic movements to and from the site has been assigned in accordance with existing traffic movements in the vicinity. The impact at the traffic signals on Gors Avenue/Cocket Road indicates less than 0.5% impact. This level of impact is not significant and therefore will not adversely affect the efficiency of the traffic signal junction.

There is a small selection of shops within 400m walking distance of the site on Heol y Gors. This includes a newsagents and small supermarket. Footways are generally present on both sides of the road in the area and pedestrians therefore are catered for.

There is a 10-15 min frequency bus service along Heol y Gors which is well within the recommended 400m walking distance. Access to the site for bus use therefore is acceptable.

There are no dedicated cycle facilities in the immediate vicinity of the site. Cyclists therefore would be required to use on road facilities as is the case for existing adjacent residents.

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As the application is in outline form, an indicative layout has been submitted for illustration purposes only. This shows how 73 units might be accommodated on the site. The layout is generally to a traditional standard with carriageway and footways on both sides of the road.

Some elements of the layout may not be suitable for adoption due to the layout and materials being proposed. This aspect is normally fine-tuned at the S38 adoption stage.

The assessment of traffic impact indicates that no adverse effect will result on the surrounding highway network and the Head of Transportation and Engineering is satisfied that the traffic generation can be adequately accommodated. There are therefore no highway objections subject to conditions.

Ecology

With regard to the ecology of the site an extended Phase 1 Ecological Survey was submitted as part of this application and following consideration of this document in consultation with Natural Resource Wales it is considered that the recommendations contained within that report for mitigation and enhancement should form part of any approval and secured via appropriately worded conditions.

Land Stability

In terms of land stability, the Coal Authority originally made a holding objection to the determination of this application and requested the submission of a Mining Risk Assessment. The Coal Authority records indicate that there is a mine entry on the site close to the southern boundary. The site is also in a likely zone of influence from workings from 3 coal seams at between 31m to 101m depth, last worked in 1904 and is in an area of likely unrecorded historic coal mine workings at shallow depth.

The applicant has obtained appropriate and up-to-date coal mining information for the proposed development site and has used this information to inform the Coal Mining Risk Assessment, dated 30 January 2014 and prepared by WYG Environment. The Coal Mining Risk Assessment has been informed by appropriate sources including; BGS maps, BGS borehole data, Coal Mining Report and mine abandonment plans.

The Coal Mining Risk Assessment identifies that the site is underlain by three coal veins, the Slatog, Bwdwr (or Bodwr) and Hughes seams. The report states that the Slatog seam extends across the northern third of the site with workings on the Bwdwr and Hughes seams extending beneath the entirety of the site.

The Coal Mining Risk Assessment identifies that there is significant risk to the new development from past shallow mine workings and that further site investigations are required in order to ascertain the exact situation in respect of coal mining legacy issues on the site.

The Coal Mining Risk Assessment also comments on the mine entry indicated on the Coal Authority records as being on the southern part of the site. The report author notes that their review of data, including geo-referencing abandonment plans and overlying them with current plans and site boundary plans, indicated that there were no mine shafts within the site boundary.

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On this basis the report authors sought further clarification from the Coal Authority as to the origin of the location of the shaft identified in the Coal Mining Report. The Coal Authority confirmed that the information used to identify the site of the mine entry was supplied by British Coal on their demise and as such must be regarded as a bone fide location.

As no further information is available at this time the report authors state that the mine shaft cannot be excluded and is still considered as a potential risk. They recommend that further site investigations be carried out in order to clarify the situation regarding the presence, or not, of the mine entry on the site and its condition if found, with appropriate mitigation measures as may be required.

It is noted that the planning application is in outline with all matters reserved for consideration at a later date apart from access. The findings of the intrusive site investigations proposed in respect of the mine shaft, if located on the site, should inform any subsequent layout of the development with appropriate exclusion zones if necessary.

The Coal Authority therefore withdrew its objection to the proposed development subject to the imposition of a condition or conditions which secure the submission of site investigations prior to commencement of work on site. Therefore the current submission is considered to comply with the principles of Policy EV39 of the Swansea UDP.

Response to Consultations

Notwithstanding the above, one letter of objection was received which raised concerns relating to the surrounding commercial uses, noise and disturbance, the principle of the development and deliverability of the site to the north. The issues pertaining to which have been addressed above.

Concern has also been raised with regard the land ownership of Webbons Way. This is a civil matter between the two land owners and not a matter for the Local Planning Authority.

The application for the site to the north has been granted under Ref: 2013/1832 and this development proposes a new access onto Webbons Way. It is not, however, for the Local Planning Authority to resolve land ownership issues in this respect.

Finally concern has also been raised regarding the LDP process, however, this is a separate issue and not considered relevant to the consideration of this application.

Conclusion

In conclusion it is considered, subject to conditions and the applicant entering into a S106 Planning Obligation, that the proposed development is compatible with the objectives of Policies EV1, EV2, EV3, HC1, HC17, AS1, AS6, EV39, EV33, EV35, and HC3 of the Swansea Unitary Development Plan and the Council's adopted Supplementary Planning Guidance document's entitled the 'Residential Design Guide' and 'Planning Obligations'. Approval is therefore recommended.

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RECOMMENDATION

APPROVE, subject and to the developer entering into a Section 106 Obligation to provide the following:

- 1. a management plan for the future maintenance and management of the of the public open space,**
- 2. an Education contribution of £35,000 towards Login Fach Welsh Primary School**
- 3. a Section 106 Management and Monitoring fee equivalent to 20% of the planning application fee.**

And subject to the following conditions:

- 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 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking or amending that Order), Class A of Part 1 of Schedule 2 shall not apply.
Reason: The development hereby approved is such that the Council wish to retain control over any future development being permitted in order to ensure that a satisfactory form of development is achieved at all times.
- 5 Before each individual property hereby approved is occupied the means of enclosing the boundaries of the individual curtilages relating to that dwelling 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.

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- 6 Notwithstanding the submitted plans, details of the play equipment for the recreational space shall be submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be completed prior to the occupation of the first dwelling.
Reason: To ensure an adequate level of play provision.
- 7 The site shall discharge surface water at no greater than 25 litres per second per developed hectare as stated in Section 5.1.2 of the Drainage Strategy, August 2013 REV 2.
Reason: To reduce surface water flood risk downstream and protect the integrity of the Burlais Brook culvert.
- 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 Prior to the commencement of any development, a scheme for the construction, ownership and maintenance of the surface water system shall be submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be completed prior to the occupation of the first dwelling and shall thereafter be maintained in accordance with the approved details.
Reason: To ensure the satisfactory long-term operation of the surface water management scheme to prevent the increased risk of flooding to the development itself and surrounding third parties.
- 10 If, during development, contamination 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 a remediation strategy to the local planning authority detailing how this contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
Reason: To ensure the satisfactory long-term operation of the surface water management scheme to prevent the increased risk of flooding to the development itself and surrounding third parties.

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11 No development approved by this permission shall be commenced until a Construction Management Plan (CMP) detailing all necessary pollution prevention measures for the construction phase of the development is submitted to and approved in writing by the Local Planning Authority. The Method Statement shall identify as a minimum;

- Identification of surrounding watercourses and potential pollution pathways from the construction site to those watercourses.
- How each of those watercourses and pathways will actually be protected from site run off.
- How the water quality of the watercourses will be monitored and recorded.
- What the construction company intends to do with surface water runoff from the site during the construction phase.
- storage facilities for all fuels, oils and chemicals
- construction compounds, car parks, offices etc
- measures for dealing with dust
- measures for dealing with any contaminated material (demolition waste or excavated waste)
- identification of any buried services, such as foul sewers, so that they are protected
- details of emergency contacts, for example Natural Resources Wales' Pollution hotline 0800 807 060

Any drains laid must also be protected in a way that prevents dirty water from the construction site entering them.

Reason: To prevent pollution of controlled waters.

12 No development shall commence until a Site Waste Management Plan has been completed in accordance with details to be submitted to and agreed in writing by the Local Planning Authority.

Reason: Prevention of pollution to controlled waters and the wider environment.

13 No development shall commence until an Estate Street Phasing and Completion Plan has been submitted to and approved in writing by the Local Planning Authority. The streets within the estate shall be completed in accordance with these details unless otherwise agreed in writing by the Local Planning Authority.

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.

14 No dwelling shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the Estate Street Phasing and Completion Plan.

Reason: To ensure that the estate streets serving the development are completed and thereafter maintained to an acceptable standard in the interest of residential / highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the development; and to safeguard the visual amenities of the locality and users of the highway.

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ITEM 7 (CONT'D)

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- 15 No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. [The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established].

Reason: To ensure that the estate streets serving the development are completed and maintained to the approved standard, and are available for use by the occupants, and other users of the development, in the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway.

- 16 Prior to the commencement of development a method statement shall be submitted to and approved in writing by the Local Planning Authority detailing how invasive species plants including Himalayan balsam and Japanese Knotweed will be treated so as to control their spread during construction. The development shall be undertaken in accordance with the approved method statement.

Reason: In the interest of ecology and to prevent the spread of invasive species.

- 17 Prior to the commencement of demolition/construction works on the application site (including all access roads) a Construction Pollution Management Plan (CPMP) should be submitted to and approved in writing by the Local Planning Authority. The CPMP is to include the following:

- a) Demolition/Construction programme and timetable
- b) Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas etc
- c) Traffic scheme (access and egress) in respect of all demolition/construction related vehicles;
- d) An assessment of construction traffic generation and management in so far as public roads are affected, including provisions to keep all public roads free from mud and silt;
- e) Proposed working hours;
- f) Principal Contractor details, which will include a nominated contact for complaints;
- g) Details of all on site lighting (including mitigation measures) having regard to best practicable means (BPM);
- h) Details of on site dust mitigation measures having regard to BPM;
- i) Details of on site noise mitigation measures having regard to BPM;
- j) Details of waste management arrangements (including any proposed crushing/screening operations); and
- k) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by Principle Contractor on Local Authority.

Reason: In the interest of ecology and the amenity of the area.

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ITEM 7 (CONT'D)

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- 18 The applicant shall submit a phased scheme, comprising three progressively more detailed reports, detailing measures to be undertaken in order to investigate the presence of land contamination, including relevant gas, vapour and, where appropriate, radiation related risks, at the proposed site.

Where the initial investigations indicate the presence of such contamination, including the presence of relevant gas/vapour and/or radioactivity, subsequent reports shall include:

- a list of potential receptors
- an assessment of the extent of the contamination
- an assessment of the potential risks
- an appraisal of remedial options, and proposal for the preferred remedial option(s).

The reports shall be submitted individually.

The provision of Phase 2 and Phase 3 reports will be required only where the contents of the previous report indicate to the Local Planning Authority that the next phase of investigation/ remediation is required.

Reason: To ensure minimal nuisance impact on local residents/businesses from construction activities.

- 19 Phase 1 report: Desk Top Study

this shall:

- Provide information as to site history, setting, current and proposed use.
- Include a conceptual site model to establish any potentially significant pollutant linkages in the source-pathway-receptor human health and environmental risk assessment.
- Identify if further investigation or remediation is required.

In the event that the Local Planning Authority is then of the opinion that further investigation/ information is required the applicant shall submit a detailed site investigation [Phase 2] report to the Local Planning Authority, viz:

Phase 2: Detailed Investigation

this shall:

- Provide detailed site-specific information on substances in or on the ground, geology, and surface/groundwater.

Provide for a more detailed investigation [Human Health Risk Assessment] of the site in order to confirm presence or absence of, and to quantify, those potentially significant source-pathway-receptor pollutant linkages identified in Phase 1.

Note; where any substance should be encountered that may affect any controlled waters the applicant, or representative, must contact the Environment Agency in order to agree any further investigations required.

In the event that the need for remediation is identified the applicant shall submit a subsequent detailed [Phase 3] report to the Local Planning Authority, viz:

- Continued -

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ITEM 7 (CONT'D)

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Phase 3: Remediation Strategy Options Appraisal this shall:

- Indicate all measures to be taken to reduce the environmental and human health risks identified in Phase 1 and Phase 2 to an acceptable level, in a managed and documented manner, to best practice and current technical guidance.

Phase 3: Validation/verification Report

- On completion of remediation works a validation/verification report will be submitted to the Local Planning Authority that will demonstrate that the remediation works have been carried out satisfactorily and remediation targets have been achieved.

Reason: To ensure that the safety of future occupiers is not prejudiced.

Reason: To ensure minimal nuisance impact on local residents/businesses from construction activities.

- 20 Prior to the commencement of work on site further site investigation works relating to ground conditions and the stability of the site shall be completed in accordance with details to be submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interest of land stability.

- 21 The development shall be carried out in strict accordance with the recommendations for mitigation and enhancement identified in the survey report 'Swansea Gors TEC - Ecology: Extended Phase 1 Habitat Survey (WYG Environment, 2013) unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of ecology.

- 22 The development shall be carried out in accordance with the following approved plans and documents: [A074361 02 Application Site Plan, A074361 (C) 02 Site Location Plan, drainage strategy report, ecology report, planning statement, transport statement, received 30th October, 2013 and A074361(C)13 Rev A Illustrative layout dated 11th March 2014]

Reason: To define the extent of the permission granted.

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (EV1, EV2, EV3, HC1, HC17, AS1, AS6, EV39, EV33, EV35, and HC3)
- 2 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.

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- 3 Please be aware that under the Flood and Water Management Act 2010 the City and County of Swansea is now classified as the Lead Local Flood Authority (LLFA) and as part of this role is responsible for the regulation of works affecting ordinary watercourses. Our prior written consent for any works affecting a watercourse may be required irrespective of any other permissions given and we encourage early engagement with us to avoid any issues.
- 4 Any waste materials that are generated on site (either as a result of construction or demolition) must be stored and treated in line with relevant environmental legislation. If it is proposed to treat waste on site (i.e. production of aggregates), a relevant waste permit/exemption must be registered with NRW. More information on relevant waste exemptions can be found on our website; www.naturalresourceswales.gov.uk

The CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during development works are waste or have ceased to be waste.

Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between sites.

We recommend that developers should refer to the CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) for further information and guidance. This can be found from the Environment Agency website at: www.environment-agency.gov.uk

Any waste materials transported off site must be done so by a registered waste carrier and disposed of at an appropriately licensed facility.

- 5 **Management and Maintenance of Estate Streets - Note**
The applicant is advised that to discharge condition X that the local planning authority requires a copy of a completed agreement between the applicant and the local highway authority under Section 38 of the Highways Act 1980 or the constitution and details of a Private Management and Maintenance Company confirming funding, management and maintenance regimes.

Submission of Details - Adoptable Streets - Note

The applicant is advised to obtain a technical approval for all estate street details from the Local Highway Authority prior to the submission of such approved details to the Local Planning Authority to discharge Condition X of this consent.

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6 Foul water and surface water discharges shall be drained separately from the site.

Reason: To protect the integrity of the public sewerage system.

No surface water shall be allowed to connect either directly or indirectly, to the public sewerage system unless otherwise approved in writing by the Local Planning Authority.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment.

Land drainage run-off shall not be permitted to discharge, either directly or indirectly into the public sewerage system.

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

If a connection is required to the public sewerage system, the developer is advised to contact Dwr Cymru Welsh Water's Network Development Consultants on 0800 917 2652.

Some public sewers and lateral drains may not be recorded on Dwr Cymru Welsh Water maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry Regulations 2011. The presence of such assets may affect the proposal. In order to assist Dwr Cymru Welsh Water in dealing with the proposal you should contact them on 0800 085 3968 to establish the location and status of the sewer. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

7 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 e.g. live or dead animals or droppings, work should cease immediately and the advice of the Natural Resources Wales sought before continuing with any work (01792 634960).

8 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 particularly during the bird nesting season March-August.

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ITEM 7 (CONT'D)

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- 9 The Welsh Government have introduced new legislation that will make it mandatory for all developers who wish to communicate with the public sewerage system to obtain an adoption agreement for their sewerage with Dwr Cymru Welsh Water (DCWW). The Welsh Ministers Standards for the construction of sewerage apparatus and an agreement under Section 104 of the Water Industry Act (WIA) 1991 will need to be completed in advance of any authorisation to communicate with the public sewerage system under Section 106 WIA 1991 being granted by DCWW.

Welsh Government introduced the Welsh Ministers Standards on the 1st October 2012 and we would welcome your support in informing applicants who wish to communicate with the public sewerage system to engage with us at the earliest opportunity. Further information on the Welsh Ministers Standards is available for viewing on our Developer Services Section of our website - www.dwrcymru.com

Further information on the Welsh Ministers Standards Can be found on the Welsh Government website - www.wales.gov.uk

If a connection is required to the public sewerage system, the developer is advised to contact Dwr Cymru Welsh Water's Developer Services on 0800 917 2652.

Water Supply

No problems are envisaged with the provision of water supply for this development.

A water supply can be made available to serve this proposed development. The developer may be required to contribute, under sections 40-41 of the Water Industry Act 1991, towards the provision of new off-site and/or on-site watermains and associated infrastructure. The level of contribution can be calculated upon receipt of detailed site layout plans which should be sent to the address above.

Our response is based on the information provided by our application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

10 INFORMATIVES

1 Construction Noise

The following restrictions should be applied to all works of demolition/ construction carried out on the development site

All works and ancillary operations which are audible at the site boundary shall be carried out only between the hours of 08.00 and 18.00 hours on Mondays to Fridays and between the hours of 08.00 and 13.00 hours on Saturdays and at no time on Sundays and Public Holidays and Bank Holidays.

The Local Authority has the power to impose the specified hours by service of an enforcement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

- Continued -

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ITEM 7 (CONT'D)

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10 2 Smoke/ Burning of materials

No burning of any material to be undertaken on site.

The Local Authority has the power to enforce this requirement by service of an abatement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

3 Dust Control:

During construction work the developer shall operate all best practice to minimise dust arisings or dust nuisance from the site. This includes dust and debris from vehicles leaving the site.

The Local Authority has the power to enforce this requirement by service of an abatement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

4 Lighting

During construction work the developer shall operate all best practice to minimise nuisance to locals residences from on site lighting. Due consideration should be taken of the Institute of Lighting [www.ile.org.uk] recommendations

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ITEM 8

APPLICATION NO.

2014/1189

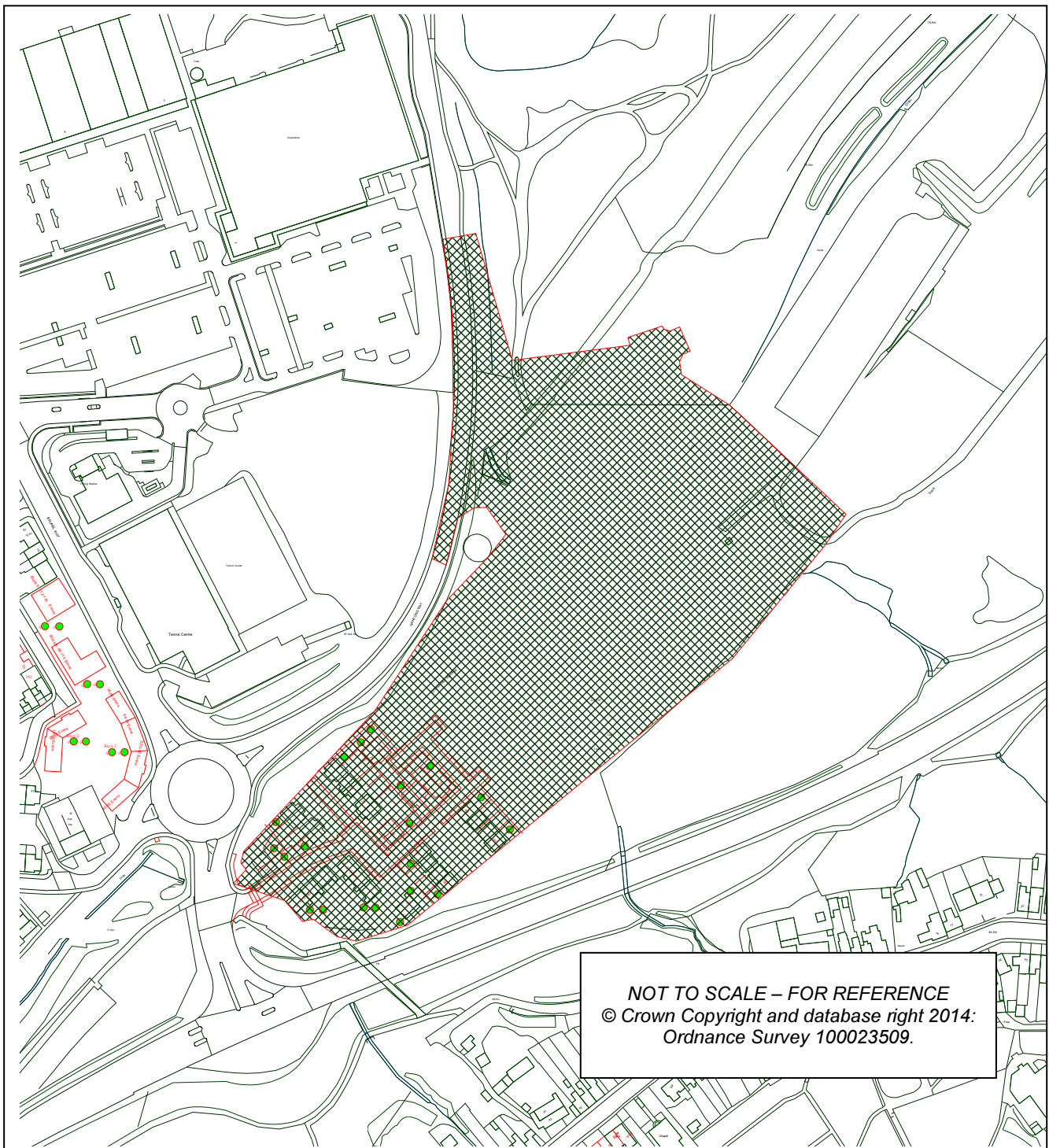
WARD:

Bonymaen

Location: Land at Upper Bank, Pentrechwyth, Swansea, SA1 7DB

Proposal: Residential development with construction of new vehicular access off Nantong Way (outline) - Section 73 application to vary condition 21 (Foul sewerage connection) and removal of conditions 16 (Footway improvements to Nantong Way) and 24 (Oil Interceptor) of planning permission 2006/1902 granted 16th July 2012.

Applicant: Hygrove Planning Services



BACKGROUND INFORMATION

RELEVANT PLANNING POLICIES

Unitary Development Plan

Policy EV1	New development shall accord with the stated objectives of good design
Policy EV2	Siting of new development should give preference to the use of previously developed land over greenfield sites and should have regard to the physical character and topography of the site and its surroundings.
Policy EV3	Accessibility
Policy HC1 (76)	Site allocated for residential development – Upper Bank, Pentrechwyth
Policy HC17	Planning Obligations
Policy AS1	New developments (including housing) should be located in areas that are currently highly accessible by a range of transport modes, in particular public transport, walking and cycling
Policy AS2	Design and layout of access to new developments should allow for the safe, efficient and non intrusive movement of vehicles
Policy AS6	Parking provision to serve developments will be assessed against adopted maximum parking standards to ensure appropriate levels of parking

Supplementary Planning Guidance

Tawe Riverside Corridor Strategy, which was adopted as draft Supplementary Planning Guidance by Council on 21st September, 2006

Planning Obligations (March, 2010)

National Planning Policy Guidance:-

National Planning Policy Guidance:-

Planning Policy Wales (PPW) (July 2014 7th Edition)

With regard to housing, PPW seeks to ensure that previously developed land is used in preference to Greenfield sites; is well designed; meets national standards for the sustainability of new homes and makes a significant contribution to promoting community regeneration.

Technical Advice Note: 12 Design

RELEVANT PLANNING HISTORY

2006/1902

Residential development with construction of new vehicular access off Nantong Way (outline)

Planning Permission 6 July 2012 following completion of a Section 106 Planning Obligation. The completed Section 106 Planning Obligation incorporates the following clauses:

Education Contribution

Not to allow occupation of the 51st Housing Unit constructed under the Planning Permission until the Owners and the Developers have paid the Council the sum of £70,000 (increased in the Retail Price Index) as an Education Contribution.

Second Schedule - Affordable Housing Obligations

The Owners and the Developers covenant with the Council that not more than 120 Market Housing Units shall be occupied on the site under the Planning Permission until 20 Affordable Housing units have been constructed.

Third Schedule - Highways Works and Access

1. Not to start construction of any dwelling on the site under the Planning Permission until a Highways Agreement under the Highways Act has been agreed with the Council.
2. Not to allow the occupation of any dwelling until the existing 'temporary' bollards adjacent to the existing Brunel Way access which separate the carriageways to / from Morfa and which prevent right turn vehicular movements, shall be replaced with a more permanent physical barrier (at the developers expense) in accordance with details to be submitted to and approved by the Local Planning Authority in order to enforce the restriction of no right turn vehicular movements.
3. Not to allow the occupation of more than 80 dwellings on the site under the Planning Permission until:
 - 3.1 The vehicular access off Nantong Way to the Site is brought into use and
 - 3.2 A pedestrian crossing across Nantong Way has been provided and brought into use;
4. Not to allow the occupation of more than 50 dwellings on the site under the Planning Permission until:
 - 4.1 Works for the upgrading of the existing footpath between the pedestrian footbridge over the A4217 and Pentrechwyth Road.
 - 4.2 Works for traffic calming near Pentrechwyth School.

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ITEM 8 (CONT'D)

APPLICATION NO.

2014/1189

5. To design the internal road layout of the site to discourage through traffic and reduce traffic speed to no more than 20 mph through the site.

2014/0013

Construction of 42 residential units (details of siting, design, external appearance and landscaping pursuant to condition 01 of outline planning permission 2006/1902 granted 6th July 2012)

Approval of reserved matters granted 7 March, 2014

RESPONSE TO CONSULTATIONS

The application was advertised on site and in the local press. No response

Natural Resources Wales - Having reviewed the information provided, NRW would not object to the variation of condition 21 and the removal of conditions 16 and 24.

Dwr Cymru Welsh Water – We have approved a new connection as illustrated so there is no objection from DCWW.

Highway Observations – On inspecting the site and surrounding highway, namely Nangtong Way, I consider the requirement for a 4m shared footway / cycle way along Nangtong Way, adjoining the Upper Bank site to be impractical, due to the excessive costs and disruption to the site, necessary to construct such a facility, when a good quality 2m wide footway already exists. Additional works would entail potential statutory diversions and retaining structures in order to retain the Upper Bank site.

I would, therefore, suggest the need to fulfil this particular element of work is withdrawn.

APPRAISAL

The outline planning permission Ref:2006/1902 was granted 6 July 2012 following completion of a Section 106 Planning Obligation and included the means of access details to be obtained from a new vehicular access road on Nantong Way, however, this was later amended to allow the occupation of no more than 80 dwellings on the site under the planning permission until the vehicular access (together with a pedestrian crossing across) off Nantong Way to the site is brought into use. The Transport Assessment which accompanied the application was based on a development proposal of 218 residential units for the site.

Reserved matters approval for the first phase of the residential development of the site was granted on 7th March, 2014 (ref:2014/0013) and construction of which is nearing completion. This element of the scheme consists of the construction of 42 residential units within the south-eastern section of the site with vehicular access from Brunel Way, and includes the provision of 22 no. affordable housing units comprising of 14 flats and 8 houses as part of a deal with Family Housing Association. A future vehicular access is proposed from Nantong Way to connect to the northern edge of the site and will serve the later phases of housing development. These access roads will be connected internally within the site to provide a connected road layout throughout.

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APPLICATION NO.

2014/1189

Section 73 Application

This current Section 73 application seeks to vary condition 21 (Foul sewerage connection) and removal of conditions 16 (Footway improvements to Nantong Way) and 24 (Oil Interceptor) of the outline planning permission 2006/1902. The Section 73 application also seeks to revise the requirements of several of the conditions in order to facilitate the delivery of the scheme. In particular, Condition 2 requires the submission of the reserved matters not later than the expiration of three years from the date of this permission i.e. 6 July, 2015. This condition as it stands prohibits the submission of any further reserved matters applications.

Condition 16 (Footway improvements to Nantong Way)

Condition 16 to ref:2006/1902 reads as follows:

16. *The existing footway along the site frontage to Nantong Way (A4217) shall be widened to a minimum width of 3 metres in accordance with details to be submitted to and approved by the Local Planning Authority, shall be constructed in accordance with the approved details, and completed in accordance with the approved phasing scheme.*

In order to facilitate shared cycle / pedestrian usage and in the interests of pedestrian safety.

The Head of Highways and Transportation has indicated, following an inspection of the site and surrounding highway along Nantong Way, that the requirement for the 3 metre shared footway / cycle way along Nantong Way, adjoining the Upper Bank site would be impractical, due to the excessive costs and disruption to the site, necessary to construct such a facility, particularly given that a good quality 2m wide footway already exists. Additional works would entail potential statutory diversions and retaining structures in order to retain the Upper Bank site. It is therefore recommended that this condition be removed.

Condition 21 (Foul sewerage connection)

Condition 21 reads as follows:

21. *The development hereby approved shall not be occupied until a scheme for the comprehensive and integrated foul water, surface water and land drainage of the site has been implemented in accordance with details to be submitted to and approved by the Local Planning Authority. The foul flows from the proposed development must be connected to the public sewerage system at manhole SS66943702, which will require the construction of off-site foul sewers.*

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.

This condition required that foul flows from the proposed development must be connected to the public sewerage system at manhole SS 66943702 which will require the construction of off-site foul sewers. However, the proposed development (and future adjoining development) will be served by a new foul water sewer which be adopted by Welsh Water under a Section 104 Agreement.

The proposed foul sewer will connect to the existing public foul sewer network at Welsh Water manhole SS66957221, which lies within Ffordd Donaldson off Brunel Way. Welsh Water have confirmed that they have approved the new connection under the Section 104 Agreement and therefore it is proposed to amend the requirements of the condition under the Section 73 application.

24 (Oil Interceptor)

24. *Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.*

To prevent pollution of the water environment.

The surface water runoff from the proposed development will be collected in a single adoptable surface water sewer which discharges to an existing surface water culvert within the site highway, which in turn discharges to the local watercourse. Due to the nature of the development, which is entirely residential, the surface water runoff is considered to have a very low risk of containing oil contamination and would have a negligible impact on the water quality of the receiving watercourse, and as such a dedicated oil interceptor is not considered necessary due to the low risk posed by the development. Welsh Water Dwr Cymru and Natural Resources Wales raise no objections to the removal of this condition.

Section 106 Planning Obligation

The outline planning permission under ref:2006/1902 addressed issues of traffic generation; site investigation / remediation; flood risk / drainage infrastructure; and archaeology / cultural heritage. Additionally, the permission is subject to a Section 106 Planning Obligation which requires an education contribution of £70,000 upon occupation of the 51st housing unit, the provision of 20 affordable housing units and the provision of off-site highway works under a Highways Agreement including works to the existing Brunel Way access; a vehicular and pedestrian crossing off Nantong Way (prior to more than more 80 dwellings being occupied); the upgrading of the existing footpath between the pedestrian footbridge over the A4217 and Pentrechywth Road and traffic calming near Pentrechwyth School (prior to the occupation of no more 50 dwellings) and the internal road layout of the site being designed to discourage through traffic and reduce traffic speed to no more than 20 mph through the site. The requirements of the Section 106 will still apply to this current Section 73 application.

Conclusion

As a Section 73 application, the only matter which can be considered are the conditions to which the application relates and the permission itself is not a matter for consideration. The LPA may decide that planning permission should be granted subject to conditions differing from those subject to the previous planning permission, and additionally, a Sec. 73 application allows the LPA to reconsider conditions other than those which are the subject of the application to modify. The new planning permission should however refer to all the previous conditions to avoid the possibility of the new permission being interpreted as having no conditions other than those applied to vary. In this respect the conditions on the original planning permission are substantially re-imposed.

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It is recommended that the Section 73 application to vary Conditions 2 & 21 and to remove Conditions 3, 16 and 24 under planning permission ref:2006/1902 be granted. It is not considered that the provisions of the Human Rights Act provide any other overriding considerations.

RECOMMENDATION:

It recommended that the application be APPROVED subject to the following conditions:

1 Approval of the details of the siting, means of access, design and external appearance of the dwellings / buildings and the landscaping of the site shall be obtained from the Local Planning Authority in writing before any development on each phase is commenced. This permission specifically excludes the road layout shown on the indicative masterplan.

These reserved matters applications shall be in accordance with a full reserved matters design and development framework document for all of the site to be submitted to and approved by the Local Planning Authority prior to or contemporaneously with the first reserved matters application. The design and development framework will address the key design issues of;

- Creating local distinctiveness.
- Integrating the development into the adjacent development site.
- Linkages with surrounding communities and facilities.
- Accessibility.
- Permeability.
- Legibility.
- Scale and massing.
- Creating people friendly streets.
- Public open space, landscaping and biodiversity.
- Designing out crime.
- Reducing car dependence and use.
- Encouraging cycling and walking.
- Sustainable water use and drainage.
- Reducing building energy consumption.
- Building design and materials.
- The frontage to Nantong Way and Brunel Way.

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 1 shall be submitted for approval by the Local Planning Authority in accordance with the approved Design Development Framework pursuant to condition 1 and a programme of phasing of the development to be approved pursuant to Condition 4 of the permission.

Reason: To ensure that the site is comprehensively developed to a high standard of sustainable urban design and to ensure that the development is carried out in an orderly and satisfactory manner.

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ITEM 8 (CONT'D)

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- 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 A programme of the future phasing of the development shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of further works on the site approved under further reserved matters applications. The development shall be completed and brought into beneficial use in accordance with the approved phasing and the details approved under Condition 1, unless otherwise agreed by the Local Planning Authority.
- Reason: To ensure that the development is completed in accordance with the plans and a phasing scheme approved by the City and County of Swansea, and so avoid any detriment to amenity or public safety by works remaining uncompleted.
- 5 Details of the means of enclosing the site boundaries and the individual curtilages of all dwellings and / or apartment blocks including the details of the height, design and materials of forecourt enclosures, shall be submitted to and approved by the Local Planning Authority. The approved means of enclosure shall be completed in accordance with these approved details.
- Reason: In the interests of visual amenity and general amenity.
- 6 Samples of all external finishes together with an external finishes schedule illustrating the disposition of finishes within the layout shall be submitted to and approved by the Local Planning Authority before the development is commenced. The development shall be completed in accordance with the approved scheme
- Reason: In the interests of visual amenity.
- 7 The landscaping scheme for the site to be submitted as part of the reserved matters and shall incorporate an area of public open space, not less than 0.2h in area and to include an equipped play area and the scheme as approved shall be carried out in accordance with the approve programme of phasing pursuant to Condition 03. Any trees, shrubs or plant material which are part of the scheme, which die, become seriously damaged or diseased within two years of planting shall be replaced by trees or shrubs of a similar size and species to those originally required to be planted.
- Reason: In the interests of the visual amenity of the site as a whole, and to accord with Section 197 of the Town and Country Planning Act 1990.

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ITEM 8 (CONT'D)

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- 8 A landscape management plan including management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved by the Local Planning Authority prior to the occupation of any phase of the development. The landscape management plan shall be carried out as approved.
Reason: To ensure that the landscaped areas are adequately maintained in the interests of visual amenity.
- 9 Before the development hereby permitted is commenced, details of the levels of the dwellings, roads and footpaths in relation to the adjoining land and highways together with any changes proposed in the levels of the site shall be submitted to and agreed by the Local Planning Authority in writing.
Reason: To ensure that the work is carried out at suitable levels in relation to the highway and adjoining land having regard to drainage, gradient of access, and the amenities of adjoining occupiers.
- 10 Road layout details of the new vehicular site access roundabouts including longitudinal road sections and surface water drainage details shall be submitted for the approval of the Local Planning Authority as part of the submission of details.
Reason: To allow the proper consideration of all highway details.
- 11 Prior to the commencement of the development of the adoptable roads, full road engineering details of the internal road layout shall be submitted to and approved by the Local Planning Authority and shall be constructed in accordance with the approved details.
Reason: To allow the proper consideration of all details in the interests of highway safety.
- 12 No dwelling unit within the development shall be occupied until the adoptable roads linking that unit to the existing adopted road network have been constructed to base course level and provided with street lighting in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure that the development is provided with satisfactory vehicular access in the interests of public safety.
- 13 The use of any retaining walls to support the internal road network will need to be supplemented by full structural calculations and drawings to be submitted for approval of the Local Planning Authority prior to the construction of any such works commencing on site
Reason: To allow the proper consideration of all details in the interests of highway safety.

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- 14 No part of the development hereby approved shall be occupied until a Travel Plan for the development has been submitted to and approved by the Local Planning Authority. The Travel Plan shall be implemented prior to the occupation of any part of the development.
- Reason: In the interests of sustainability and to prevent unacceptable highway congestion.
- 15 The new access off Nantong Way shall be constructed prior to the occupation of the 81st dwellinghouse. The existing left-in/left-out access arrangement for vehicular traffic onto Brunel Way shall incorporate a lit, pedestrian / cycleway access points at the south-western corner of the site together with a connection to the existing footbridge over the A4217 and an additional lit, pedestrian / cycleway access at the north-eastern corner of the site, the details of all of which shall be submitted to and approved by the Local Planning Authority as part of the reserved matters approval, and the works completed in accordance with the approved phasing scheme.
- Reason: To ensure good accessibility, in the interests of safety for pedestrians and cyclists and to provide a safe route to school for local school children.
- 16 Unless otherwise agreed by the Local Planning Authority, no development (which shall exclude site clearance, demolition, ground investigation and site preparation works) approved by this planning permission shall be commenced until:
- a. A desktop study has been carried out which shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and other relevant information. And using this information a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors, an assessment on human health and environmental risk assessment has been produced.
 - b. A site investigation has been designed for the site using the information obtained from the desktop study and any diagrammatical representations (Conceptual Model). This should be submitted to, and approved in writing by the Local Planning Authority prior to that investigation being carried out on the site. The investigation must be comprehensive enough to enable:
 - a risk assessment to be undertaken relating to ground and surface waters and human health associated on and off the site that may be affected, and
 - refinement of the Conceptual Model, and
 - the development of a Method Statement detailing the remediation requirements.
 - c. The site investigation has been undertaken in accordance with details approved by the Local Planning Authority and a risk assessment has been undertaken.

- Continued -

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ITEM 8 (CONT'D)

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- d. A Method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters, and human health using the information obtained from the Site Investigation has been submitted to the Local Planning Authority. This should be approved in writing by the Local Planning Authority prior to that remediation being carried out on the site.

The development of the site should be carried out in accordance with the approved Method Statement

Reason: To ensure that any site contamination is satisfactorily dealt with in the interests of public safety and amenity.

- 17 If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained approval from the Local Planning Authority for, an addendum to the Method Statement. This addendum to the Method Statement must detail how this unsuspected contamination shall be dealt with.

Reason: To ensure that the development complies with the approved details in the interests of the protection of controlled waters.

- 18 Upon completion of remediation detailed in the Method Statement a report shall be submitted to the Local Planning Authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and report shall also be detailed in the report.

Reason: To protect the environment and prevent harm to human health by ensuring that the remediated site has been reclaimed to an appropriate standard.

- 19 A detailed scheme for the eradication of Japanese Knotweed shall be submitted to and approved by the Local Planning Authority, and shall be implemented in accordance with the approved scheme.

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

- 20 The development hereby approved shall not be occupied until a scheme for the comprehensive and integrated foul water, surface water and land drainage of the site has been implemented in accordance with details to be submitted to and approved by the Local Planning Authority. The foul flows from the proposed development shall be connected to the public sewerage system at manhole SS66957221, which has been constructed.

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.

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ITEM 8 (CONT'D)

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- 21 The development hereby approved shall not be occupied until a scheme for the provision and implementation of a surface water regulation system has been submitted to and approved by the Local Planning Authority. Such a scheme shall be implemented prior to the construction of any impermeable surfaces draining to the system unless otherwise agreed by the Local Planning Authority.

Reason: To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal.

- 22 Foul water and surface water discharges must be drained separately from the site and no surface water shall be allowed to connect (either directly or indirectly) to the public sewerage system. No land drainage run-off will be permitted, either directly or indirectly, to discharge into the public sewerage system.

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

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (UDP Policies EV1, EV2, EV3, HC1, HC17, AS1, AS2 & AS6)

PLANS

3485.SL03 proposed development site, 101B S104 foul drainage off-site foul connection received 13th August 2014.

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ITEM 9

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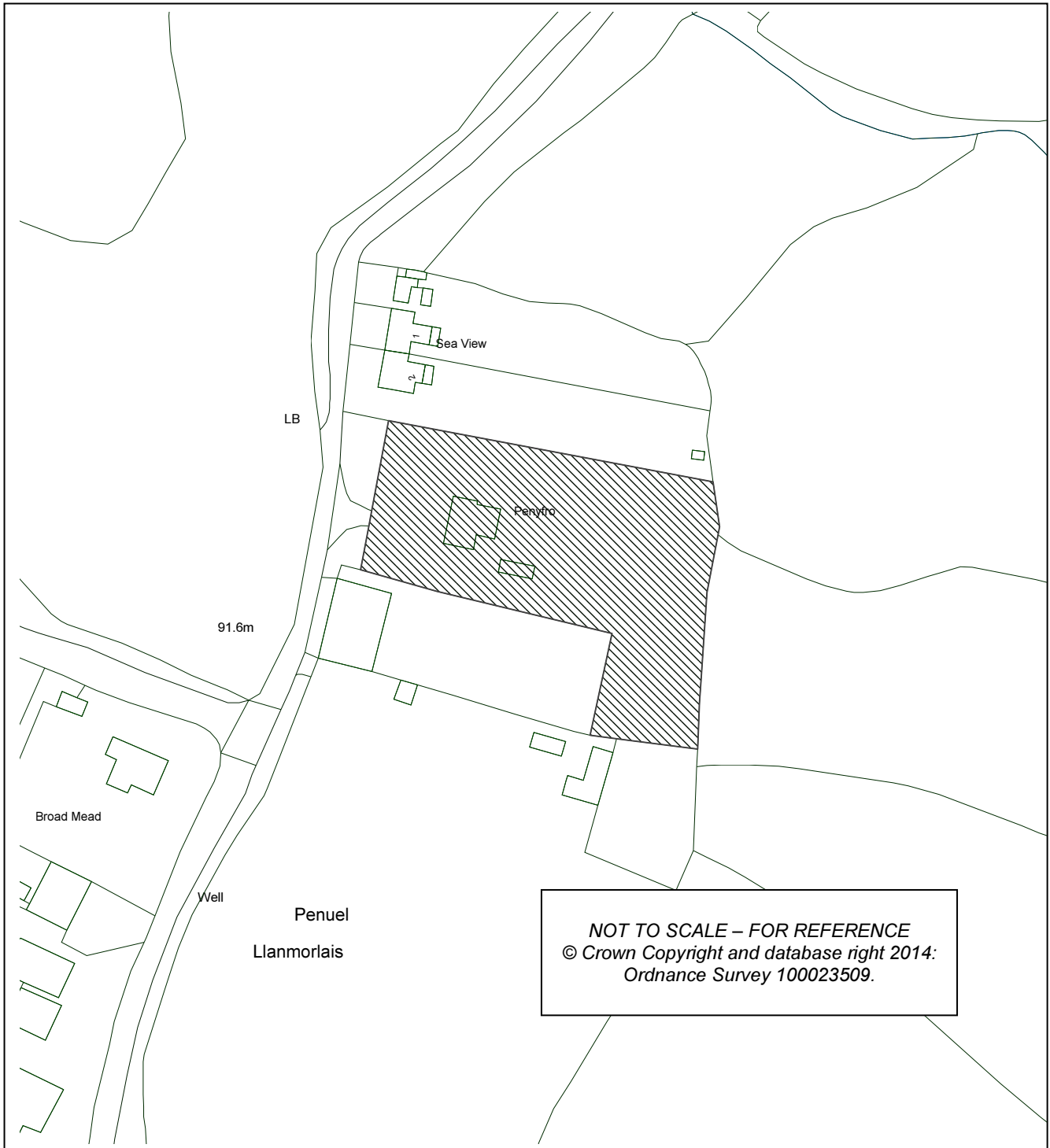
WARD:

Penclawdd

Location: Penfro, Penuel, Llanmorlais, Swansea SA4 3UQ

Proposal: Replacement dwelling house

Applicant: Mrs S Davies



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BACKGROUND INFORMATION

POLICIES

Policy	Policy Description
Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
Policy EV22	The countryside throughout the County will be conserved and enhanced for the sake of its natural heritage, natural resources, historic and cultural environment and agricultural and recreational value through: i) The control of development, and ii) Practical management and improvement measures. (City & County of Swansea Unitary Development Plan 2008)
Policy EV26	Within the Gower AONB, the primary objective is the conservation and enhancement of the area's natural beauty. Development that would have a material adverse effect on the natural beauty, wildlife and cultural heritage of the AONB will not be permitted. (City & County of Swansea Unitary Development Plan 2008)
Policy EV19	Replacement dwellings in the countryside, including residential chalets, will only be permitted where the residential use has not been abandoned, the proposed new dwelling is similar in terms of siting, scale, design and character and compliments the character of the surrounding area. (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).

SITE HISTORY

App No.	Proposal
2015/0438	Replacement dwelling Decision: Refuse Decision Date: 14/05/2015

RESPONSE TO CONSULTATIONS

The application was advertised on site and in the press as a Departure to the City and County of Swansea Unitary Development Plan (UDP). Neighbouring properties were also consulted.

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Two letters of objections have been received. One of these letters is written by the occupiers of the neighbouring property known as Penuel Chapel. The second letter is from a firm of planning consultants, written on behalf of the occupiers of Penuel Chapel. The comments contained within these letters of objection are outlined below:

The latest development fails to address the previous reason for refusal (2015/0438) and therefore clearly falls foul of Development Plan Policies and therefore fails to address the underlying principle of development whereby new residential development is unacceptable in an open countryside location unless justified for the purposes of agriculture or an appropriate use to serve the rural economy.

Reference must be drawn to Section 38(6) of the Planning and Compulsory Purchase Act 2004 which stipulates that planning applications should be determined in accordance with the Development Plan for an area unless material considerations indicate otherwise.

In this instance it is recognised that the latest proposal has altered the height of the dwelling and incorporates materials which appear to be more in keeping with a typical Gower Cottage. However as a consequence of the altered height the proposal has merely compensated for this reduction by introducing an additional two-storey rear wing extension to form a contrived development with a complicated roof form that is still excessive in terms of scale and massing and fails to respect the exemplary design standards expected of the Gower AONB Design Guide.

The ground floor area of the proposed dwelling is approximately 65% larger than the footprint of the existing bungalow whilst the additional storey will increase the volume of the proposed construction to more than three times that of the existing bungalow.

Notwithstanding the information provided in the supporting DAS, it is evident that the scale parameters indicated within the Gower AONB Design Guide have not been faithfully applied as it is calculated that the depth of the proposed dwelling measures approximately 7.6 metres which is greater than two-thirds of the width of the dwelling, and does not even account for the 6 metre projection of the two storey rear extension, and as such contrary to the Design Guide (Para A1.16). The same can be said for the two storey side extension which is estimated to measure 6.3 metres in depth. The cover letter seeks to justify that the depth of the replacement dwelling is acceptable and suggests that the depth of Penuel Chapel lies well beyond this building line; however, this is an unjust representation bearing in mind the Chapel lies directly along the road frontage whereas this dwelling is set back and extends considerably further back.

Whilst it is acknowledged that the proposal has been built with the parameters of a 'Gower Cottage' in mind, it is considered that the design fails to achieve the desired Gower standards and is greatly undermined by excessively large extensions with a complicated roof layout that represent a contrived form of development.

It is considered that the proposal represents an 'executive' sized house as opposed to a typical replica of a Gower Cottage.

It is accepted that Penuel Chapel occupies a more prominent position but this landmark building is listed in the National Monuments Record for Wales.

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In contrast, the proposed development represents an overly large dwelling which has no relationship to immediate neighbouring buildings, particularly given its set back position, and thus representing a visually intrusive form of development which fails to sustain the character and setting of the site or the immediate locality. The DAS also suggests that the existing dwelling is the only bungalow property in the immediate vicinity when in fact there are several more single-storey properties within a half-mile radius from Penyfro, both to the north and south.

It is considered that the excessive scale and massing of the proposed replacement dwelling will cause a significant adverse effect to the amenity of the neighbours.

Planning permission for car parking spaces at Penyfro is limited to two vehicles (Application ref 92/0289). The application to increase this to three vehicles represents a significant increase in motor vehicle usage by residents.

Bats are frequently seen around the proposed development site. Such animals enjoy protected status and it is misleading of the applicant to state that no protected and priority species will be adversely affected by the proposed development.

The DAS states that the existing property dates back to the 1960s, this is wholly untrue. The bungalow was built in 1993 by members of the applicant's own family.

Within the Gower AONB, restrictive housing and protection policies have been in operation for many years. Development has only been allowed in exceptional circumstances. The countryside, including the agricultural land, is one of the area's major assets and should be protected from any development which need not be located there.

Historically, the planning reports noted the "concern over a number of 'edge settlement' permission and over the relatively large number of 'agricultural dwellings' being developed in open countryside away from existing farm buildings".

Penuel has never been a site identified for housing development.

It is considered that this application design is contrary to the Gower AONB Design Guide in that it neither represents an example of innovative design nor high-quality traditional detailing. The scale and proportions of the main building, the oversized roof and the excessively large extension to the rear do not match the recommendations within the Design Guide and constitutes a considerable overdevelopment of the curtilage. Contrary to the Design Guide too is the significant enlargement of the existing footprint and the trebling of the current building's volume. In that the proposed plans have offered no evidence of significant energy efficiency, many of the applicant's supporting statements within the DAS are completely without substance. In short, the proposed new dwelling does not exhibit due regard for its rural location within the Gower AONB.

Due to Penyfro being a single-storey dwelling, the Chapel has always enjoyed complete privacy, both in the house and in the garden. Given that the bungalow is set back from the highway to a far greater extent than is Penuel Chapel, the erection of a large two-storey house on the extended footprint of Penyfro will create opportunity for direct overlooking from every one of the first floor windows along the south aspect of the proposed new build as well as oblique overlooking from windows on the first floor of the west and east aspects.

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The visible nature of the proposed replacement building, i.e. its height and its massing, will also cause a significantly detrimental effect on the perspective that is currently viewed from the Chapel's large glazed windows at its rear. This new perspective will cause an oppressive and overbearing effect on the house and garden.

The proposed building will create an unwelcome precedent in this locality for properties to directly overlook others' living spaces. There are no other examples in the vicinity for rural detached properties to overlook the private living areas of its neighbours. Penuel is recognised as an area of open countryside, and as such, the expectation by its homeowners for privacy and quiet are far greater than those of a typical residential community.

Penyfro is a small retirement bungalow that was constructed for a local farmer and his wife on a 0.2 acre rectangular plot of their own agricultural land within the Gower AONB. The permission to build the bungalow in its current position was granted outside of approved policy guidance. Permission was subject to the conditions of Section 106, restricting occupancy to a person employed or last employed in agriculture, and subject also to the installation of a defined boundary around the bungalow's curtilage prior to occupancy. In 2011, the Section 106 restriction was lifted despite the Planning Department's advice that this application should be refused.

There is an extremely strong case for the retention of small single storey properties that can usefully serve as affordable housing for all, including its ageing population.

There are issues regarding the sustainable credentials of the proposals

The supporting DAS fails to evidence that the proposal represents an exceptionally sustainable form of development, and the applicant has not prepared a pre-assessment or demonstrated their commitment to achieve CfSH Level 4. In addition the DAS fails to demonstrate how the development exhibits an appropriate design for a dwelling in a rural location and therefore does not justify an exception to Policy EV19.

We assert that the application represents an unjustified replacement dwelling which clearly falls foul of UDP Policy as well as local and national policies to encourage sustainability, minimise carbon emissions and ensure appropriate housing provision for the future.

It is maintained that the scale of the development is substantially larger and is fundamentally different in design and character compared to the original dwelling which clearly conflicts with Policy EV19, hence the reason the application has been advertised as a departure from the provisions of the UDP. The DAS draws reference to the Gower AONB Design and paragraph A1.29, albeit referenced as paragraph A1.25, which indicates that proposals that depart from the provisions of Policy EV19 maybe considered as an exception to the policy where the scheme is considered to be exceptional in terms of sustainability and design exhibiting due regard for its rural location into the countryside.

The proposals do not accord with Planning Policy at both National and Local Levels.

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It is contended that there are notable discrepancies on the planning application submission not least of all the accuracy of the site location plan. According to Part 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, an application for planning permission must be accompanied by a plan which identifies the land to which the application relates. However having regard to the previous planning history of the site, in particular planning permissions 89/0557 and 92/0289, it can be evidenced that the residential curtilage is being extended by this application, incorporating surrounding agricultural land to the side and rear without consent. In reference to the red line boundary, it also suggests that the application form has been completed incorrectly given that Certificate A has been signed on the declaration of ownership. It would appear that the land surrounding the bungalow was registered by the former applicant and the applicant has failed to serve the requisite notice upon this owner, or taken reasonable steps to ascertain the ownership of land to which the application relates by publication of the notice after the prescribed date in a newspaper circulating in the locality. In this respect it clearly conflicts with regulation 10.(1) of Part 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

There are concerns both with regards to the general visual amenity implications related to the proposals and the impact on a neighbouring property.

It is disingenuous for the applicant to repeat the complaint of inadequate living accommodation as justification for the bungalow's demolition.

One objection letter has been received from Edwina Hart (Assembly Member) the comments of which are outlined below:

I have some real concerns about this application. We have struggled for years to maintain the integrity of the Gower landscape, the size and purpose of dwellings. It is important that the planning system upholds the underpinning principles of planning policy in Wales.

The impact of any development upon the character and appearance of the Gower AONB is a primary consideration.

Welsh Water –

As the applicant intends utilising a septic tank facility we would advise that the applicant contacts Natural Resources Wales who may have an input in the regulation of this method of drainage disposal.

However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

Council's Ecology Officer –

A protected species survey was requested and following submission of the survey the Authority's Ecologist provided the following comments:

The surveyor is confident there are no roosting bats in the house, the search carried out found no features suitable for bat access and no signs of bats in any part of the property.

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An emergence survey wasn't carried out as the building was assessed as being unsuitable for bats. I think the survey is sufficient and no further work is needed. Standard Bat and Bird informatives recommended.

NRW –

Protected Species Survey

We note the recent submission of the document entitled; 'Penfro, Llanmorlais, Gower, Swansea: Assessment of Bat Interest', dated 15 August 2015, by Fiona Elphick.

The assessment states that no evidence of current or recent bat roosting was noted and no potential access points to the roof space or any other part of the structure could be found. In addition, the external features of the building are regarded as offering negligible potential for roosting. The report concludes that the building has no bat interest.

In light of these findings, we have no further comments to make in relation to this matter.

Foul Water Disposal

As the proposed dwelling is not currently within a mains sewered area we note that the applicant intends to dispose of foul water via a septic tank. Should your Authority be minded to grant planning permission, the applicant should be advised that a permit or registration as exempt from the requirement for a permit under the Environmental Permitting (England and Wales) Regulation 2010, is required from Natural Resources Wales. Further guidance on this matter is available from our website:

Council's Head of Transportation and Engineering – No objection.

APPRAISAL

This application is reported to Committee for decision as the proposal is a Departure from the Development Plan and a recommendation of approval is being put forward.

Description

The existing dwelling is a bungalow of relatively modest proportions located within the countryside and the Gower AONB amongst a small hamlet of dwellings. There is various planning history pertaining to the site which relates to the construction of the bungalow which was originally consented as a retirement bungalow for a farmer. However, the original 'agricultural tie' relating to the dwelling was subsequently lifted via a Section 106 removal application, which was granted consent in 2012 (2011/0366).

The proposal comprises of replacing the existing bungalow with a two storey dwelling. An application for a two storey replacement dwelling was recently refused planning permission (2015/0438).

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Issues

The main issues for consideration during the determination of this application relate to the acceptability of the proposal in principle, the impact of the proposed dwelling on the character and appearance of its immediate context, the wider landscape and the Gower AONB, the impact on the residential amenities of the neighbouring dwellings, the ecology of the site and highway safety, having regard to the provisions of the Unitary Development Plan. It is not considered that the Human Rights Act raises any additional issues.

A previous application for a replacement dwelling (2015/0438) was refused for the following reason –

'The proposed replacement dwelling, by virtue of its scale and design would represent an inappropriate and unsympathetic form of development which would be detrimental to the character and appearance of the Gower AONB and the surrounding open countryside. The proposal, therefore, conflicts with the provisions of Policies EV1, EV2, EV19, EV22 and EV26 of the Swansea Unitary Development Plan 2008 and the Gower AONB Design Guide.'

The current proposals have now been amended so that they are more reflective of the Guidance indicated within the Gower AONB Design Guide (page 45) .There is however an exception to this guidance, in terms of the depth of the main part of the dwelling. These are discussed in further detail in the 'Visual Amenity' section of this report.

Policy Context

The site is situated within the Gower AONB and as such Policies EV22 and EV26 of the UDP require development to first and foremost preserve and enhance the character and appearance of this highly protected area. Policies EV1 and EV2 are also relevant, although they are more generic policies relating to all types of development.

Policy EV19 of the Swansea UDP relates to the erection of replacement dwellings/chalets in the open countryside and states that:

Replacement dwellings in the countryside, including residential chalets, will only be permitted where:

- (i) The residential use has not been abandoned,*
- (ii) The proposed new dwelling is similar in terms of its siting, scale, design and character with the dwelling it is to replace, and -*
- (iii) The development complements the character of the surrounding area.*

The main aim of these policies is to prevent the replacement of rural dwellings with inappropriate new development that detracts from the character of villages and the countryside in which they are set.

The proposal is discussed against criteria i) and ii) of Policy EV19 below. Criterion iii) is discussed in the 'Visual Amenity' section of this report.

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The existing bungalow is currently in use as a residential dwelling. The residential use of the site has therefore clearly not been abandoned, and criterion i) is met.

Criterion ii) of Policy EV19 requires replacement dwellings to be similar in terms of siting, scale, design and character to the dwelling it is to replace. The scale, form and design of the building is distinctly different to that which it is to replace, and therefore the proposal is not considered to comply with criterion (ii) of Policy EV19. On the basis, the application has therefore been advertised as a departure from the provisions of the Development Plan.

The Supplementary Planning Guidance document entitled 'A Gower Design Guide' provides additional clarification with respect proposals which depart from the provisions of Policy EV19 of the Swansea UDP. The Design Guide states that *"it is not the intention of the UDP... to restrict proposals which would complement the character of the Gower in accordance with Policies EV19 (iii) and EV26."*

The Design Guide also states *"it would be a missed opportunity not to replace an existing nondescript or poorly designed dwelling with a better designed dwelling that enhances the appearance and character of the locale and the AONB."* Furthermore, paragraph A1.29 of the Gower Design Guide states that *"proposals may be considered an exception to the policy where the scheme is considered to be high quality in terms of sustainability and design exhibiting due regard for its rural location in the countryside."*

Paragraph a1.35 of the Gower AONB Design Guide also states that *"in addition to being high quality, proposals which wish to depart from the provisions of Policy EV19 should also be exemplars of sustainability. In this regard schemes which are high quality and... achieve at least Code for Sustainable Homes Level 4 in all criteria, may be considered favourably."*

The design merits of the scheme are discussed below in the 'Visual Amenity' section of this report, together with the compliance of the scheme against the Gower AONB Design Guide.

Visual Amenity

The proposed dwelling is a traditional Gower style cottage and of an appropriate scale in accordance with the majority of the general guidance set out in the Gower AONB Design Guide SPG.

The width and ridge height of the proposed dwelling complies with the diagram of a 'Gower Cottage' set out within the Design Guide (page 45). The pitch of the roof (at approximately 38 degrees) also complies with the range of between 30 – 45 degrees specified in the design guide.

However, the depth of the main part of the dwelling is 7.5m. The Guide states that the depth of the main part of the dwelling should be less than or equal to two thirds of the width of the main frontage. Therefore, the width should not exceed 6m if that rule is applied. The main part of the dwelling is therefore 1.5m deeper than it should be if the diagram on page 45 of the Design Guide is slavishly applied. However, this greater depth does not adversely affect the general design or appearance of the proposed dwelling.

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Therefore whilst the size and form of the main part of the dwelling does not strictly comply with the diagram contained within the Design Guide, the proposal is nevertheless still considered to be akin to a 'Gower Cottage' and thus acceptable to the character of the Gower AONB.

The rear single and two storey wing of the proposed dwelling is considered to be subservient to the main part of the dwelling, and its scale and massing is considered to be acceptable. This element of the proposal will be located to the rear of the dwelling and, therefore, is not readily visible within the streetscene and will be considered to be in keeping with the general character and appearance of the surrounding area.

The use of traditional materials such as the hardwood doors and windows and slate roofing is particularly welcomed. In order to secure the architectural quality of the scheme, a condition is recommended seeking samples to be submitted in relation to all finishes. Additionally it is considered that further details are required with regards to certain elements of the proposal i.e details of windows and openings, verge and eaves etc. Therefore, appropriately worded conditions to this effect are also recommended.

It is acknowledged that the proposed dwelling is wider than the previous proposal which was refused. However, the front elevation of the dwelling is now broken up into two elements, being the main front elevation and a subservient side annex, which is considered to break up the overall massing of the frontage. The proposed front elevation complies with the recommendations made in the Design Guide.

Furthermore the ridge height of the dwelling has now been reduced (8m) which is considered to make a major difference in terms of the overall acceptability of the scheme. The proposed dwelling as a whole is now considered to be more in-line with the requirements of the Design Guide and as such is considered an acceptable scheme compared to the previous scheme which was not considered to comply with the Guide and as such would have had a harmful impact on the surrounding area.

Therefore, given the above considerations it is considered that the proposal will be in keeping with the surrounding area which is characterised by various types of properties. It should also be noted that the site is located within an existing cluster of dwellings and is not isolated, meaning its approval will not result in the approval of a new development in an area devoid of buildings.

It should also be noted that the dwelling to the south of the site is a large two storey property incorporating a large footprint and, therefore, the size and scale of the proposal dwelling will not be out of keeping with dwellings within the immediate vicinity. It should also be noted that the existing dwelling as it currently stands is a relatively non-descript bungalow and the proposal, therefore, given its sensitive design will be considered to complement the surrounding area rather than take away from it.

Therefore, whilst as stated above, the proposed dwelling does not comply with (ii) of EV19 of the Unitary Development Plan, it is in keeping with the credentials set out in the Gower AONB Design Guide and is not considered to have a harmful impact on the surrounding area. The applicant has also advised that the dwelling will be constructed to Code for Sustainable Homes Level 4.

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Therefore, it is considered that the proposal will be high quality in terms of design and sustainability, and therefore qualifies as an 'exception' scheme to Policy EV19, as permitted by the Gower AONB Design Guide.

Residential Amenity

The proposed dwelling is located in excess of 10m away from each of the side boundaries with neighbouring properties, therefore, there are not as such considered to be any particular issues with regards to impacts on neighbouring by way of overlooking or overshadowing or overbearing impacts.

The only issue that may be a problem, is the potential overlooking of the neighbouring property to the south – the objector's property (Penuel Chapel). The south facing side elevation of the proposed dwelling features windows at both first and second floor level. The two first floor windows however serve a bathroom and an en-suite which are non-habitable rooms. The applicant's agent has confirmed that the second floor window serves attic space

The Council's 'Infill and Backland Design Guide' states that a separation distance of 10m between a proposed first floor habitable room and the rear or side garden boundary of neighbouring properties should be provided. It also states that 21m should be provided between opposing habitable room windows.

On the basis that the first floor side windows (facing towards Penuel Chapel) are serving non-habitable rooms, they are not considered to create an overlooking problem. The second floor window is to serve attic space. However, there is the potential that the attic space of the proposed dwelling could be converted to living accommodation at a later date. If this did take place, a separation distance of 21m would not be achieved. On this basis it is recommended that a condition be used so that this window is fitted with obscured and fixed glazing.

It is acknowledged that the dwelling is located quite far back within the plot. However, given the separation distance between the proposed dwelling and its site boundaries, it is not as such considered to have a negative impact upon the living conditions of neighbouring occupiers.

It is also acknowledged that the site is located at a higher level than the properties to the north. However, again given the distance of the proposed dwelling away from the common boundary with the neighbouring property to the north, it is as such considered that the potential impact would be relatively minimal.

In terms of any overlooking from the front and rear of the proposed dwelling to the properties either side, the distances between the proposed dwelling and its neighbouring properties is considered to dictate that any overlooking would be very oblique and, therefore, would not represent a major problem in this instance.

Highway Safety

The Head of Transportation and Engineering has stated there is no objection to the scheme in question. It is not considered that the proposed erection of a larger replacement dwelling on the site will have an impact on highway safety.

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The local highway network is capable of meeting the demands of the minimal increased level of vehicular activity associated with a larger dwelling, whilst the new dwelling is served by sufficient off-street car parking provision. The access arrangements serving the plot are also considered to be acceptable (they are similar to the existing arrangements).

Sustainability

To accord with the criteria set out in the Gower AONB Design Guide the development should achieve at least Code for Sustainable Homes Level 4 in all criteria. The agent has confirmed that the applicant is agreeable to adhering to the requirements to construct a dwelling to Code Level 4. In order to secure this, relevant conditions will be used to ensure the development is built in-line with Code Level 4.

Response to Consultations

The issues relating to a majority of the concerns contained within the letters of objection, relating to issues such as visual and residential amenity implications, highways considerations, Code for Sustainable Homes, Impact on the Gower AONB and Planning Policy considerations are considered to have been addressed within the context of the report.

The objectors have suggested that the applicant does not own all of the application site and have subsequently not completed the correct 'Certificate' section of their planning application forms. The applicant has been asked for clarification on this matter, who has verbally confirmed that she does indeed own all of the site.

The objectors have suggested that the application site is larger than the extent of the original curtilage serving the existing dwelling. This suggestion is indeed correct. It appears that the original curtilage of the site has been extended over previous years (albeit without planning permission), and the extent of the current application boundary appears to reflect current site circumstances. Aerial imagery of the site seems to suggest the extended curtilage, as indicated on the Location Plan submitted with the application, has been in existence for in excess of ten years, suggesting that in any event, the unauthorised extension to the original curtilage would now be immune from enforcement action. The granting of this planning application will regularise the situation.

The issues relating to the concerns over why the requirements of a previous Section 106 agreement was removed is not considered to be pertinent to the determination of this application. The current planning application must be determined based on the existing planning status of the site – a dwelling without an agricultural tie.

A bat survey has been provided and assessed as mentioned above in the 'Response to Consultations' section.

How long the property has been in existence is not a matter of importance in this instance.

The family's needs in terms of the space required for their family is not a material planning consideration and is not taken into consideration.

Conclusion

For the reasons set out above, it is considered that the development accords with Policies EV1, EV2, EV22 and EV26 of the UDP and will complement the character and natural beauty of the AONB. The scheme does not comply with criteria ii) of EV19 as it is not similar in terms of its scale, design and character with the dwelling it replaces.

In overall design terms, however, the proposed scheme is considered to be high quality in terms of sustainability and design, which demonstrates how well considered traditional design can respond positively to the sensitive and cherished landscape of the Gower AONB.

Whilst the proposal is considered not to accord with one of the criteria of EV19, it is however considered to accord with Policies EV1, EV2, EV22 and EV26 of the UDP and the provisions of the Gower AONB Design Guide.

On this basis therefore the proposal is regarded as an acceptable departure from the provisions of Policy EV19 of the City and County of Swansea UDP (2008). Approval is therefore recommended.

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: 01 Location Plan received 11th June 2015. Elevational drawings and Floor plans drawings, received 16th June 2015. 02 Site Plans, received 31st July 2015.
Reason: To define the extent of the permission granted.

- 3 Samples of all external finishes (including details of window, doors, cills, fascias, soffits and guttering) shall be submitted to and approved by the Local Planning Authority in writing before the development is commenced. The scheme shall be implemented in accordance with the approved details.
Reason: In the interests of visual amenity.

- 4 Large scale details of:
 - eaves and verges
 - fascias and cills
 - windows, window reveals and their openings;shall be submitted to and agreed in writing by the Local Planning Authority before works commence on site.
The development shall be carried out in accordance with the agreed details.
Reason: In the interests of visual amenity.

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- 5 The second floor window in the south-facing side elevation of the dwelling hereby approved, shall be fitted with obscured glazing and shall be unopenable below a height of 1.7m from internal floor level. This window shall be retained as such at all times thereafter unless otherwise agreed in writing with the Local Planning Authority.
Reason: To safeguard the privacy of the occupiers of the neighbouring property known as Penuel Chapel.
- 6 The dwelling hereby permitted shall be constructed to achieve a minimum Code for Sustainable Homes Level 4 and achieve a minimum of 3 credits under category Ene1 - Dwelling Emission Rate, in accordance with the requirements of the Code for Sustainable Homes Technical Guide, November 2010 (as amended).
Reason: To ensure that the new dwelling constitutes an 'exemplar of sustainability' as required by the Council's Gower AONB Design Guide and so can be considered as an 'exception' to UDP Policy EV19.
- 7 The construction of the dwelling hereby permitted shall not begin until an "Interim Certificate" has been submitted to the Local Planning Authority, certifying that a minimum Code for Sustainable Homes Level 4 and a minimum of 3 credits under Ene1 - Dwelling Emission Rate, has been achieved for the dwelling in accordance with the requirements of the Code for Sustainable Homes Technical Guide, November 2010 (as amended).
Reason: To ensure that the new dwelling constitutes an 'exemplar of sustainability' as required by the Council's Gower AONB Design Guide and so can be considered as an 'exception' to UDP Policy EV19.
- 8 The dwelling hereby approved shall not be occupied, until a Code for Sustainable Homes 'Final Certificate' is submitted to the Local Planning Authority certifying that a minimum Code for Sustainable Homes Level 4 and a minimum of 3 credits under Ene1 - Dwelling Emission Rate has been achieved for the dwelling, in accordance with the requirements of Code for Sustainable Homes Technical Guide, November 2010 (as amended).
Reason: To ensure that the new dwelling constitutes an 'exemplar of sustainability' as required by the Council's Gower AONB Design Guide and so can be considered as an 'exception' to UDP Policy EV19.

INFORMATIVES

- 1 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.

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ITEM 9 (CONT'D)

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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

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com

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

3 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 e.g. live or dead animals or droppings, work should cease immediately and the advice of the Natural Resources Wales sought before continuing with any work (01792 634960).

4 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 particularly during the bird nesting season March-August.

5 A permit or registration as exempt from the requirement for a permit under the Environmental Permitting (England and Wales) Regulation 2010, is required from Natural Resources Wales. Further guidance on this matter is available from their website: <http://naturalresources.wales/apply-and-buy/water-abstraction-licences-water-discharges/register-your-septic-tank-package-sewage-treatment-plant/?lang=en>

6 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, EV2, EV19, EV22 and EV26 of the Unitary Development Plan.

Agenda Item 5a

ITEM 5a

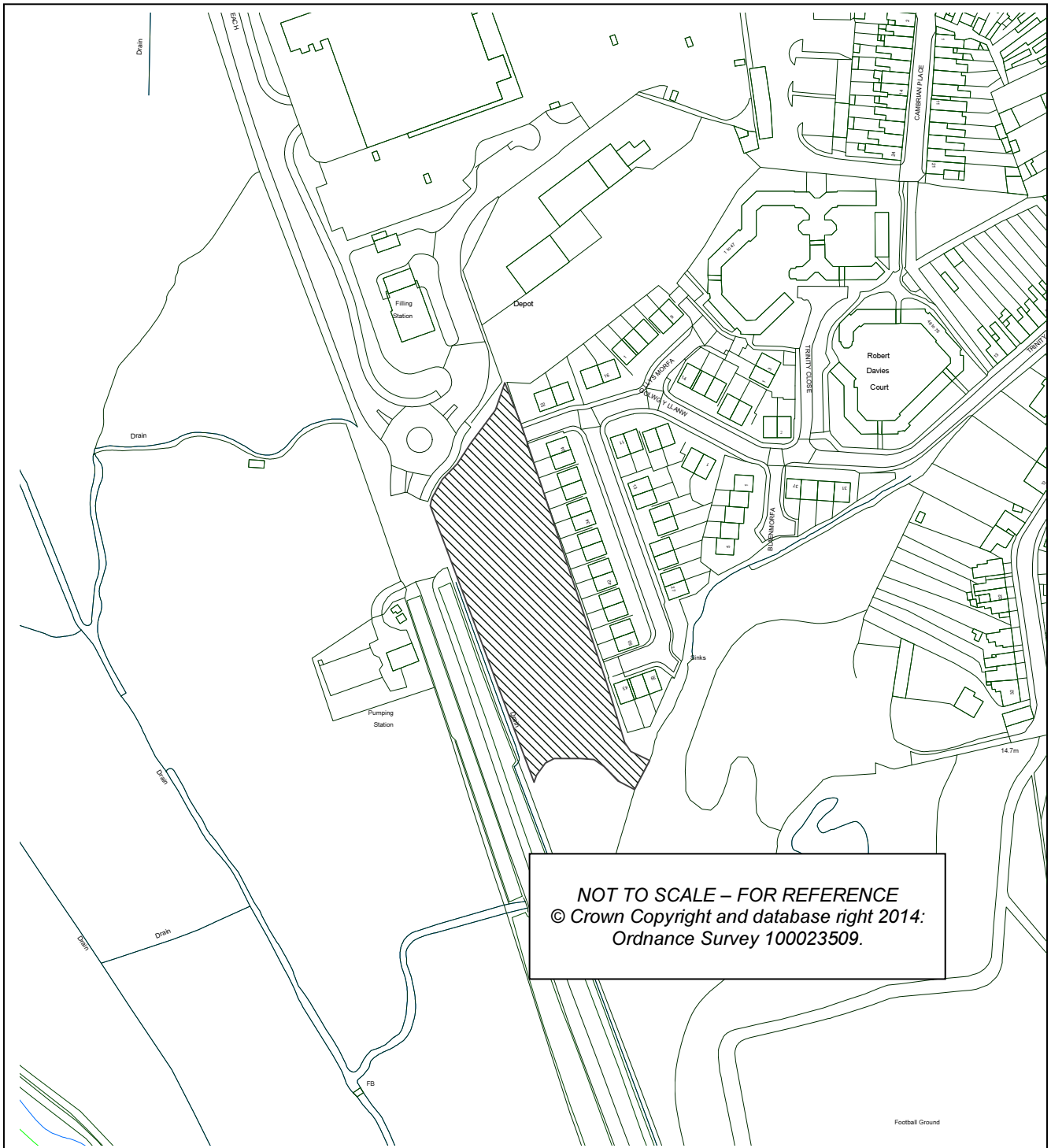
APPLICATION NO. 2011/0758

WARD: Pontarddulais

Location: Land to the West of Parc Y Bont off Trinity Place Pontarddulais Swansea

Proposal: Construction of 35 No. two storey dwellings with associated vehicular access, car parking and infrastructure works

Applicant: Hygrove Homes



This application was deferred at the Planning Committee on 8 September, 2015 to request an updated flood consequences assessment and for re-negotiation of the design and layout of the scheme in the light of current adopted SPG. Members did not consider that the previous resolution to approve 32 dwellings on the application site was sufficient grounds to allow this development.

With regard to the flood risk issue, further consultation with NRW initially indicated that the Flood Consequences Assessment (FCA) which was prepared in 2011, was out of date as NRW's flood maps have been updated since then. NRW therefore issued an objection pending the provision of an updated FCA. Since then additional flood risk information has been submitted to NRW by the applicants' consultants. NRW highlight that the original 2011 Flood Consequence Assessment was acceptable, and confirmed that the flood risk to the development could be managed by raising ground levels within the site boundary. The levels of the site have been subsequently raised. As a result of the further information submitted by the applicant and given the existing site conditions, NRW advise that provided levels are raised to the extent proposed in the original FCA then the development is likely to remain flood free. In light of this NRW withdraw their holding objection.

With regard to the design and layout of the scheme, a revised site layout has been submitted which has changed the following:

- * introduced low walls to sides of parking bays serving plots 11, 16, 17 and 35 to screen the parked cars.
- * relocated side side screen walls to the garden area of plots 11, 16 and 17 and continued dwarf walls level with the front facades,
- * relocated the terrace block consisting E/J/J to plots 24 – 26 in order to break up the length of parking bays previously indicated. Relocating these properties has allowed additional landscaping areas in be inserted.

Additionally, the applicant has submitted a design statement which has been incorporated into the report. The recommendation of approval subject to the completion of the Section 106 Planning Obligation remains unchanged.

BACKGROUND INFORMATION

RELEVANT PLANNING POLICIES

Unitary Development Plan

Policy EV1	New development shall accord with the stated objectives of good design
Policy EV2	Siting of new development should give preference to the use of previously developed land over greenfield sites and should have regard to the physical character and topography of the site and its surroundings.
Policy EV3	Accessibility
Policy EV33	Sewage Disposal
Policy EV34	Protection of Controlled Waters

Policy EV35	Surface Water Run-off
Policy EV36	Development and Flood Risk
Policy HC1 (112)	site allocated for residential development – Land south of A48, Pontarddulais
Policy HC3	Affordable Housing
Policy HC17	Planning Obligations

Supplementary Planning Guidance

Planning Obligations (March, 2010)

Places to Live – Residential Design Guide Jan. 2014

National Planning Policy Guidance:-

Planning Policy Wales (Edition 7 – July 2014)

Supports in principle the redevelopment of previously developed (brownfield) land for new development, in preference to Greenfield sites. Developments should be well designed, integrated and connected to existing settlements.

Technical Advice Note: 12 Design

Technical Advice Note: 15 Development and Flood Risk

RELEVANT PLANNING HISTORY

2008/1960	Construction of retail store (Class A1) - 4.169 square metres (44,874 square feet) gross floor space with 324 parking spaces, petrol filling station/car wash, vehicular access off Water Street, including off site highway improvements incorporating a new signalled junction with Station Road, and a roundabout at the junction of Iscoed Road and Fforest Road (A48), and a pedestrian link to St Teilo Street and associated landscaping works Planning Permission June 2009 subject to a Section 106 Planning Obligation
2008/1959	Construction of 49 no. two storey dwellings with vehicular access from Trinity Place and associated access roads and external works Planning Permission March, 2009

RESPONSE TO CONSULTATIONS

ORIGINAL PROPOSAL

The application was advertised on site and in the local press and 53 No. properties were consulted individually. No response

AMENDED PROPOSAL

53 No. properties were re-consulted individually. FOUR LETTERS OF OBJECTION, making the following points:

1. Potential traffic though Golwy y Llanw
2. Impact of extended road through existing gardens.
3. Development will obstruct view and light.

FURTHER AMENDED PROPOSAL

53 No. properties were re-consulted individually. ONE LETTER OF OBJECTION, making the following point:

1. Voicing concern if there were to be vehicular access from Golwg y Llanw

Pontarddulais Town Council - opposes the application on the grounds that there has been considerable housing development in the town over the last 15 years with no resultant improvement to the infrastructure and serve development of the town.

Environment Agency – 2011

Flood Risk

The FCA accepts that the site is largely within zone C2 and also that it lies partly within zones 2 and 3 on our Flood Map. The FCA also accepts that the site is at risk of flooding from a number of sources including tidal inundation, fluvial flooding from the adjacent watercourse and sewer flooding from the existing combined sewer.

With regard to the threat of tidal inundation the FCA suggests that site levels could be raised to provide a minimum slab level of 7.6m AOD. This would comply with the flood free threshold required in Table A1.14 of TAN15, including a climate change allowance for a 100 year lifetime of development. It would also comply with the allowable depth of flooding outlined in Table A1.15 of TAN15. In order to achieve the minimum slab level, parts of the site (currently at around 5.7m AOD) would need to be raised by nearly 2m. Other large parts of the site would need to be raised by around 1m. We would therefore query the sustainability of raising site levels this much in order to allow for dwellings to be located within a flood risk area.

Raising ground levels within a flood risk area will reduce flood storage and displace flood water and flows, which may in turn increase the risk of flooding to existing property and/or land. This would be unacceptable. In order to mitigate against this detriment, it is proposed to form a compensatory storage area on adjacent land within the applicant's ownership. We would strongly recommend that as this compensatory flood storage area forms an integral part of the proposed development, the application site boundary should be amended to include this area. This will allow greater control over future maintenance of any approved mitigation scheme and ensure it's operation over the lifetime of the development.

The FCA refers to emergency access arrangements to the proposed development in times of flood and notes the risk to the new distributor road. If this development secures planning permission, then the details and feasibility of the proposed emergency access arrangements should be outlined in a flood management plan. This should be submitted to and approved in writing by yourselves as the LPA in liaison with other relevant bodies.

Burry Inlet

In addition to the flood risk concerns, the site is also located in an area where there are on-going concerns regarding the sewerage infrastructure. These concerns relate to the impact on the Burry Inlet (Carmarthen Bay and Estuaries) SAC from additional pollution and nutrient loading. This has resulted in a Memorandum of Understanding (MOU) being prepared 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 site will not cause any detriment to water quality.

We understand that foul flows generated from the development are to be connected to the main sewerage system, which we have assumed is via the nearby pumping station. While this is our preferred and most sustainable method of foul water disposal, prior to determination we would ask for confirmation from Welsh Water that the pumping station and sewerage network has the hydraulic capacity to accommodate the additional flows generated 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 has been implemented within the same catchment.

Surface Water

With regard to surface water disposal, in order to avoid hydraulic overloading of the sewerage system, it is imperative that no surface water is allowed to enter the sewerage infrastructure.

We note that the application form and FCA proposes to discharge surface water freely to the watercourse that runs through the site, as implemented on an adjacent site following agreement with your Engineers on the benefits to existing flood risk upstream. The FCA also acknowledges that allowance for tidal locking of the surface water system will need to be incorporated within the surface water drainage design.

Discharging surface water directly into a watercourse is not considered to be acceptable. Unless a similar agreement can be reached with your authority's drainage engineers on the basis of betterment upstream, then the surface water system should be designed to demonstrate reduced flows off the site. We would strongly recommend that where possible, sustainable drainage systems (SUDS) are used. We recognise however that ground conditions may preclude the use of some techniques, however the variety of techniques available means that virtually any development should be able to include a scheme based around these principles.

We would strongly recommend that prior to determination, a full surface water drainage scheme based on SUDS principles is submitted in writing to your Authority for approval.

Further Comments

We can confirm the calculations used to estimate the hard standing area within Phase 3 are correct. However, whilst the technical content of the e-mail is accepted as factual, it does not alter our previous advice, that to comply with TAN15 guidance, a SUDS scheme should be provided to deal with surface water drainage.

Applying attenuation to runoff from the site would reduce the risk of exacerbating flooding from a double peaked storm, where the peak of flooding on the main river potentially coincides with a short duration high intensity storm over the site. If, however, in consultation with your own Drainage Engineers, it is considered acceptable to allow free discharge of surface water from the site, then the capacity of the receiving watercourse and structures thereon should be confirmed so as not to increase flood risk in the area.

Natural Resources Wales (9 Sept. 2015) - We would object to the above application pending the provision of an updated Flood Consequence Assessment (FCA). On receipt of this information we would be happy to review our position and provide further comments.

Flood Risk

The site is located within zone C2 as defined by the development advice maps referred to under TAN 15 Development and Flood Risk (July 2004). Our Flood Map information, which is updated on a quarterly basis, indicates the site to be at risk of flooding during the 1% event. We note that the proposal is for a residential development which would be classed as a highly vulnerable development according to TAN15.

The TAN15 guidance is that highly vulnerable development should not be permitted within zone C2. However, as your Authority have consulted us on this application, it would appear that you are minded to go against TAN15 policy in this instance.

A Flood Consequences Assessment (FCA) has been prepared by Atkins (Ref. AK8618/495/60/DG/R04 and dated 2 May 2011), in support of this application. We have previously commented on this FCA, but it appears that no new information with regards to flood risk has been submitted.

We advise your Authority that the FCA is out of date as our flood maps have been updated since its production in 2011. As a result our understanding of flood risk at this location has now changed. Our flood maps now show that the Phase 3 Development site is at risk of fluvial flooding during both the 1% and 0.1% flood events.

A revised FCA will need to demonstrate that the development complies with TAN15 not only with regards to the potential tidal inundation at the site, but also with regards to the fluvial flood risk. We would advise that this may prove challenging given that the proposed mitigation, outlined in the current FCA, is to raise the existing site levels by 1-2m in order to comply with TAN15 with regards to tidal flood risk and section A1.12 of TAN15 states that development must not increase flooding elsewhere

We would advise that the assessment of tidal flood risk at the development site is also updated. In addition we would also refer to the letter from Welsh Government to the Chief Planning Officers in January 2014 which states that climate change should be now considered during the 0.1% scenario.

Further comments 6th Oct. 2015 – We received supporting information from the applicant on Monday 28th September. As agreed we have progressed our advice as quickly as possible to assist you report to Committee.

As you will be aware at the time of the original application the applicant provided a Flood Consequence Assessment which was acceptable to us. This assessment confirmed flood risk to the development could be managed by raising ground levels within the site boundary.

The levels of the site have been subsequently raised.

As a result of the further information from the applicant and given the existing site conditions, we would advise that provided that levels are raised to the extent proposed in the original FCA the development is likely to remain flood free. In light of this we withdraw our holding objection.

Welsh Water Dwr Cymru -

No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site. Conditions are recommended relating to foul and surface water discharges.

Highway Observations – This proposal is for the construction of 32 dwellings on land west of Trinity Place, Pontardulais. The site is to be accessed from the newly constructed access road serving Tesco store and will be in the form of a priority junction just beyond the Tesco roundabout access.

A traffic statement has accompanied the application which assesses the impact of additional movement at the new traffic controlled junction onto Water Street. The statement concludes that an envisaged 60 dwellings would have a negligible impact on the operation of the signals which would remain within their theoretical capacity. This proposal is for only 32 dwellings and is therefore considered acceptable in traffic movements/volume terms.

The development of this phase will not affect the option to construct a through distributor road along the old railway alignment should that be considered necessary in the future. That aspect however would require separate consideration and is not part of this current proposal.

The development indicates a mixture of dwellings with predominantly on site parking within each plot. There is some shared parking where house types require this and overall the level of parking provision is acceptable. Carriageway and footway widths accord with recommended standards and are also acceptable.

I recommend that no highway objections are raised subject to the following;

1. All road works being undertaken to Highway Authority standards and specification and in accordance with detailed engineering drawings which must be submitted and approved prior to any works commencing.
2. Within 12 Months of consent, a Travel Plan shall be submitted for approval and the Travel Plan shall be implemented on beneficial use of the development commencing.

Note 1: The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary.

Note 2: The Developer must contact the Team Leader - Highways Management, City and County of Swansea (Highways), Penllergaer Offices c/o Civic Centre, Swansea, SA1 3SN (Tel 01792 636091) before carrying out any work.

Amended Plan

The amended layout plan shows an increased number of dwellings from 32 to 35. The site layout has been able to change as a future by-pass is no longer considered viable along the former railway line. The land required for this therefore does not need to be reserved which had an effect on the development layout.

All other matters are outlined in my previous report are still valid and my overall recommendation therefore does not change.

APPLICANTS DESIGN STATEMENT

LeTrucco design have been commissioned by Hygrove Homes to undertake a redesign of the approved layout in phase 3 – Pontarddulais.

The scheme was awarded planning permission in 2011 subject to a section 106 agreement, with the original layout being prepared by Boyes Rees Architect indicating 32 units, with a mixture of 2 and 3 bed units. The approved layout being based on a 2 sided development, with an arrangement of units either facing the main road or turned 90 degrees with the gable ends facing the road. The latter being a matter of necessity to comply with overlooking issues from phase 2 and observing a 12m privacy distance.

A new separate access being created off the new access road serving the Tesco store opposite due to Highways 2 being allowed.

A S185 sewer diversion transverses part the site, effectively cutting the site into 2 section from North to South. The sewer being taken from phase 2 and into the existing culvert on the Southern side of the site. The diversion requires a 7m overall easement.

LeTrucco design's commission is to increase the unit numbers by 3, in order to make the site viable following extensive ground works, necessary in order to raise levels.

The site boundary has changed from the approved layout due to the varying radius and layout of the roundabout as built. The western boundary has therefore required re-aligning. The result of which as affected the layout of the Western portion of the site.

The remainder of the site has in essence remained fundamentally as the approved 2011 layout. This is mostly due to the constraints on the site, in the form of:

- Re-aligned Western Boundary;
- Overlooking distances from phase 2;
- Re-aligned sewer diversion;
- Single point access governed by Highways;
- Predetermined position of pedestrian links from phase 2.

The additional 3 units have been incorporated within plots 13, 14 & 19 whilst still respecting the 12m privacy distances from phase 2, which have essentially proved one of the main constraints in the design, due to the plots of phase 2 being constructed so close to their rear boundaries.

Plots 1 – 8 are positioned fronting the access road and parking court whilst respecting the drainage easement. The plots are oriented internally within the site, so as to offer a sense of community and involvement. It also offers natural surveillance over car parking areas, main access into the site and the pedestrian link from phase 2.

The existing footpath link from phase 2 has been incorporated within the design and follows the link directly from the public foot path within phase 2. The footpath offers a 1.8m wide footway and safe and well surveyed footpath link throughout. On entering the boundary of phase 3 (adjacent plot 8), direct views are provided across the entire parking court, which in turn are well surveyed from the various plots facing in inward layout of the court.

The use of additional 2 bed units, which require only 1 parking space, have allowed a vast amount of landscaping areas to be sporadically placed fronting plots 20 – 35, with the introduction of a continuous 1m wide landscaping strip between the plots and the parking bays. This will offer a soft relief along this horizontal plane. Re-designing of the pots have also allowed the introduction of side parking, thus again reducing the impact of parking dominance.

The 2m wide landscaping strip that followed the line of the roundabout and access road has been omitted on the approval from planning officers. The removal of the strip has eliminated future issues, such as maintenance, litter picking, vandalism and theft, which are all issues constantly faced by SCC Highways division.

Whilst plots 11, 16 & 17 face the main road via their gable end, this provides a variation and diversity in the overall street scene, by offering varying facades. The gable ends will be furnished with feature bay and brick quoin details to enhance their facades. Boundary wall enclosing the rear gardens of such properties will be softened by the introduction of soft landscaping strips between the footway and boundary wall, all of which are lined through with the main façade of the dwellings to provide a good strong build line along the duration of the street scene.

A mix of various and well balanced tree types have been introduced throughout the layout, offering vertical relief to the overall street scene, whilst respecting natural surveillance and sight lines.

APPRAISAL

Background

It was resolved to approve this application for, what was then, the construction of 32 dwellings in October 2011, subject to the completion of a Section 106 Planning Obligation, in respect of an education contribution (£50,000) to be paid on a phased basis (£25,000) on completion on 50% of the dwellings, with the remaining £25,000 to be paid on completion of the development. The Section 106 Planning Obligation has not been completed by the developer and since the original resolution Cabinet resolved on 28 February, 2013 not to proceed with further work on the potential development of the Pontarddulais Southern Bypass.

The original submission comprised a relatively contrived layout as it was constrained by the reservation of a strip of land along the western boundary along the line of the former railway line for the potential Pontarddulais by-pass road, which additionally accommodates a Welsh Water watermain.

As the Section 106 Planning Obligation has not been completed the planning application is effectively undetermined. The decision not to proceed with development of the Pontarddulais Southern Bypass has allowed the development plots to be revised with the omission of the 2 metre wide landscaping strip along the western boundary. Additionally, it has emerged that the northern boundary of the site adjacent to the roundabout along the access road was inaccurately drawn and as a result the proposed layout has therefore been amended. Planning permission is now, therefore, sought for a revised scheme of 35 dwellings on this revised site area.

Proposed Development

The application seeks full planning permission for the construction of 35 dwellings with vehicular access from the access road to the Tesco retail store on land to the west of the centre of Pontarddulais. The cleared site lies adjacent to the completed residential development (Ref:2008/1959) to the west of Trinity Close / Blaenmorfa referred to as Phases 1 / 2 and there is a car scrapyards / repair garage to the north. The site layout would essentially comprise of two and three bedroom semi-detached and linked two storey dwellings. The site is allocated for residential development (Land south of A48, Pontarddulais) under Policy HC1 (112).

The application has been subject to a Screening Opinion for an Environmental Impact Assessment (EIA) under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 to assess the impacts of the development. Whilst it was acknowledged that the site is located adjacent to the environmentally sensitive area of the Burry Inlet and Loughor Estuary Site of Special Scientific Interest (SSSI) and Carmarthen Bay and Estuaries Special Area of Conservation (SAC), it was not considered that the associated environmental issues would be of more than of local importance to warrant the submission of an EIA. It was therefore considered that an Environmental Impact Assessment was not required for the proposed development. The application is accompanied by a Design and Access Statement (DAS), Flood Consequences Assessment (FCA), Transport Statement and Extended Phase 1 Habitat Survey.

Main Issues

The main issues for consideration in this instance relate to the whether the scheme represents an acceptable form of residential development in terms of the layout, design and visual impact of the proposal. In addition, consideration is given to the impact of the proposed development on the character, appearance and relationship with the surrounding area of Pontarddulais, the transport implications of the proposal and the impact of the proposal on the development constraints within the site including existing ground conditions. There are in this instance no additional overriding issues for consideration under the provisions of the Human Rights Act.

Development Plan Policy and Land Uses

Within the adopted Unitary Development Plan, Policy HC1 (112) – (Land south of A48, Pontarddulais) allocates the site for residential development as part of a mixed use scheme which has an indicative capacity of 200 units, although a substantial part of the allocation has been occupied by the Tesco's development. However, the proposal accords with UDP Policy HC1 in principle. Since the proposal was originally considered in 2011, there has been a material change in circumstances with the adoption of the Council's SPG – 'Places to Live – Residential Design Guide' in January, 2014. It should be noted that in considering the original scheme against the SPG, there are numerous elements which would not be compliant, in particular, the dominance of frontage car parking, pedestrian links and the elevational treatment of the corner plots / gable elevations.

Policy HC17 indicates that in considering proposals for development the Council will, where appropriate, enter into negotiations with developers to deliver planning obligations under Section 106 of the Planning Act. The Council will expect developers to make contributions towards social, economic or environmental investment to address reasonable identified needs. The Council has adopted a Planning Obligations SPG and this issue is discussed in detail below.

UDP General Development Principle Policies EV1, EV2 and EV3 provide the policy context to ensure new development shall accord with the objectives of good design, be appropriate to the local character and context of the site, not result in a significant detrimental impact on local amenity and have general regard for the development to provide reasonable access.

Policy EV33 requires all development to be served by the public mains sewer, whilst Policy EV34 requires that development proposals should only be permitted that do not pose a significant risk to the quality and or quantity of controlled waters. Policy EV35 indicates that additional surface water run-off should not result in flooding or result in a reduction of the quality of surface water run-off. Within flood risk areas, Policy EV36 development will only be allowed where it is justified and the consequences of flooding are acceptable.

Design and Layout

The density of the residential layout is relatively high; however, this reflects the density and local character of Pontarddulais and also that of the completed Phase 1 and 2 developments. The layout is constrained by a Welsh Water watermain along the western boundary and it is proposed to obtain vehicular access from the roundabout to the Tesco access road. Moreover, the proposed vehicular access is intended to serve the proposed further residential development to the south east of the site which is also designated as part of the UDP Policy HC1 allocation. The site layout is further constrained by the 6 metre Welsh Water foul sewer easement that runs diagonally through the site which discharges to the Pumping Station to the west of the site. It has also become evident from the amended layout that the original layout was inaccurate in that the access road / roundabout indicated on the revised site layout extends further into the site effectively reducing the size of the site, which further accentuates the cramped nature of the development.

The siting of the proposed dwellings has been dictated by the road layout and the above constraints. The dwellings on the eastern side of the road on plots 9 – 19 will retain a minimum 12 m gable end separation distance to the existing residential properties in the development at Golwg y Llanw, whilst the dwellings on the western half of the site are orientated fronting onto the road.

The eastern boundary of the residential layout abuts the residential properties recently constructed within Phases 1 and 2 (Golwg y Llanw). The FCA indicates that the original site is relatively flat with a gentle slope to the south west with ground levels varying from 7.5m AOD to the north to approx. 5.70m AOD at the southern boundary of the site. In order to reduce the tidal flood risks to the development it is proposed to raise levels in the lower parts of the site and adopt a minimum slab level of 7.6m AOD for the development. The adjacent dwellings within the Phase 2 development to the east of the site have been constructed with slab levels ranging from 7.610m AOD to 7.25m AOD. Consequently, the levels of the proposed dwellings would have an acceptable relationship to the existing dwellings in this respect.

Amended scheme

As outlined above, the previous 2m wide landscaping zone that was in place to screen the development from the proposed Pontarddulais bypass scheme has been incorporated into the residential layout. On the basis of this additional 2m strip, an amended scheme was submitted by the applicant in June of this year which increased the number of dwellings from 32 to 35 units. This scheme, however, did not meet with many of the requirements of the Residential Design Guide and a revised scheme was submitted in August 2015 in an attempt to address officers concerns in this respect. The merits of this scheme are assessed below before consideration is given to the further amendments submitted on 30th September 2015 in an attempt to address the reasons for deferral expressed at Committee on 8th September 2015.

The architectural designs of the dwellings are based upon a simple palette of forms, features and materials comprising of render and brickwork with brick window details and an external finishes condition would be imposed to approve the precise details. The principle of using this palette of materials would be acceptable. The layout has been amended to incorporate 1.80 metre high brickwork / render walls to the rear boundaries and side boundaries where they abut the internal estate road. The details of this boundary wall will be controlled by condition.

The residential layout, however, backs onto the access roundabout and the previous scheme originally considered in October 2011 made provision for a landscaping strip to mitigate the lack of active frontage, the presentation of rear elevations and the presence of blank rear boundary walls. The scheme again presents blank rear boundary walls to the site frontage but because of the more cramped nature of the site, there is no scope to mitigate this impact with a landscaping strip. It is proposed to address this issue with the construction of a 1.80m high boundary wall to be 'broken-up' with brick piers and rendered infill panels (detailed scheme to be agreed by condition) and the planting of mature trees within the boundary of the rear gardens to plots 1 – 8.

The dwellings at plots 9 – 19 are all turned sideways 90 degrees to the access road which is the main streetscene of the development. This results in a long streetscene on this side of road comprising of side boundary walls interspersed by the side elevations of dwellings and parking areas. This approach is not ideal in urban design/visual terms and reduces natural surveillance and activity onto the street.

Additionally, the proposed rear garden for plot 1 was below the absolute minimum acceptable size of being the same size as the footprint of the dwelling it serves, contrary to para 15.11 of the Residential Design Guide.

In order to address these latter concerns, the site layout was amended by re-siting plots 1-2 further forward to provide a larger rear garden area to serve these properties. In addition a revised house type (K), which incorporates a principal elevation onto its side elevation including an entrance and habitable-room windows has been introduced at plots 1-2 providing more visual interest and street surveillance. Additionally, the dwellings on plots 11, 16 & 17 (which are the three additional dwellings) have incorporated ground floor box bay windows onto the side elevations windows in order to provide more visual interest within the street scene and also provide an element of natural surveillance.

The long unbroken row of parking serving plots 1 – 4 adjacent to the entrance to the scheme, and along plots 20 – 35 created a car dominated street environment with an excessive number of pavement crossovers which reduces the quality of pedestrian experience contrary to the 'Accommodating Parking' Principles within the adopted Residential Design Guide. Additionally, the road layout between plots 4 – 10 remains unaltered and is configured in a contrived manner due to the constraint imposed by the 7m wide sewer easement, which results in an indirect pedestrian access from Golwg y Llanw.

The further revised layout received 30 September, 2015 has attempted to address the design and layout concerns of the Committee by the introduction of low walls to the sides of parking bays serving plots 11, 16, 17 and 35 to screen the parked cars, relocation of the side screen walls to the garden area of plots 11, 16 and 17 to allow for additional landscaping, and the relocation of the terrace block to plots 24 – 26 by substituting house types on plots 20 – 23 & 27 / 28 in order to break up the length of parking bays previously indicated with additional landscaping. The amendments detailed above have attempted to address several of those concerns in the context of the now adopted Residential Design Guide and are considered to be acceptable.

Water Quality Issues within the Burry Inlet and Loughor Estuary Site of Special Scientific Interest (SSSI) and Carmarthen Bay and Estuaries Special Area of Conservation (SAC)

The site is located within the drainage catchment area that drains to the Loughor Estuary and Burry Inlet which forms part of the Carmarthen Bay and Estuaries European Marine Site (CBEEMS). The City and County of Swansea, as the competent authority, is required to carry out a Test of Likely Significant Effect (Habitat Regulation Assessment) of the proposal under the Conservation of Habitats and Species Regulations 2010. The TLSE is intended to assess the likely effect of the drainage proposals of this development on the integrity of the CBEEMS both alone and in combination with other developments in the same catchment area .

The TLSE has been undertaken and concludes that subject to the drainage conditions recommended, the development will not have a significant effect on its own or in combination with other developments in the catchment area for the reasons set out in the TLSE. These relate to the compensatory hydraulic capacity which has been created in the catchment area and which is recorded in the Register of approvals kept by the Council in accordance with the

Memorandum of Understanding (MOU), signed by the City and County of Swansea (CCS), Carmarthenshire County Council (CCC), Countryside Council for Wales (CCW), Environment Agency Wales (EAW), and Dwr Cymru Welsh Water (DCWW) on the 1st March, 2010 (as revised by the MOU signed 12 Sept. 2011). Also the phosphate stripping carried out at the Llanant WWTW which has created a capacity for 1000 new dwellings within that part of the catchment area in Swansea. A full Appropriate Assessment under the Habitat Regulations is not therefore necessary and the application can be approved subject to the drainage conditions indicated. This would satisfy the requirements of the Habitat Regulations.

Flood Risk

Tidal Flood Risk

The FCA indicates that the site is relatively flat with a gentle slope to the south west with ground levels varying from 7.5m AOD to the north to approx. 5.70m AOD at the southern boundary of the site. There is a stream along the southern boundary which is culverted below the dismantled railway line, and consists of a 1.80 metre wide masonry arch. The site lies adjacent to the tidal reaches of the River Loughor. The majority of the site lies within zone C2 on the development advice map under TAN15, which is defined as an area of flood plain without significant flood defences considered to be at risk from a 0.1% (1 in 1000) annual chance event. The C2 zone is based on the EA's extreme flood outline (0.1%) which is estimated to have a level of 6.08m AOD and the FCA indicates that only the southern part of the site is situated below a level of 6.08m AOD and therefore it is only this part of the site which lies within the C2 zone. In order to reduce the tidal flood risks to the development it is proposed to raise levels in the lower parts of the site and adopt a minimum slab level of 7.6m AOD for the development.

Fluvial Flood Risk

The FCA has also considered the fluvial flood risk from the watercourse to the south of the site which is culverted below the former railway line and is indicated to have sufficient capacity to convey run-off from the stream into the flood plain of the River Loughor. However, in the event of the capacity being exceeded there is the possibility of overland flows entering the site. Raising the site levels will however, provide a natural protection from a flood stage within the watercourse. In order to compensate for any loss of local storage, it is proposed to create a low-lying environmental amenity area adjacent to the south east corner of the site. The proposed earthworks will compensate for the flood storage lost by raising parts of the site. The EA recommended that the compensatory flood storage area forms an integral part of the proposed development and should be maintained over the lifetime of the development. With regard to the compensatory flood storage area, this has been agreed by the former Environment Agency.

Site Drainage

The FCA has given consideration to the requirement to Sustainable Urban Drainage (SUDS) systems, however, it is indicated that having regard to the site location at the lower reaches of the stream and adjacent to the tidal reaches of the River Loughor, there are benefits from not attenuating surface water runoff from the site. The development under Phases 1 and 2 (Ref:2008/1959) has an agreement with the Council's Drainage Engineers having regard to the benefits to existing flood risk upstream. The initial response from NRW was that discharging surface water directly into a watercourse was not acceptable and that unless a similar agreement can be reached with our Engineers, then the surface water system should be designed to demonstrate reduced flows off site through a SUDS system.

In support of the phases 1 & 2 a Surface Water Drainage Strategy was submitted (Dec. 2009) which was based on the unrestricted discharge of surface water from the proposed development to the Ordinary Watercourse along the south – eastern boundary of the site. This was approved, however, the Strategy was based on the residential site (Phases 1 and 2) and the assessment was based on the impermeable surface areas of the food store development.

In order to consider a similar strategy for this current Phase 3 proposal, an Addendum report has been submitted based on the impermeable surface area of the proposed residential layout of Phase 3, indicating that the surface area will be less, and therefore demonstrates that a similar capacity exists through the culvert. The Council's Drainage Engineer has consequently accepted the free discharge into the watercourse for the proposed Phase 3 development subject to a planning condition requiring the maintenance / management of the surface water drainage scheme (as imposed under Ref:2008/1959 (Phases 1 & 2)).

Site Contamination

The Head of Pollution Control indicates that the former Cambrian Tin Plate Works and Dulais Tin Plate Works were located within the vicinity of the site and therefore contamination is strongly suspected on the site and there is also the potential for ground contamination to have migrated from outside the site. It is recommended some site investigation work is carried out and it is therefore proposed to impose planning conditions requiring a phased scheme, comprising three progressively more detailed reports, detailing measures to be undertaken in order to investigate the presence of land contamination at the site.

Transport

The site is to be accessed from the newly constructed access road serving Tesco store and will be in the form of a priority junction just beyond the Tesco roundabout access. A traffic statement has accompanied the application which assesses the impact of additional movement at the new traffic controlled junction onto Water Street. The statement concludes that an envisaged 60 dwellings (which also accounts for the proposed Phase 4) would not have a significant impact on the operation of the signals which would remain within their theoretical capacity. The amended proposal is for only 35 dwellings and the Head of Transportation and Highways considers this to be acceptable in traffic movements/volume terms. The Head of Transportation and Highways considers the overall level of parking provision to be acceptable and that the proposed carriageway and footway widths would accord with recommended standards. No highway objections have therefore been raised.

Planning Obligations

As indicated above, UDP Policy HC17 indicates that in considering proposals for development the Council will, where appropriate, enter into negotiations with developers to deliver planning obligations under Section 106 of the Planning Act. The Council will expect developers to make contributions towards social, economic or environmental investment to address reasonable identified needs. The Council has adopted a Planning Obligations SPG to implement this policy.

Education Contribution

When this application was considered in October 2011 the developer had indicated a willingness to make an education contribution of £50,000 which was accepted and as a consequence it was resolved to approve this application subject to the completion of a Section 106 Planning Obligation, in respect of the agreed education contribution of £50,000.

This Section 106 Planning Obligation has not been completed by the applicant, which is a highly undesirable situation given the time that has elapsed since the original resolution. The applicant has, however, indicated a desire to commence development as quickly as possible and it is recommended, therefore, that if this application is approved subject to a Section 106 Planning Obligation then the Obligation must be completed within 6 months with the education contribution of £50,000 being index linked from the date of any Committee resolution to approve planning permission.

Under Section 29 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, having regard to the timescales for determination having lapsed, if it appears to the Local Planning Authority that the Section 106 Planning Obligation is unlikely to be completed, then the LPA could treat the application as being finally disposed of i.e. withdrawn.

If the Obligation is not completed within the timescales specified above the application will, therefore, be reported back to Committee with a view to either disposing of the application or as a development contrary to the provisions of UDP Policy HC17.

Affordable Housing

UDP Policy HC3 indicates that the Council will seek to negotiate the inclusion of an appropriate element of affordable housing on sites which are suitable in locational / accessibility terms and where this is not ruled out by exceptional development costs. This would generally focus on new housing developments of 25 or more dwellings. However, in this instance the completed Phase 1 and 2 development under Ref:2008/1959 (49 dwellings) has been constructed for the Coastal Housing Group and having regard to the overall viability of the proposed development referred to above and the priority with regard to the education contribution then it is not proposed that affordable housing would be required in this instance.

Conclusions

The proposed development is in accordance with UDP Policy HC1 and therefore having regard to all the relevant Development Plan Policies and all other material considerations on balance it is not considered that a recommendation of refusal could be justified in this instance. Approval is therefore recommended subject to the developer entering into a S106 Planning Obligation in relation to the education contribution detailed above.

RECOMMENDATION

APPROVE, subject to:

1. the completion of a Section 106 Planning Obligation in respect of an education contribution (£50,000) with the agreed phased payments (trigger points) consisting of £25,000 to be paid on completion of 50% of the dwellings (i.e. 17 units) with the remaining £25,000 to be paid on completion of the development,
2. the Section 106 Planning Obligation being completed within 6 months of the date of the Committee resolution to approve planning permission,
3. the education contribution being index linked from the date of the Committee resolution to approve planning permission.

4. and to the following conditions:

- 1 The development shall be commenced not later than the expiration of 5 years from the date of this planning permission.
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: [Drg. Nos HG.12.03 205 Rev. A (Type G), HG.12.03 207 Rev. A (Type G), HG.12.03 230 (Type H), HG.12.03 232 (Type H), HG.12.03 180 Rev. B (Type F), HG.12.03 182 Rev. B (Type F), HG.12.03 255 Rev. A (Type J), HG.12.03 257 Rev. A (Type J) - amended plans received 26 February, 2015);

LT1424.04.01 Rev. H, LT1421.04.02 rev. A plots 1-13 +17-19, LT1421.04.03 rev. A plots 14 - 16; HG.12.03.405 - 407 house type K- (amended plans received 26 Aug, 2015)
Reason: To define the extent of the permission granted.
- 3 Notwithstanding the details indicated in the application, and unless otherwise agreed in writing by the Local Planning Authority, prior to commencement of any superstructure works details of the means of enclosing the site boundaries and the individual curtilages of all dwellings, including the details of the height, design and materials of any forecourt enclosures, shall be submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority all means of enclosure shall be completed in accordance with the approved scheme prior to beneficial occupation of the dwellings. The rear and side boundaries to dwellings adjacent to the access road and internal estate road shall be enclosed with screen walls unless otherwise agreed with the Local Planning Authority.
Reason: In the interests of visual amenity and general amenity.

- 4 Notwithstanding the details indicated in the application, samples of all external finishes together with an external finishes schedule illustrating the disposition of finishes within the layout shall be submitted to and approved by the Local Planning Authority prior to the commencement of any superstructure works. The development shall be completed in accordance with the approved scheme.
Reason: In the interests of visual amenity.
- 5 The development shall not be occupied without the prior written approval of the Local Planning Authority of a scheme for the landscaping of the site and shall be carried out as an integral part 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.
- 6 The proposed dwellings shall incorporate a minimum finished floor level of 7.60m AOD.
Reason: In order to ensure the dwellings are not affected by potential tidal flooding.
- 7 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 in accordance with the approved scheme.
Reason: In the interests of the ecology and amenity of the area.
- 8 Prior to the commencement of the development of the adoptable roads, full road engineering details of the internal road layout shall be submitted to and approved in writing by the Local Planning Authority. The roads shall be constructed in accordance with the approved details.
Reason: To allow the proper consideration of all details in the interests of highway safety.
- 9 No dwelling unit within the development shall be occupied until the adoptable roads linking that unit to the existing adopted road network have been constructed to base course level and provided with street lighting in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure that the development is provided with satisfactory vehicular access in the interests of public safety.
- 10 No part of the development hereby approved shall be occupied until a Residential Travel Plan for the development has been submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of sustainability and to prevent unacceptable highway congestion.

- 11 Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement of superstructure works, a scheme for foul drainage shall be implemented in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Such a scheme must ensure that a foul sewer is provided which enables each individual plot to connect to the main foul public sewer.

Reason: To prevent hydraulic overloading of the public combined system, to protect the health and safety of the existing residents and ensure no detriment to the environment.

- 12 No development approved by this permission shall be occupied until details of the surface water drainage and maintenance and management of the surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- i a timetable for its implementation, and
- ii. a management and maintenance plan for the lifetime of the development.

Reason: To prevent the increased risk of flooding and to ensure the protection of water quality by ensuring the provision of a satisfactory means of surface water disposal.

- 13 Foul water and surface water discharges must be drained separately from the site and no surface water shall be allowed to connect (either directly or indirectly) to the public foul sewerage system. No land drainage run-off will be permitted, either directly or indirectly, to discharge into the public foul sewerage system.

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

- 14 Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority and which exclude site clearance, demolition, ground investigation and site preparation works), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order

to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

Reason: Based on the previous contaminative uses on the site, and given the proximity of the site to the tributaries of the River Loughor, the site is considered to be of high environmental sensitivity.

- 15 If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained approval from the Local Planning Authority for, an addendum to the Method Statement. This addendum to the Method Statement must detail how this unsuspected contamination shall be dealt with.

Reason: Given the complexity of the previous uses on the site and the areas to where the trial pits and boreholes are limited to, it is considered possible that there may be previously unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated.

- 16 Prior to the occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

Reason: To ensure that the remediation criteria relating to controlled waters have been met and (if necessary) to secure longer-term monitoring of groundwater quality.

- 17 No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.

Reason: For the prevention of pollution.

- 18 A development free buffer strip of a minimum of 5 metres shall be maintained in perpetuity between the development and the top of the bank of any watercourse / surface water feature identified within, or along the boundary of the application site. This buffer strip must be protected from all development including gardens, decking, footpaths and benches.

Reason: To protect the integrity of the riparian corridor and its associated wildlife.

19 Before the completion of the last dwelling, the proposed pedestrian link at the north eastern corner of the site shall be provided and completed in accordance with the details to be submitted to and approved in writing with the Local Planning Authority.

Reason: In the interests of the amenity of the area.

20 No superstructure development shall commence until further details of the sustainable drainage measures (SUDS) measures such as permeable paving for the car parking areas, and rainwater harvesting shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and retained, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of sustainability and to reduce the risk of flooding within the area.

21 The development shall not be occupied until the compensatory flood storage area adjacent to the south eastern corner of the site has been laid out in accordance with details to be submitted to and approved by the Local Planning Authority. The submitted details shall include details of the maintenance and management of the flood storage area for the lifetime of the development.

Reason: To prevent the potential risk of flooding and to ensure the area is maintained and managed for this purpose.

INFORMATIVES

1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (UDP Policies EV1, EV2, EV3, EV33, EV34, EV35, EV36, HC1 & HC17)

2 The Developer must contact the Team Leader - Highways Management, City and County of Swansea (Highways), Penllergaer Offices c/o Civic Centre, Swansea, SA1 3SN (Tel 01792 636091) before carrying out any work.

3 The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary.

4 i. The applicant is requested to contact the Head of Environmental Services prior to the commencement of any works on site in order to identify any statutory controls which may be required in relation to the specific works being carried out and the hours of working on the site.

ii. The applicant's attention is drawn to the requirements of the Highways Act not to cause obstruction to the users of the public highway nor to allow soil, and or other materials to be deposited onto the street, and to obtain consent for the storage of building materials on the public highway. The applicant should contact the Head of Transportation to advise on the requirements of the Act and the penalties for non-compliance.

- 5 The Construction Method Statement (CMS) shall provide full details of all necessary pollution prevention measures for the construction phase of the development

The CMS shall include the following details:

- a) Demolition/Construction programme and timetable
- b) Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas etc
- c) Traffic scheme (access and egress) in respect of all demolition/construction related vehicles;
- d) An assessment of construction traffic generation and management in so far as public roads are affected, including provisions to keep all public roads free from mud and silt;
- e) Proposed working hours;
- f) Principal Contractor details, which will include a nominated contact for complaints;
- g) Details of all on site lighting (including mitigation measures) having regard to best practicable means (BPM);
- h) Details of on site dust mitigation measures having regard to BPM;
- i) Details of on site noise mitigation measures having regard to BPM;
- j) Details of waste management arrangements (including any proposed crushing/screening operations); and
- k) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by Principle Contractor on Local Authority.

note: items g - j inclusive need to take particular account of the potential for statutory nuisance from site related activities [see Informatives].

6 Construction Noise

The following restrictions should be applied to all works of demolition/ construction carried out on the development site

All works and ancillary operations which are audible at the site boundary shall be carried out only between the hours of 08.00 and 18.00 hours on Mondays to Fridays and between the hours of 08.00 and 13.00 hours on Saturdays and at no time on Sundays and Public Holidays and Bank Holidays.

The Local Authority has the power to impose the specified hours by service of an enforcement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

7 Smoke/ Burning of materials

No burning of any material to be undertaken on site.

The Local Authority has the power to enforce this requirement by service of an abatement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

8

Dust Control:

During construction work the developer shall operate all best practice to minimise dust arisings or dust nuisance from the site. This includes dust and debris from vehicles leaving the site.

The Local Authority has the power to enforce this requirement by service of an abatement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

9

Lighting

During construction work the developer shall operate all best practice to minimise nuisance to locals residences from on site lighting. Due consideration should be taken of the Institute of Lighting [www.ile.org.uk] recommendations

Report of the Head of Economic Regeneration and Planning

Planning Committee - 13 October 2015

Draft Fabian Way Innovation Corridor Masterplan Framework

Purpose:	To seek approval to undertake a period of public consultation on the draft Masterplan Framework document.
Policy Framework:	Planning Policy Wales, Swansea Local Development Plan (LDP) Preferred Strategy (2014), Swansea Bay City Region Economic Regeneration Strategy (2013), NPT Local Development Plan (anticipated to be adopted late 2015)
Reason for Decision:	The Masterplan Framework is being produced jointly by Swansea and Neath Port Talbot (NPT) Councils. It will form Supplementary Planning Guidance (SPG) to the two Authorities' respective Local Development Plans (LDP) on their adoption. Public consultation informs the content of SPG and improves the status and weight that may be afforded to it in future decision making once it is adopted.
Consultation:	Legal, Finance, Regeneration and Access to Services.
Recommendation(s):	It is recommended that permission is granted to undertake public consultation on the draft Masterplan Framework.
Report Author:	Steve Smith/David Rees
Finance Officer:	Aimee Dyer
Legal Officer:	Christopher Allingham
Regeneration	Huw Jones
Access to Services Officer:	Sherill Hopkins
NPT Planning Policy:	Lana Beynon

1.0 Introduction

- 1.1 The draft Masterplan Framework document has been produced jointly by Swansea and NPT Councils to co-ordinate development in the cross-border Fabian Way Corridor area. A joint meeting of the two Authorities' Cabinet Members and Senior Officers has agreed the document as a basis for public consultation. Once adopted under the respective future Local Development Plans of the two Authorities, it will form Supplementary Planning Guidance (SPG) and a material consideration in the determination of planning applications within the Corridor area. A copy of the draft Framework is appended to this report.
- 1.2 This report provides an overview of the Framework and how it has been prepared. A period of formal public engagement is now required to inform its preparation for which approval is sought.

2.0 Background

- 2.1 The Framework covers the area red-lined in Figure 1 below.

Figure 1: The Framework area – Fabian Way Corridor



- 2.2 The document has been based on a City Region approach and takes forward the prevailing national, regional and emerging LDP local planning / regeneration policy contexts. While there are some hooks for the SPG in the adopted Swansea UDP, the Masterplan Framework contradicts some Swansea UDP policies. Therefore, the Masterplan Framework is being prepared in parallel with the emerging LDP and will form SPG to the future LDP when the Plan is adopted.
- 2.3 The Framework identifies constraints and opportunities based on detailed site assessments and close engagement with the local Ward Members, Transportation, Regeneration and Environmental Health Officers from both Local Planning Authorities, and key external stakeholders such as Welsh Water, Natural Resources Wales and The Port Health Authority. Engagement has been maintained throughout the process with the land owners (such as Associated British Ports), the Universities and Swansea Bay Tidal Lagoon. The next stage of preparation is to build on this engagement by undertaking a period of formal public consultation.

3.0 The Masterplan Framework Document

- 3.1 The Framework takes a strategic and collaborative approach and sets out a vision for a City Region 'Innovation Corridor', building upon the Higher Education and Tidal Lagoon developments and their triangle of opportunity. It supports the development of a local 'Knowledge Economy Cluster' in-line with the Swansea Bay City Region Economic Regeneration Strategy as part of a mixed use area with creativity, connectivity, innovation and place-making at its heart. The document aims to facilitate the future expansion of both Universities, capture the associated socio-economic benefits from third party Research & Development and high technology businesses seeking to cluster close to the Universities and Tidal Lagoon, and facilitate the provision of sustainable residential accommodation in appropriate locations supported by the necessary infrastructure.
- 3.2 It seeks to coordinate the transformation of derelict and under-used brownfield land and promote sustainable development, providing employment opportunities and economic benefits for the City Region, whilst complementing City Centre regeneration.
- 3.3 The Framework aims to bring about a step change in the environment of this key City Region gateway by guiding future land use and development through a place making approach, promoting high quality design and public realm building upon the environmental improvements already delivered at SA1, the Bay Campus and expected from the Tidal Lagoon.
- 3.4 It will identify priority actions with the potential to bring about long term improvement to the area's connectivity particularly by sustainable transport (in-line with the Fabian Way Corridor Transport Assessment), better integrate communities north/south of Fabian Way, and identify priority actions to enhance infrastructure to make the area competitive and sustainable.
- 3.5 These development sites are in multiple private ownership. Each has physical constraints which could hinder their individual development potential. Uncoordinated development proposals would put the long-term regeneration of the Corridor at risk. Therefore, this Framework seeks to provide an integrated strategic approach, maximise the benefits of each site, overcome site constraints, and minimise conflicts between different land uses.
- 3.6 While the Framework covers the whole Corridor, detailed masterplans already exist for SA1 and the Bay Campus. This Framework focuses on co-ordinating planning of the intervening land with these established frameworks. The Masterplan Framework is set out in Chapter 5 of the Appendix.

4.0 Proposed Consultation

- 4.1 It is proposed that the consultation will be undertaken for 6 weeks from the beginning of November 2015 and in the respective administrative areas will be facilitated through elements of the following as appropriate:
- Press and social media releases throughout the 6 week period to make people aware of the consultation, raise interest, and inform them how to participate;
 - Targetted emails - sent to the relevant consultation bodies (including the Swansea Bay City Region Group); the local landowners concerned, local businesses and interested parties;
 - Letters – and summary leaflet sent to specific communities identified by Officers/Councillors for additional engagement;
 - Webpage – will provide all relevant information and documentation with a pdf copy of the document for people to comment on;
 - Community drop-in information sessions – possibly three offering a cross-section of locations and including at least one in the evening to make them accessible;
 - Summary leaflet – available in public locations;
 - Opportunity to read and comment on a hard copy of the draft document in local Council buildings as appropriate;
 - The consultation be advertised on the Swansea City Centre Big Screen, Bus Station, Civic Centre screens.

5.0 Equality and Engagement Implications

- 5.1 An Equality Impact Assessment (EIA) Screening has been undertaken and it has been agreed by Swansea Access to Services Team that a full EIA is not required. The screening has highlighted some of the expected positive outcomes of the Framework including the aims for:
- Better integration of communities north / south of Fabian Way
 - Improved employment opportunities
 - Improved sustainable travel options and connectivity
 - Improved public realm and environment
 - Provision of residential development in appropriate locations accompanied by the necessary physical and social infrastructure
- 5.2 The document will be informed by full and open public consultation as detailed above.

6.0 Financial Implications

- 6.1 There are no immediate financial implications arising from the public consultation. The cost of the joint public consultation exercise will need to be accommodated within existing budgets and staff resources; and shared appropriately between the two Councils.

7.0 Legal Implications

7.1 The Masterplan Framework will be a material planning consideration when determining planning applications in the Corridor area once adopted as SPG to the future adopted LDP. Before then, it will not form part of the current Development Plan (UDP) and will not attract the weight of an adopted SPG to the UDP.

Background Papers:

- City & County of Swansea Unitary Development Plan
- City and County of Swansea LDP Preferred Strategy
- Neath Port Talbot County Borough Council Local Development Plan

Appendices:

Appendix 1 – Fabian Way Innovation Corridor Masterplan Framework Working Draft



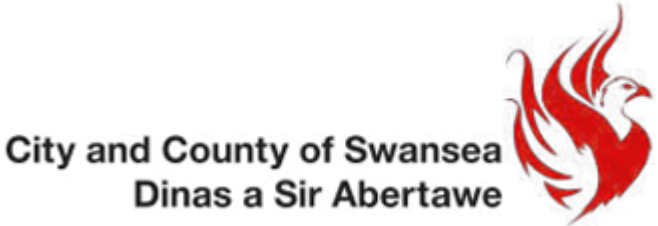
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Fabian Way Innovation Corridor

Masterplan Framework: Working Draft

October 2015



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Contact Details

To discuss a planning proposal with the relevant Local Planning Authority, please contact:

City & County of Swansea Council

Email: planning@swansea.gov.uk

Telephone: 01792 635701

Neath Port Talbot County Borough Council

Email: planning@npt.gov.uk

Telephone: 01639 686726

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Introduction

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1.1 Overview

1.1.1 This draft masterplan framework has been produced jointly by the City and County of Swansea (CCS) Council and Neath Port Talbot (NPT) County Borough Council to co-ordinate development in the Fabian Way Corridor area.

1.1.2 The vision is for an 'Innovation Corridor', building upon the prestigious Higher Education developments being undertaken by Swansea University and the University of Wales Trinity St David (UWTSD); and also the Swansea Bay Tidal Lagoon (SBTL), the world's first man-made energy generating lagoon which was granted development consent on 9th June 2015. The Framework aims to reinforce the identity of the City Region's emerging knowledge and innovation economy by supporting the development of a local Knowledge Economy Cluster, which will complement the Swansea City Centre regeneration aims and provide employment opportunities and economic benefits for the City Region.

1.1.3 It will facilitate this by guiding future land use through a place making approach, and identifying priority actions with the potential to bring about long term improvement to the connectivity and infrastructure of the Corridor area. The measures set out will serve to facilitate and shape the future expansion of both Universities enhancing their educational,

economic and community functions. In addition, the Framework seeks to capture, as far as possible, all associated benefits in terms of third party research and development and high technology businesses seeking to locate close to the Universities and SBTL.

1.1.4. The Lagoon provides a 'game changing' opportunity to regenerate the Corridor, particularly through the anticipated significant improvements it will bring to the public realm. It is anticipated that SBTL will bring clustering benefits from businesses linked to the tidal energy sector and marine engineering.

1.2 Why is a Framework Needed?

1.2.1. The Framework is needed to build upon high profile developments, such as the SBTL and the Higher Education developments. These will provide opportunities for growth within the Region and a shift towards a knowledge based economy. The Framework will seek to maximise such opportunities, developing key links and infrastructure needed to promote growth within the City Region, and co-ordinating the re-use of derelict former docks and related sites.

1.2.2. These development sites are in multiple private ownership. Each has physical constraints which could hinder their individual development potential. Unco-ordinated development proposals would put the long-term regeneration of the Corridor

at risk. Therefore, the Framework seeks to provide an integrated approach, maximise the benefits of each site and overcome site constraints. The Corridor is home to a mix of important established and emerging uses and the Framework seeks to co-ordinate development to avoid bad neighbour effects.

1.2.3. The Corridor is one of the key approach routes from the M4 into Swansea City Centre, the heart of the City Region, and the design principles set out by this Framework seek to enhance its gateway function and maximise accessibility in-line with the Fabian Way Corridor Transport Assessment (TA).

1.2.4. A key aim is to better integrate the communities either side of Fabian Way. Although the majority of the development opportunities are south of the dual carriageway, the Framework seeks to ensure the regeneration benefits are also felt to the north.

1.2.5. The above overarching principles are reflected in subsequent sections. The Framework does not set out detailed development briefs for each site, but does specify an overall development layout, desired accessibility linkages and a land use framework.

1.2.6. This draft Framework will be the subject of public/stakeholder consultation. Ultimately it will be adopted as Supplementary Planning Guidance (SPG) and form a material planning consideration to the Local Development Plan (LDP) for each area.



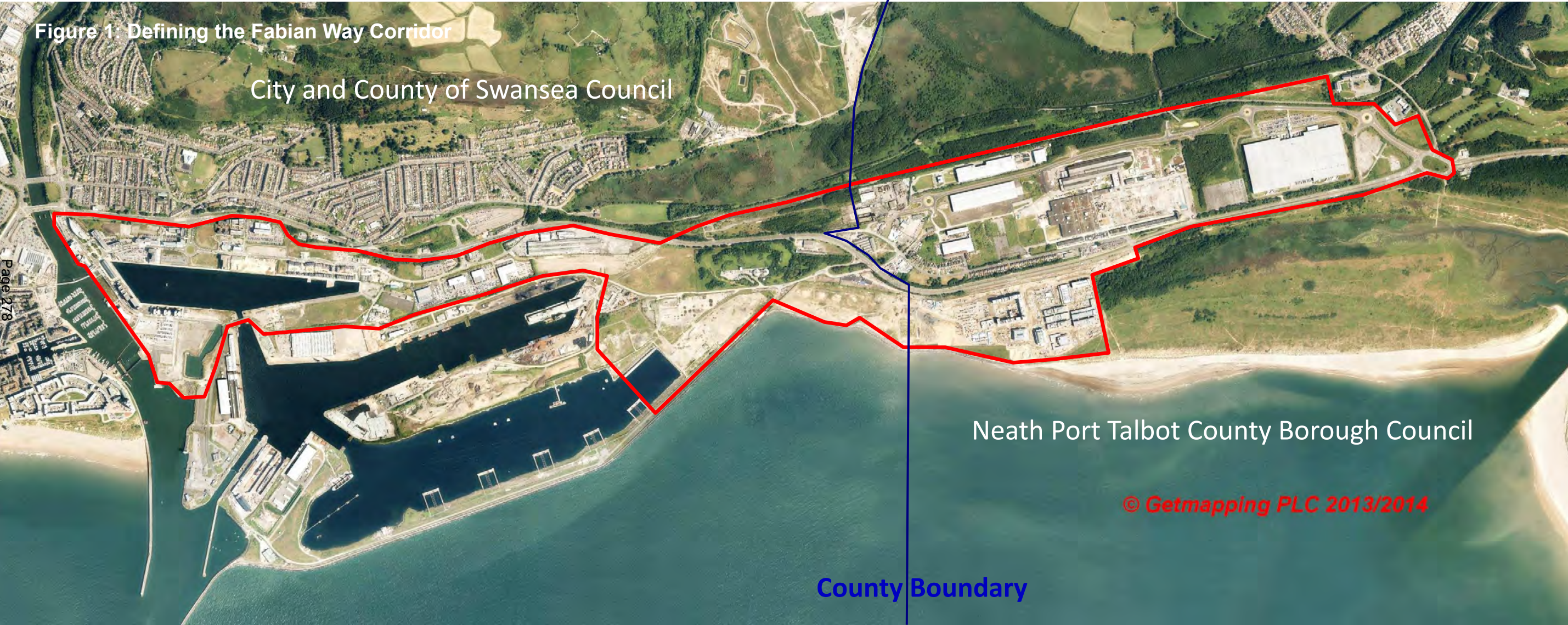
1.3 Defining the Corridor Area

1.3.1. The Corridor stretches for 5km along the A483 Fabian Way, which forms the eastern gateway road approach to Swansea City Centre from the M4 Junction 42. The Corridor area is illustrated in Figure 1.

1.3.2. It covers an area from the eastern bank of the River Tawe in the City and County of Swansea to the Amazon roundabout in Neath Port Talbot. The eastern extent is limited by the Crymlyn Burrows Site of Special Scientific Interest

(SSSI). To the south is Swansea Bay. The west connects to Swansea City Centre, whilst the north is edged by the Tennant Canal and restricted by the Crymlyn Bog and established communities of St Thomas / Port Tennant.

1.3.3. While the Framework covers the whole Corridor, detailed masterplans already exist for SA1 and the Bay Campus. This Framework seeks to co-ordinate the planning of the intervening land with these established development frameworks.



2 Policy Context

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2.1 National Context

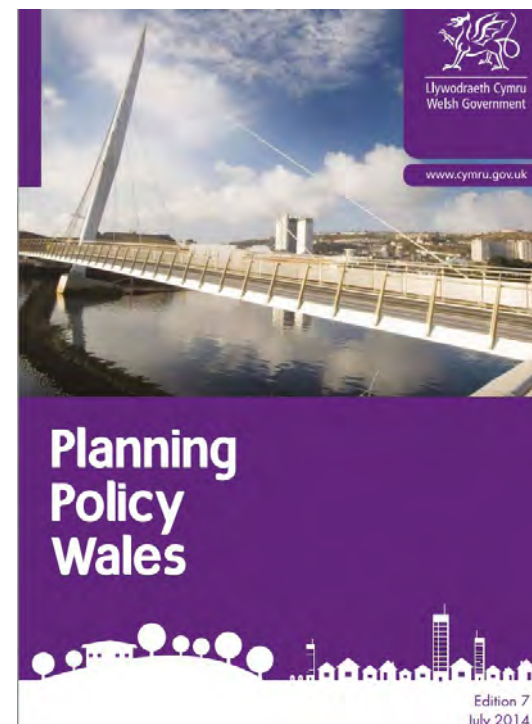
2.1.1. The key principles are underpinned by national planning guidance contained in Planning Policy Wales (PPW, 2014). This Framework :

- Promotes the use of previously developed land and regeneration
- Proposes mixed use development in an accessible location within an existing urban area
- Supports development of innovative business / technology clusters
- Promotes sustainable communities
- Integrates / co-ordinates land use and planning with transport planning, seeks to improve accessibility by walking, cycling and public transport; promotes use of the port and identifies the potential re-establishment of an historic inland waterway
- Identifies and supports the provision of necessary infrastructure improvements
- Protects the vitality of the adjacent City Centre, adopting a sequential site selection approach for relevant uses
- Identifies and seeks to mitigate potential conflicts of use

- Identifies potential environmental risks / pollution issues and seeks to minimise / manage them
- Is subject to public consultation and will be reviewed on a regular basis

2.1.2. In-line with national guidance and good practice this Framework has been prepared collaboratively by the two Councils due to the strategic and cross boundary nature of the area. It is underpinned by a cross boundary Economic Assessment and Employment Land Provision Study (2012), Housing Market Assessment (2013), and Joint Local Transport Plan (2015).

2.1.3. It has been prepared with reference to the relevant Technical Advice Notes



(TANs) and good practice guidance.

2.1.4. Of particular note for the place making approach advocated by this document is the Manual for Streets (MfS, 2007), a companion guide to TAN 18, produced to counter the dominance of vehicles in streets. Its main aim is to facilitate the creation of streets that promote greater social interaction and enjoyment while still performing successfully as movement conduits. MfS 2 (2010) stresses that all new streets must be 'walkable' and provides further detailed guidance demonstrating how these areas should pre-eminently be 'places' as well as focal areas for movement.

The highway should not be seen in isolation or simply as a piece of infrastructure. The best highway designs respect their surroundings - the buildings, open space and pedestrian/cycle routes that pass through an area. (MfS2 p42)

2.1.5. The Active Travel Act requires Local Authorities to continuously improve facilities/routes for pedestrians and cyclists and to prepare maps identifying current/potential future routes. It requires new road scheme designs (including road improvement) to consider the needs of pedestrians and cyclists.

2.2 Regional Context

2.2.1. Swansea and Neath Port Talbot form part of the Swansea Bay City Region. The most up to date regional policy context is provided by the **Swansea Bay City Region Economic Regeneration Strategy (ERS) 2013-2030**. Its key aspiration is:

“By 2030, South West Wales will be a confident, ambitious and connected City Region, recognised internationally for its emerging Knowledge and Innovation economy”.

2.2.2. The Strategy identifies the need to raise productivity from 77% to 90% of the UK average. Importantly, this will require a change to both the sectoral mix of the economy to higher-value activity and the occupational mix to higher-value jobs.



2.2.3. The City Region ERS Vision will be realised by achieving the following broad aims:

- **Business Growth, Retention & Specialisation:** by developing a more entrepreneurial and “can-do” culture, growing key business assets, attracting new and higher-value investment, and exploiting more international business opportunities
- **Skilled and Ambitious for long-term success:** by improving ambition and attainment in education and training, expanding employer and learning-provider engagement, and by aligning skills provision with the needs of employers
- **Maximising job creation for all:** by encouraging enterprise and employment growth, establishing co-ordinated work experience and apprenticeship programmes, and supporting more of the economically inactive into education, training and work
- **Knowledge Economy and Innovation:** by maximising the impact of educational excellence, Research and Development and business collaboration in Higher- and Further- Education institutions, and by helping to nurture knowledge businesses through business incubation and support

- **Distinctive Places and Competitive Infrastructures:** by co-ordinating land, property and related infrastructure development, improving transport and digital connectivity between key settlements and the wider world, and by helping to create distinctive and competitive places and spaces across the City Region.

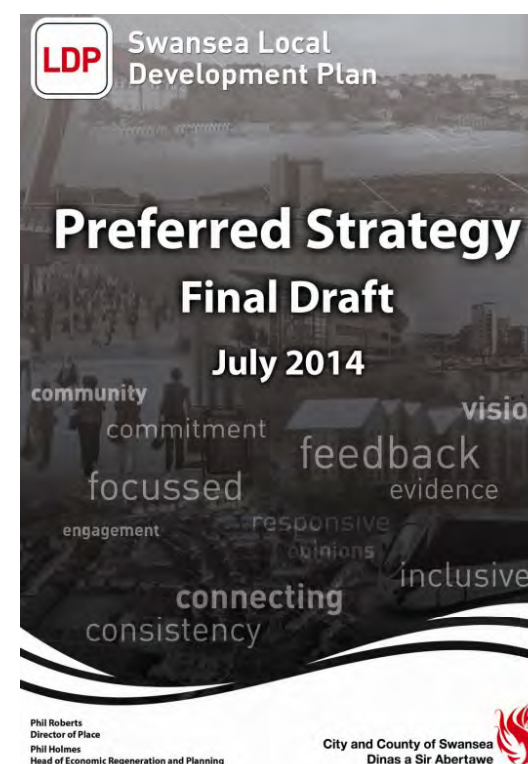
2.2.4. In-line with the City Region ERS, this Framework takes a strategic and collaborative approach. It aims to maximise the long term benefits from the significant Higher Education developments in the Fabian Way Corridor, and provides opportunities for the growth of related knowledge based industries and academia/ industry links in the business sectors identified in the ERS. It also supports the development of infrastructure necessary to make the area competitive and sustainable.

Swansea Emerging LDP Policy Context

2.3 Local Context

2.3.1. The adopted Swansea Unitary Development Plan (UDP 2001-16) provides the current planning policy framework for the City & County of Swansea, but will expire at the end of December 2016. It will be replaced by the **Swansea Local Development Plan (LDP)**, which will cover the period up to 2025. This Framework will form SPG to the LDP.

2.3.2. The LDP Preferred Strategy identifies the Fabian Way Corridor as a Strategic Site for mixed commercial, employment and residential uses and sets out that a masterplan will be formulated,



demonstrating how new business development, and other appropriate uses, can come forward at appropriate locations to revitalise the eastern gateway approach to Swansea in the context of the operational port, SA1, and the Bay Campus, while complementing regeneration of the City Centre. The Fabian Way Strategic Site was identified in the 2014 LDP Draft Proposals Map Consultation and will be taken forward in the Deposit Plan.

2.3.3. Other changes in the Corridor make this a timely moment to review the policy context including further Higher Education developments at SA1, SBTL development consent, and Associated British Ports’ (ABP) proposals to draw back the operational dock boundary.

2.3.4. The **Swansea City Centre Strategic Framework**, which provides a guide for development and investment, is currently being reviewed. It seeks to identify a role for the City Centre and express this through a range of new development and enhancement proposals, along with an accessibility strategy and supporting design framework principles.

2.3.5. The Review emphasises the importance of connectivity and integration with SA1 and the Waterfront area, and identifies that the establishment of UWTS in SA1 offers the opportunity for this area to complement the City Centre.

2.3.6. It identifies a potential gateway mixed use development site opportunity on the western side of the Sailbridge which connects the City Centre with SA1 and the Fabian Way Corridor.

Figure 2: Swansea City Centre Strategic Framework Policy Context
Consolidated Priority and Complementary Areas Plan



2.3.7. In-line with national and local planning policy, any proposals in the Fabian Way Corridor must complement and not conflict with the regeneration objectives for the City Centre. Certain relevant uses such as retail, office and leisure will need to be sequentially tested to make sure they go to the most strategically appropriate locations for the benefit of the City Region's economic growth.

Neath Port Talbot LDP Policy Context

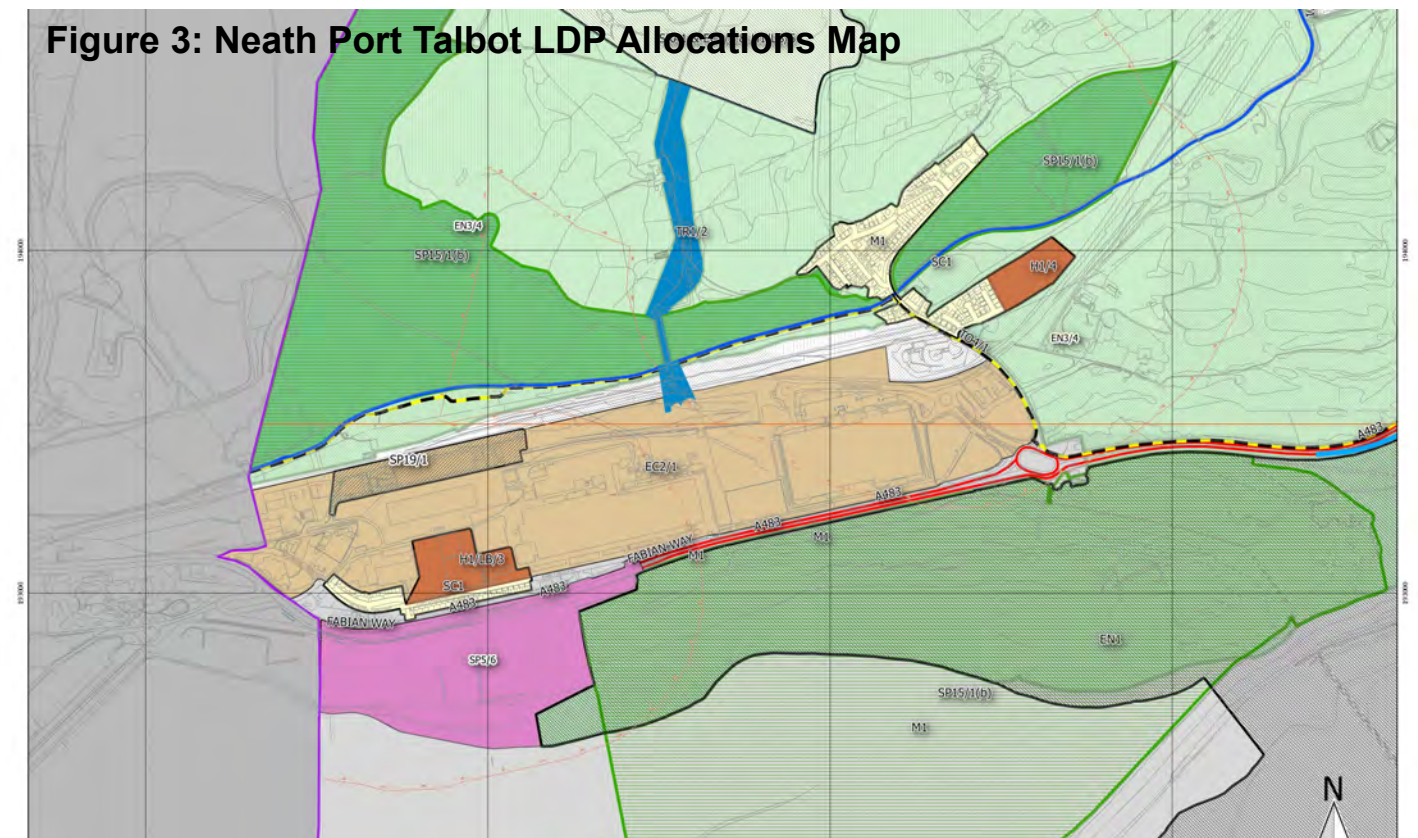
2.3.8. **Neath Port Talbot's LDP (2011-26)** has been submitted to the Welsh Government for Examination. The Hearing Sessions part of the Examination commenced during March 2015 and the Inspector's report is expected by the end of October, with Adoption scheduled for December 2015.

2.3.9. Policy relevant to the Fabian Way area largely focuses on protecting the employment function of the existing employment area at Crymlyn Burrows, restricting development to employment generating uses including ancillary facilities

or services that support or complement the wider role and function of the primary employment use (Policies EC2 and EC3). Policy SP19 (Strategic Waste Management Policy) makes provision for the continuation of the treatment of waste at the MREC.

2.3.10. The residential area of Baldwin Crescent and Elba Crescent is identified as a settlement within which development is acceptable in principle, providing it is proportionate in scale and form to the role and function of the settlement. In addition to the existing housing, the settlement boundary also encompasses an area of Elba Business Park for which outline planning consent has been approved for mixed use development including 50 dwellings, some

Figure 3: Neath Port Talbot LDP Allocations Map



of which are proposed to front Elba Crescent, opposite the existing housing and in continuation of the housing of Baldwins Crescent. Policy H1/LB/3 identifies 3.9 ha of this proposed development as a housing site.

2.3.11. The land required for the Coed Darcy Southern Access Road that runs north – south connecting the main Coed Darcy development to Ffordd Amazon (Phase II) just to the east of Elba Works is also identified and protected (Policy TR1/2).

2.3.12. The development of the Swansea University Bay Campus is supported and promoted, while the remaining stretch of coast, south of Fabian Way between the Bay Campus site and the River Neath estuary, is identified as Undeveloped Coast (policy EN1) where development will be restricted to uses that require a coastal location such as coastal infrastructure, sea defences or the provision of appropriate recreational, leisure, access or other necessary infrastructure only.

2.3.13. Other than the existing residential areas of Baldwins Crescent/Elba Crescent and Jersey Marine, all other parts of the coastal belt in the area fall within the designated Crymlyn Bog/ Crymlyn Burrows/ Llandarcy Green Wedge (Policy EN3/4) and environmental designations, restricting most types of new development to prevent the coalescence of settlements and protect the setting of existing urban areas.

3 Analysis

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3.1 Existing Land Uses

Established Communities

3.1.1. To the north of Fabian Way are the established communities of **St Thomas, Dan y Graig and Port Tennant** which form a continuous densely populated residential area (population approximately 6,500). The existing accommodation largely comprises private terraced and some Local Authority rented semi-detached housing. A large new housing estate has recently been built on the site of the former Marcroft Works which is the only significant concentration of modern housing north of Fabian Way. Much of the area is covered by Communities First. Some pressure is anticipated to occur in terms of demand for Houses in Multiple Occupation (HMO)s resulting from the nearby University developments .

3.1.2. This urban area is effectively built to its natural limits, bounded by the steep terrain and community woodland of Kilvey Hill; the River Tawe; Crymlyn Bog; and Fabian Way. The busy roads to the south and west of this established community create a significant level of severance. This effectively turns the area into an 'island' and although the eastern part of St Thomas is close to the City Centre (600m-1km away) many residents choose to drive into the city due to the actual and perceived barriers to walking.



3.1.3 To the south of Elba Business Park are the residential streets of **Elba Crescent** and **Baldwins Crescent**, which are set back from, and run parallel to, Fabian Way. These are mostly two-storey 1930/40's semi-detached houses with south / southwest facing gardens. The community benefits from an area of open space, a children's playground and a small community hall. The larger scale industrial and commercial buildings to the north and east are relatively close to the residential area and care will need to be taken to ensure that any employment development in the surrounding area does not have a significant negative impact on the amenity of the residents.



3.1.4. To the south of Fabian Way is **SA1 Swansea Waterfront**, a mixed use regeneration area centred around Prince of Wales Dock. This area has a masterplan that has been updated a number of times. The most recent masterplan (2010) included the following (all figures are gross external floor areas):

- Residential 167,123 m²
- Business 84,437 m²
- Leisure 12,304 m²
- Retail/food and drink 14,863 m²
- Hotel 25,028 m²
- Healthcare 6,698 m²
- Church 647 m²
- Institutional/education 1,036 m²
- Onshore marine 2,000 m²
- Car park 23,997 m²



3.1.5 Over the last decade, a significant number of new homes (over 620) have been built in SA1, largely apartment blocks and some town houses. There are several supporting community uses including a mini supermarket, Church; and dental and health centres.

3.1.6. There are some mixed use commercial schemes (e.g. J Shed) featuring business space and restaurants /bars. New office accommodation has been provided such as Admiral House, Ethos, Ellipse, Langdon House and Llys Tawe. There are two Technium business innovation centres for high-tech companies to locate or start up; and two hotels.

3.1.7. The majority of SA1's remaining development plots will provide academic accommodation and associated business space for UWTSD who are relocating from their existing campuses in Swansea. More detail is provided later in this section.

Figure 4: Main Existing Land Uses in the Fabian Way Corridor



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Port of Swansea

3.1.8. ABP operates the Kings and Queens Docks. The port can handle vessels of up to 30,000 deadweight tonnes and provides berths and facilities for most cargo types. The main focus of activity is around the Kings Dock with the handling of cement, minerals, agribulks, aggregates and dredged sand. There are cement and ready mix plants on the shore. At the south western end of the port is a dry dock for controlled dismantling and repairs, plus a roll on roll off car and HGV ferry port facility that is currently mothballed.

3.1.9. The Queens Dock primarily served the oil refinery at Llandarcy which has now closed. The design of the quaysides does not readily adapt to other port handling and currently it is used for cockle beds.

3.1.10. Separating the two docks is the Graigola Peninsular. This land is currently used for a waste reclamation and recycling centre.



3.1.11. Occupying land to the east of Kings Dock is Trinity House, a light engineering company making buoys / navigation aids.

3.1.12. The port is accessed by road from Fabian Way off Baldwins Bridge via a security gate. This route is used to transport abnormal loads such as wind turbines. There are also entrances from Langdon Road and SA1 which are not currently used. A dedicated railway line serves the docks providing important infrastructure, though it has not been used for some time.

3.1.13. To the south west corner of the docks there is a 43m high community wind turbine and planning permission was granted in July 2015 at appeal by the Planning Inspectorate for a further 77m high turbine at an adjacent site.

3.1.14. ABP's corporate strategy envisages the long term retention of the Port with further development for port related trade.

3.1.15. For many people the docks are a closed and secure environment. It is only from the elevated vantage point of Kilvey Hill that the expanse of the docks can be appreciated. When the ferry terminal was in use, this was a prominent symbol of the docks from public vantage points to the west, but now the distinctive cranes with red jibs and blue super structures are markers for the docks on the skyline. Care will need to be taken to consider the mix of uses appropriate adjacent to the operating docks.

Swansea Bay Tidal Lagoon (SBTL)

3.1.16. The SBTL was granted development consent by the Secretary of State for Energy and Climate Change via the DCO process on 9th June 2015. SBTL will be the world's first man-made energy-generating lagoon, with a 320MW installed capacity and 14 hours of reliable generation every day sufficient to power over 155,000 homes for 120 years. It will form a six mile, U-shaped breakwater / seawall linked to the coastline at Swansea docks and near the Bay Campus (source: SBTL website).

3.1.17. Marine works are now anticipated to commence in Spring 2017 with the overall energy related elements of the project expected to be completed in 2021.



Land Adjacent to the Docks

3.1.18. To the east of SA1 further along Langdon Road there is land currently allocated in the UDP for B1, B2, and B8 employment uses. Most of this land has been developed and is occupied (by car dealerships, a builders merchant, and the driving test agency). On the opposite side of Langdon Road, adjacent to Fabian Way, there is a hotel and fast food outlet, while planning permission has recently been granted for a drive-through coffee shop. There are some development opportunities remaining on vacant brownfield plots.

3.1.19. At the end of Langdon Road is a small isolated community of terraced houses on Bevans Row.

3.1.20. Between these areas and the Bay Campus are large development opportunities comprising areas of derelict vacant land.

3.1.21. The development opportunities include former docks land which has been deemed surplus to requirements by ABP or where they have indicated they could relocate existing businesses to elsewhere in the docks. Part of the proposals are to draw back the operational dock perimeter, and infill the eastern end of the Queens Dock to enlarge the development area.

University Developments

3.1.22. **Swansea University's Bay Campus** is a £450 million development being delivered on a 65 acre former BP Transit site in Neath Port Talbot in the eastern part of the Corridor. The Campus masterplan includes academic, student accommodation (up to 4,000 bedrooms) and research space, the latter in the form of a series of agreements with international and national companies. While it will be a campus development, there will be open public access to some of the facilities and services.

3.1.23. Development work will continue up until 2020. However, the majority of the works have been completed during an initial phase of construction which opened for the first intake of students in September 2015, becoming home to the College of Engineering and School of Management.

3.1.24. The Campus Development Programme at Swansea University has been described as one of the top five knowledge economy projects in Europe and an 'exemplar to be replicated throughout Europe' by the Director General



of Regeneration of the European Commission (Source: Swansea University website).

3.1.25. 917 ensuite accommodation rooms were made available for students in September 2015. A further 545 en-suite rooms will be available by early 2016. The residential accommodation is supported by a nursery, extensive catering provision, and retail units to include a mini market, laundrette and cash points. It is in effect a compact and small town that will eventually cater for 5,100 students and 500 academics.

3.1.26. **UWTSD plans to create a vibrant Waterfront Innovation Quarter within the SA1 area.** It will be made up of purpose-built facilities for learning, teaching and applied research as well as social, leisure and recreation spaces. There will be 33,000m² of core UWTSD academic space with a further 100,000m² for complementary third party commercial and academic development. The development will form part of the city rather than a campus.



3.1.27. The core development will be focused on the southern peninsular of SA1 but there will also be a gateway building at the main Fabian Way entrance, sports facilities to the south east side of the Prince of Wales Dock, and continued occupation of the existing Technium Buildings. The University aims to occupy new buildings in SA1 during 2018. A new masterplan is being prepared for SA1 incorporating the UWTSD.

Tennant Canal

3.1.28. The adopted Development Plans protect the Tennant Canal, including a route for its restoration where it has been lost, albeit not the original route.

3.1.29. Whilst a specific route is identified, the essential requirement is to retain the opportunity for a link. In places, it may be possible therefore to vary the exact alignment of the reservation to facilitate the most effective layout of development in the vicinity.



Waste Water Treatment Works

3.1.30. The Swansea Bay Waste Water Treatment Works (WWTW) is located south of Fabian Way with vacant development sites bounding the site. It was built in 1998 and serves approximately 188,000 people. The operations of the current plant are underground and an air extraction and odour treatment system removes the odour. Nonetheless, a cordon sanitaire is required around the plant.

3.1.31. Dwr Cymru (DC) have indicated that no land outside of their current ownership is needed to accommodate future expansion of the plant.

3.1.32. On the western extreme of the land, planning permission, has been granted on appeal by the Planning Inspectorate for a single 79m high wind turbine. As at September 2015, this was yet to be developed, but its potential impacts must be taken into account in the masterplanning.



Waste Facilities

3.1.33. **Tir John Landfill site** is located to the east of Port Tennant and north of Fabian Way. It has been in operation since the 1960s. The landfill site has recently been leased and contracted to a private operator who will develop and manage the site until its eventual closure. The closure works are anticipated to be completed on or before 2024. Following this there will be a long period (at least 60 years) of aftercare before the Environmental Permit is returned to Natural Resources Wales.

3.1.34. To the north of the new Ffordd Amazon road, is the **Materials Recovery and Energy Centre (MREC)** a high tech waste treatment plant, opened in 2002. Its operations mechanically remove metals from waste for recycling and enable the composting or recycling of other waste. Some of the remaining waste generates energy for the facility, any surplus of which is exported to the National Grid. The facility is regulated by Natural Resources Wales, who also deal with the permitting of the facility. At present the incineration element is not operational, but the remainder of the facility is unaffected.

Burrows Rail Yard

3.1.35. Network Rail have indicated that parts of the rail sidings to the north of Fabian Way are surplus to requirements and could be released for development if the freight yard is re-organised.



Park and Ride

3.1.36. The Fabian Way Park & Ride site was opened in 2003. The site provides 550 car parking spaces and a bus every 15 minutes for travel into the City Centre via SA1.

3.1.37. Whilst the Park & Ride site experienced strong growth in the first five years of operation, there has been a gradual and consistent decline since 2008.

3.1.38. A persistent criticism of the Fabian Way facility is that it is located too close to the City Centre, such that by the time motorists come to pass the site, the benefit of changing to bus for the remainder of the

journey is diminished. New developments further out of the City on Fabian Way would also potentially benefit from a facility further east.

3.1.39. Already the development of the Fabian Way Corridor presents a potential shift in use for the existing facility as new developments with limited parking provision, such as the new University projects, begin to use it.



Playing Fields

3.1.40. Ashlands and Banfield playing fields are adjacent to each other. There is a fairly modern community centre which is well used by local groups and contains changing rooms for both sites. There is an area of woodland on the Banfield site which adjoins Kilvey Hill. Ashlands adjoins Crymlyn Bog Special Area of Conservation (SAC).

Gower Chemicals

3.1.41. Gower Chemicals is located north of Fabian Way and straddles the Local Authority border. It is partly accommodated in a former engine shed building of some historic character. The company purchased a lease of the site in 1990 and provide full-service chemical procurement management, including the supply, blending and packaging of chemicals, as well as related waste management and water treatment services. Parts of Gower Chemicals' operations are carried out on a separate nearby site to the south of Ffordd Amazon fronting Baldwins Crescent.



Elba Business Park

3.1.42 Elba Business Park comprises land to the north of Elba Crescent and accommodates a number of large industrial buildings and established businesses including the substantial Kings Dock building, as well as similar industrial / manufacturing / warehousing units of somewhat smaller scale. Ffordd Amazon runs alongside the Kings Dock building on the north side and past the rear of the Swansea Gate Business Park and Bay Studios.

Swansea Gate Business Park

3.1.43 Central to the employment area, and located to the east of the Elba Business Park is the former Linemar site, previously occupied by Ford and Visteon for the manufacture of car components. 30 acres of the site, consisting of factory and office buildings fronting Fabian Way, were acquired by RT Properties in 2007 for redevelopment as “Swansea Gate Business Park” and part of this area has subsequently become the Swansea Bay Studios.

Swansea Bay Studios

3.1.44. Originally opened in 2012, the Studios were constructed for the filming of the US drama *Da Vinci's Demons* and have been developed and expanded over the filming of three series to date (together with other projects), attracting investment to the area including funding from the Welsh Government. There are now three film studios within the complex and Bay Studios is acknowledged to be the biggest indoor film studios in Europe. The development is estimated to have provided some 200 additional jobs within the local economy as well as experience for arts students and graduates.



Amazon

3.1.45. Further east along Fabian Way is the Swansea Bay distribution centre of online retailer Amazon. Opened in 2008, the building covers almost a million square feet of floorspace and depending upon the time of year, provides employment for between 500 – 1,100 employees.



traffic movements by all modes. The promotion of sustainable transport is of particular importance if the sustainable growth of the Corridor is to be realised.

3.1.48. The Welsh Government commissioned the preparation of a comprehensive transport strategy for the Corridor in partnership with the two Councils, which was published in 2010. This Fabian Way Corridor TA has been formally adopted by both Councils and is therefore considered to be the governing transport policy for the area, sitting alongside and informing the statutory Transport Plans.

3.1.49. A series of problems are cited by the TA:

- Congestion near the Tawe Bridges
- Baldwins Bridge - poor junction arrangement, existing structure requires heavy maintenance

Transport Infrastructure

3.1.46. Fabian Way (A483) is the key eastern approach into Swansea from the M4 and Neath Port Talbot. It accommodates 32,000 vehicles per day making Fabian Way one of the busiest non-trunk roads in Wales.

3.1.47. Future development along the Fabian Way Corridor and within Swansea City Centre is expected to generate increased travel demand and as a consequence it is important that a balanced transport strategy is applied to ensure the preservation of expeditious

- Park & Ride too close to the City Centre
- Lack of eastern gateway to Swansea
- Negative local perception of transport
- Fabian Way forms a barrier between areas to the north and south
- Social exclusion
- Lack of continuous cycle facilities
- Lack of linkages between green areas
- Pollution from traffic

3.1.50. The TA sets out a series of objectives:

- To maintain or improve the duration, reliability and predictability of journey times on the Corridor for business, commuting and freight
- To reduce congestion and delay at the Tawe Bridges
- To actively promote ultra-low carbon alternatives to double the modal share for alternative modes
- To increase public transport capacity
- To define a clear gateway into Swansea
- To improve connectivity and accessibility between communities north and south of Fabian Way
- To protect, enhance and improve access to green space, particularly Crymlyn Bog and Crymlyn Burrows

- To minimise adverse impacts on air quality

3.1.51. The TA preferred strategy sets out a proposed programme of measures to address the problems above and deliver the objectives. A number of the programmed elements have been delivered since publication of the strategy, the most significant being the reconfiguration of the Tawe Bridges, which has delivered significant capacity improvements to local and strategic traffic movements.

3.1.52. The two Councils jointly commissioned a revision to the TA in 2014. The revision does not supersede the original 2010 TA, but seeks to update its conclusions in light of the development that has followed the original publication.

3.1.53. The revised programme places its greatest emphasis upon the promotion and delivery of sustainable transport measures. The Fabian Way Corridor presently caters very well for motor vehicles, but there is significant scope to improve the provisions for public transport, walking and cycling. The Bay Campus which opened in September 2015, has delivered a significant new population and traffic generator to the Corridor, and would greatly benefit from the sustainable transport means mentioned above. This need is further supported by the emerging new development by UWTSO.

5.2.18. A total of £4.5m worth of works have been undertaken on Fabian Way funded by developer contributions. The Bay Campus development Phase 1 secured £1.05m for improvements to the Fabian Way Corridor in addition to the above. Phase 2 when developed will provide an additional £1m payment.

3.1.54. Nonetheless highway movements are still recognised as being an essential mode to ensure the viability and growth of the Corridor.

Access to Social Infrastructure

3.1.55. There is a significant area of Accessible Natural Greenspace (ANGS) to the north, including Kilvey Hill, River Tawe Corridor, and Crymlyn Bog. These areas are accessible to the St Thomas and Port Tennant communities, but Fabian Way is a barrier to accessing these greenspace areas for communities to the south.

3.1.56. While the majority of the communities to the north of Fabian Way have access to play/leisure/sports facilities to the Fields in Trust (FIT) Standard (300m to access points), the vacant development sites to the east of the Queens Dock are deficient. The SBTL has the potential though to considerably improve the provision of public open space and access to leisure facilities.

3.1.57. The communities north of Fabian Way have established community

facilities. These areas are served by neighbourhood centres at St Thomas and Port Tennant. South of Fabian Way, there are community facility clusters in SA1 and the Bay Campus at either end of the Corridor but the intervening land has a lack of community facilities.

3.1.58. There are two primary schools, Danygraig and St Thomas, which have limited surplus capacity. The local Comprehensive School, Cefn Hengoed, is located outside the area. It has recently undergone major remodelling, and there is limited surplus capacity to take any increased pupil numbers, although the site is capable of expansion.

Broadband

The masterplan area including the Bay Campus is linked into the Swansea Telephone Exchange. This has superfast broadband enabled and has been supported by the Superfast Cymru programme.

3.2 Constraints

Flood Risk

3.2.1. A large area of the Corridor south of Fabian Way is affected by flood risk with a mix of Zone C2 and B as classified by Technical Advice Note (TAN) 15: Development and Flood Risk.

3.2.2. Some of the development sites are within the C2 Flood Zone (some only partially) which would preclude them from highly vulnerable development, such as residential use, in-line with National Guidance.

3.2.3. It will be necessary for flood risk to be considered strategically due to the inter-relatedness of the sites.

3.2.4. With development consent granted for the SBTL, its impact on flood risk and potential for its mitigation will be explored with WG and Natural Resources Wales.

Ground Conditions

3.2.5. Due to the area's industrial past, it will be necessary for any planning application on site to provide as a minimum a Phase 1 Desk Study and potentially a Phase 2 Preliminary Site Investigation.

3.2.6. It is essential that prospective developers contact the respective Local Authorities' Officers to discuss their proposals.

Dock Operations

3.2.7. Due to the narrow nature of the coastal strip and contrasts of uses in the area, there is potential for conflicts of use which will need to be mitigated both to prevent negative impacts on new developments and maintain the ability of established premises to operate.

3.2.8. The proximity of the docks to the vacant development areas will give rise to potential issues. The focus of aggregates handling and stockpiles; and location of the cement works at the north east of the Kings Dock give rise to unavoidable noise, dust and illumination from their operations. Most of these activities are believed to be 9-5 operations. Buffer uses that are not sensitive to these impacts will be required to separate these operations from vulnerable receptors.

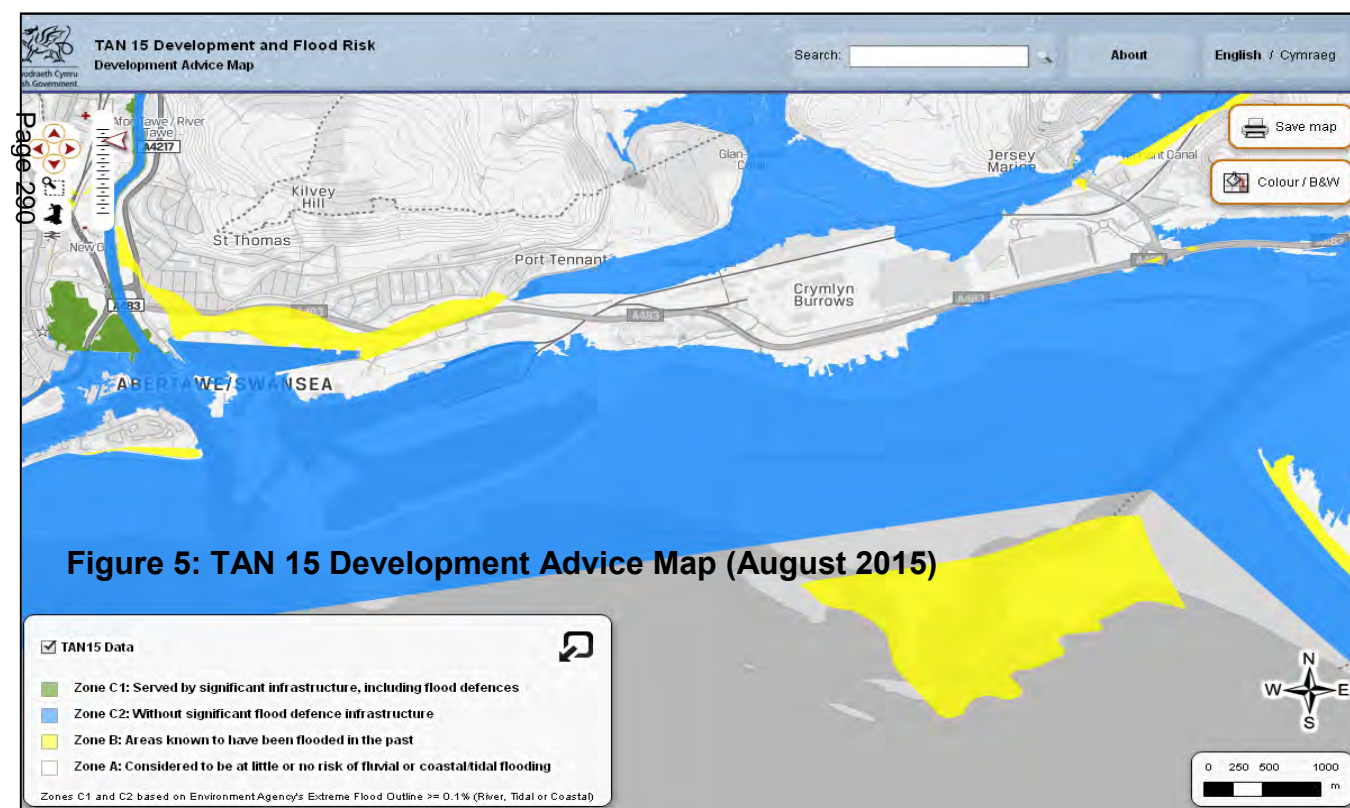
3.2.9. Although the docks railway is currently not used, it must be safe-guarded as essential infrastructure. Mitigation of the potential noise and air quality impacts from its future use will need to be incorporated into the design of adjacent developments.

Welsh Water Infrastructure

3.2.10. The Swansea Bay WWTW requires a 'cordon sanitaire' or buffer zone around it to ensure that residential uses and other development likely to be sensitive to odours are not in a location that can be affected. No official buffer distance is specified in guidance but this Framework has taken a 500m buffer from vulnerable receptors such as residential development as a starting point on the advice of Council Environmental Health Officers.

3.2.11. With regard to water and sewerage infrastructure, there are numerous public sewers (including the Swansea Bay WWTW outfall), water mains and associated infrastructure traversing this strategic site. Notably, there is a strategic tunnel sewer that approximately follows the line of Langdon Road via a pumped regime, having passed through the Langdon Road Sewage Pumping Station. In turn the pumping main approximately follows the southern boundary of the former AWCO Works site (Heywood land) before veering northwards and running adjacent to Fabian Way before entering Swansea Bay WWTW.

3.2.12. Whilst DCWW do not require any specific easement widths over the line of the tunnel sewer, they do require a 5m radius exclusion area around any chambers / shafts to allow for future access, and potential developers should



ensure the exact location of the tunnel sewer before undertaking any piling works in close proximity. Easement widths or diversions may also be required on the smaller diameter public sewers, water mains and associated infrastructure.

Wind Turbines

3.2.13. Technical Advice Note (TAN) 8: Renewable Energy (2005) suggests that 500m should be taken as a typical separation distance between a wind turbine and residential property to avoid unacceptable noise impacts and shadow flicker, although flexibility is advised.

3.2.14. Although the Corridor is an urban area, it cannot be assumed that existing background noise will mask the sound of a turbine. For example, background noise will be lower at night. For this Framework, a 500m buffer around turbines has been used as a starting point since there are too many unknown variables at this stage to propose a smaller buffer. If following detailed assessment, development proposals can prove that impacts can be satisfactorily mitigated, consideration may be given to a smaller buffer.

3.2.15. The turbine proposed at the WWTW is of most significance since it affects the adjacent vacant development sites. The buffer around those on the ABP land does not extend outside the docks.

Air Quality and Noise Impacts

3.2.16. Fabian Way is one of the busiest non-trunk roads in Wales. Frontage facades onto the dual carriageway will need sound proofing. Two Noise Action Planning Areas (NAPPA) areas have been designated on Fabian Way, one close to Bevans Row and the other adjacent to the main junction with SA1. NAPPAs are areas identified as experiencing high levels of noise.

3.2.17. Noise-sensitive new developments (e.g. residential) in these locations should be designed so as to reduce noise impact. Noise mitigation measures for the new development would include noise insulation (e.g. double glazing and appropriate internal building design). Other measures to reduce the noise impact could include tree and shrub planting to create noise barriers. Funds may be required through developer contributions for noise mitigation measures.

3.2.18. Any proposals that would add noise in these locations would need to make an

assessment of environmental noise and demonstrate that mitigation can be achieved, especially night time noise. Post completion testing and monitoring will be required.

3.2.19. New exceedences of air quality target levels have been identified at locations along Fabian Way (the SA1 Junction with Port Tennant Road; Delhi Street; and the Vale of Neath Road). Levels will continue to be carefully monitored.

Tidal Lagoon Construction

3.2.21. A number of the vacant development sites may be needed in the short term to accommodate the construction facilities and operations. The overall energy related elements of the project are expected to be completed in 2021. Upon completion, the temporary sites will be available for development (post 2021).

3.2.22. Given that the access road will not be available for public use until completion of works, it is not expected that any other development will come forward in this area during this time due to the potential conflict with the extensive construction operations and access restrictions.

Transport and Access

3.2.23. The Fabian Way Corridor TA sets out a programme of measures which will be required over the coming years to mitigate for the growth anticipated on the Corridor.

3.2.24. Baldwins Bridge is considered to be a particularly significant impediment to development opportunities that are serviced by it due to the poor lane merges.

Hazardous Installation

Consultation (HIC) Zones

3.2.25. There are some areas within which the Health and Safety Executive will need to be consulted on certain types of development proposals, as shown on the Development Plan Proposals Map.

3.2.26. The former liquid gas storage sphere located to the east of Kings Dock has an extant HIC Zone. Until this land is returned to ABP under the terms of its lease in 2016, the Zone is likely to remain despite the hazard no longer existing.

3.2.27. Gower Chemicals also has a HIC Zone.

3.2.28. Detailed information should be sought from the HSE direct. The majority of the area is located outside the HIC zones.

Ecology

3.2.29. The Fabian Way Corridor is surrounded by areas of ecological and landscape importance which will need to be fully taken into account in all proposals.

3.2.30. Immediately to the north east of the masterplan area is **Crymlyn Bog/Pant y Sais Fen**. Crymlyn Bog is the most extensive lowland fen in Wales. It is located to the north of Fabian Way in a large depression gouged during the last ice-age. A smaller wetland site near the village of Jersey Marine, Pant y Sais Fen, shares many similarities and forms part of the same wetland system. Crymlyn Bog/Pant y Sais Fen is protected under the following designations:

- Ramsar Site (wetland of international importance) (designated under the Ramsar Convention)
- Special Area of Conservation (SAC) (designated under the EU Habitats Directive)
- Site of Special Scientific Interest (SSSI) (designated under the Wildlife and Countryside Act 1981)
- National and Local Nature Reserves

3.2.31. The Habitats Regulations (HR) require a Habitats Regulations Assessment

(HRA) to be undertaken on any proposed development that could affect such European Protected Sites. (For example, any proposals to alter the water level within the docks will need to be carefully assessed via HRA as there is a hydrological link between Crymlyn Bog SAC, the Docks and the Tennant Canal).

3.2.32. **Crymlyn Burrows** dunes and foreshore immediately to the east of the Bay Campus are designated as a SSSI, protected under the terms of the Wildlife and Countryside Act.

3.2.33. It is a salt marsh and carr woodland ecosystem containing sand dunes and tidal mud flats. It supports a diverse range of coastal species, providing habitat for specially adapted, often rare, flora and fauna such as the Fen Orchid and Dune Tiger Beetle. In addition, Crymlyn Burrows SSSI provides valuable sanctuary for resident and migratory waterfowl such as the Eurasian Curlew. The site was acquired by St Modwen from BP in November 2009 and, due to its designated status, will remain as a protected leisure destination, with publicly accessible paths giving access.

3.2.34. **Sites of Importance for Nature and Conservation (SINCs)** have been identified to the north of Burrows Yard and south of the Queen’s Dock sea wall, while

other areas and sites are likely to meet the criteria for SINC designation. In addition, there are known to be habitats and priority species of principal importance for the conservation of biological diversity in Wales under the Natural Environment and Rural Communities Act (2006). Surveys will be required of the vacant development land to accompany planning applications.



Land Ownership

3.2.35. As the plan illustrates, the land along the Corridor is in multiple and mostly private ownership with the exception of some development sites at the eastern end in NPT; and the Park and Ride sites.

Figure 6: Land Ownership Plan

Plan to be completed

DRAFT

3.3 History of the Area

Docks

3.3.1. Map regression quickly demonstrates how significantly the masterplan area has changed in a relatively short period of time.

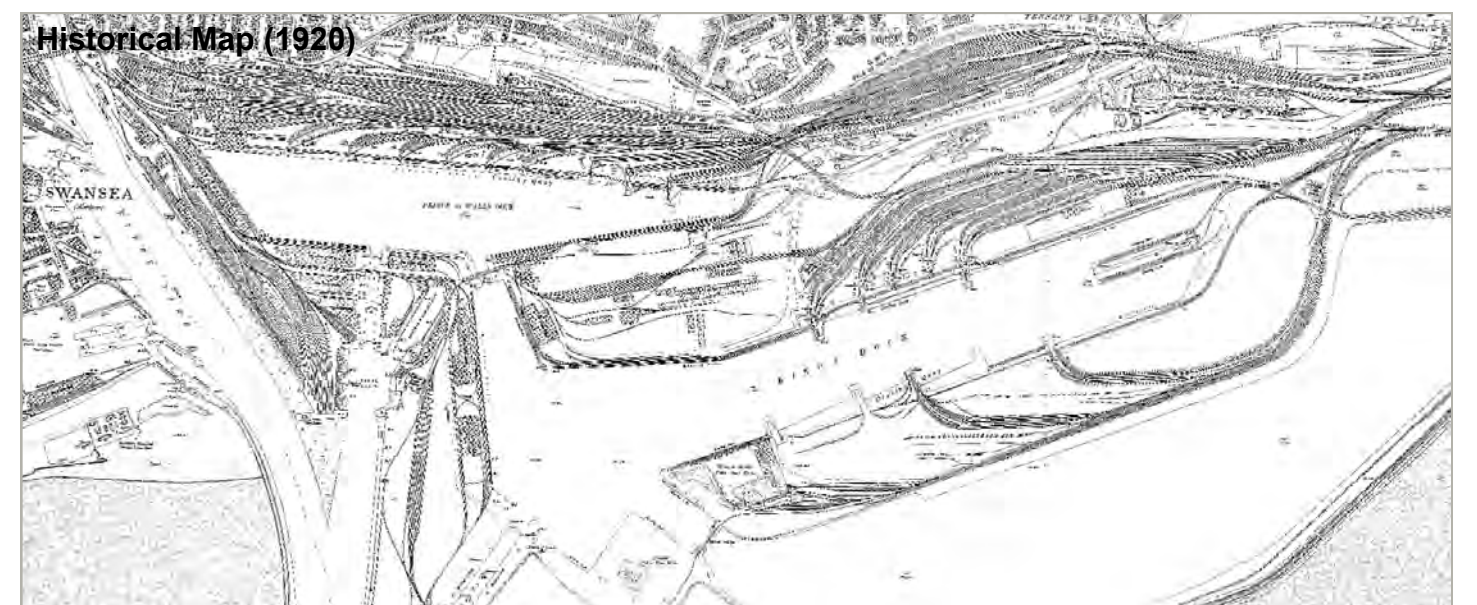
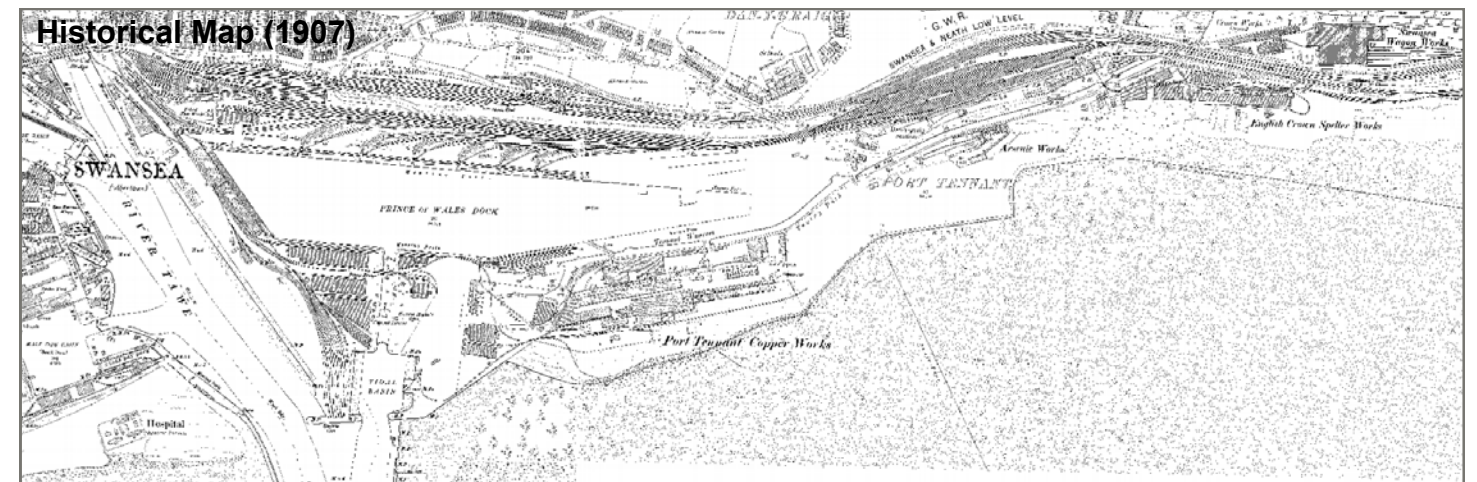
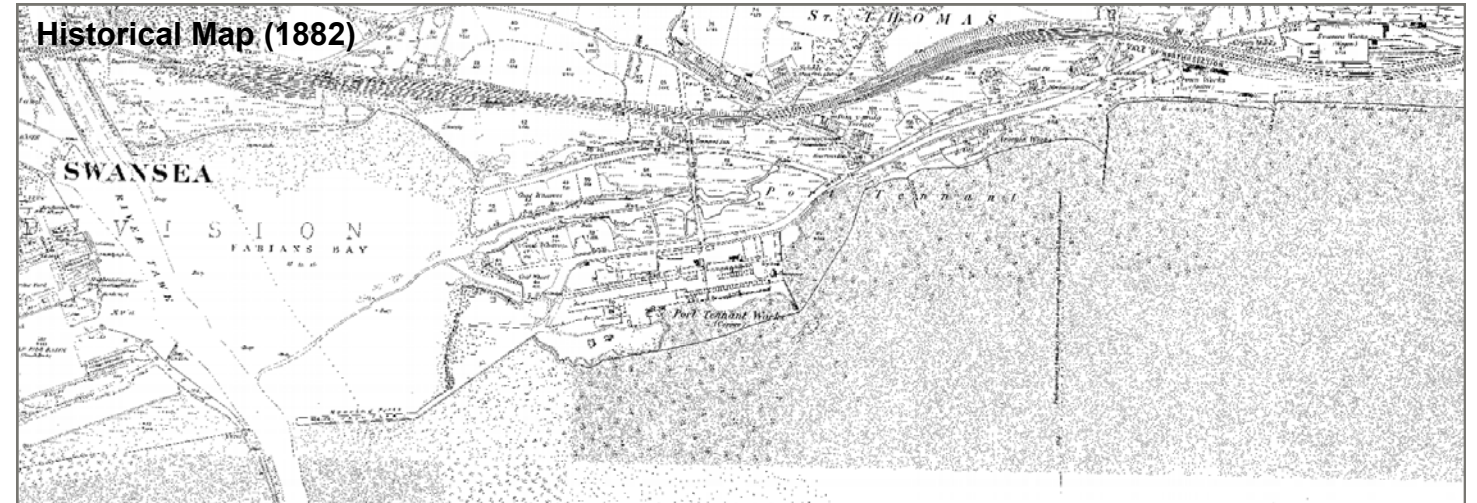
3.3.2. The Prince of Wales Dock was reclaimed from Fabians Bay in 1881 and was extended to the east in 1898. Further dock expansion occurred in 1909 with the construction of Kings Dock followed by a long breakwater (also built in 1909) that enclosed the area that became Queens Dock. This latter area became the petrochemical dock following the opening of the Llandarcy Refinery in 1919. It is interesting to note that the eastern end of Queens Dock used to stretch up to the modern boundary of the WWTW and was infilled during the interwar period to provide extra space for refinery storage tanks.

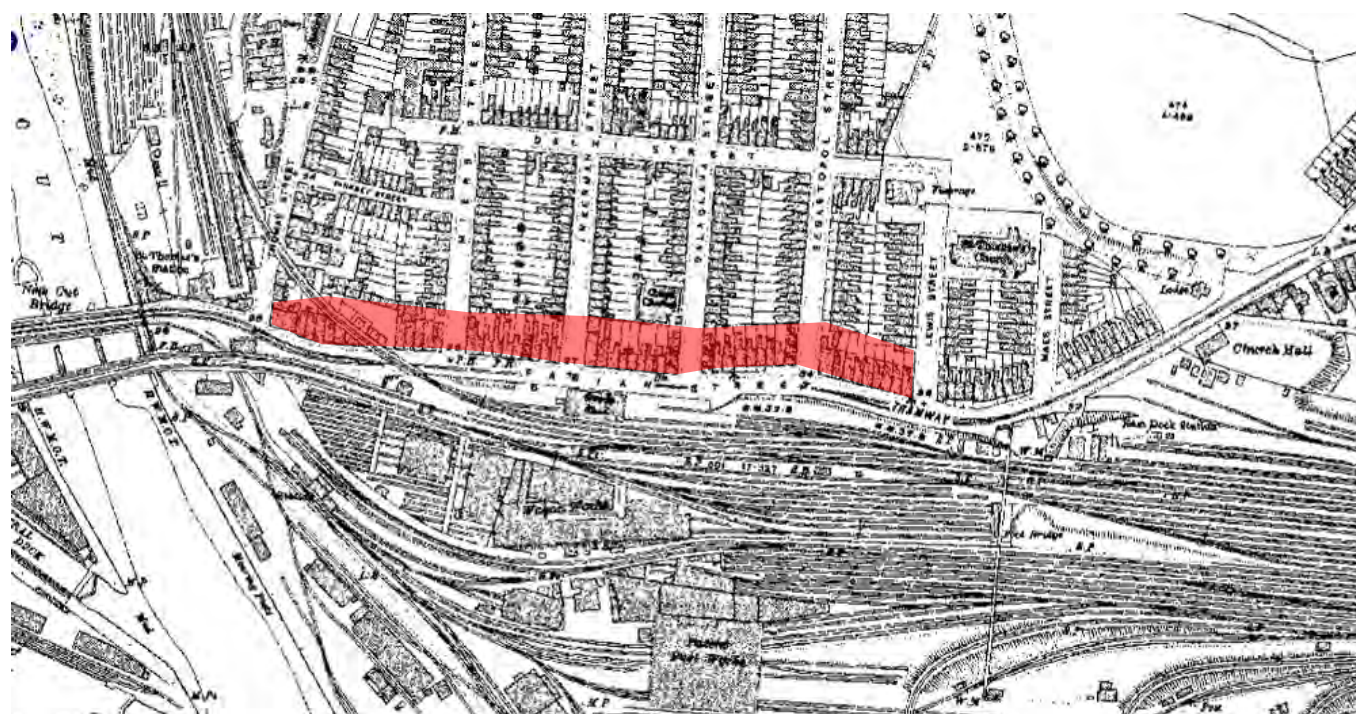
3.3.3. The prime use of the docks was for the export of bulk materials such as coal. Therefore there were relatively few warehouse buildings but a very significant area was given over to a network of rail sidings, primarily to serve the coal quays. The area also accommodated a number of works that required access to the docks for processing of export materials such as

Graigola Merthyr Patent Fuel Company .

3.3.4. The docks were at their busiest in the 1950s. However with changes to global energy the exports reduced and from the late 1990s Prince of Wales Dock has seen a shift in focus with the mixed use SA1 development.

3.3.5. Queens Dock became largely redundant with the closure of the Llandarcy refinery in 1998. Much of the land to the east was used for storing petrochemicals and this land is now being reclaimed. The Queens Dock is still used to access the dry dock in the west but is mainly a mussel farm. Kings Dock though remains in intensive use.





Dock Communities

3.3.6. To the north of the docks, the St Thomas/ Port Tennant area was predominantly home to dock workers and their families. There was a long footbridge spanning 20 rail lines from the community into the docks (known as the 'Monkey Bridge'). The area benefited from shops, schools and places of worship, many of which still remain.

3.3.7. Much of the St Thomas area fronted onto what was then called 'Fabian Street' with shops and houses which looked onto the dock boundary. This 'active frontage' (highlighted in red above) was cleared to make way for the widened Fabian Way.

Tennant Canal

3.3.8. The Tennant Canal pre-dated the docks, opening in 1824 to bring materials from the Neath Valley down to the tidal Fabians Bay. It later had wharfage and a connection to both Prince of Wales Dock and Kings Dock. It fell out of use in the 1920s with the growth of the rail network.

(This historical information has been summarised from the website dedicated to the Swansea and Port Talbot Docks (www.swanseadocks.co.uk))

Remaining Evidence of the Past

3.3.9. Whilst the docks are still recognisable today on plan by virtue of the large bodies of water, virtually all the historic dock structures have vanished.

3.3.10. However pieces of the past remain and help provide a sense of place:

- The former dock housing at St Thomas / Port Tennant. These rise up the lower slopes of Kilvey Hill with streets providing vistas over the docks.
- The western end of the Tennant Canal is covered by Fabian Way, but the route remains intact to the east of the former Neath Arms Pub.
- Although the terminus of the Tennant Canal is long vanished, the name lives on as 'Port Tennant'.
- The dock walls constructed of massive pennant stone blocks remain largely unchanged and the projections relate to the former coal hoists.
- Bevans Row deserves special mention because it once fronted onto the Canal to the north and was within 70m of the highwater mark of Fabians Bay. The adjacent modern footbridge is on the alignment of the historic road bridge over the canal.
- More recent history is highlighted by the WWII pill boxes along the breakwater that encloses Queens Dock.
- Many of the wharfs within the docks are still known by the names of the long vanished works such as Graigola Wharf which was the site of Graigola Merthyr Patent Fuel Company.
- Listed buildings such as the Ice House and J Shed recognise the architecture of national importance.
- There are other un-listed buildings of interest (e.g. the Norwegian Church in SA1 and D-Shed within the docks).





View looking north with the Queens Dock sea wall to the left and start of the petro-chemical tanks to the centre. This area is now the core of the development framework.

The Eastern Approach Corridor

3.3.9. While the growth and decline of Swansea Docks has had a pivotal role in the development and formation of the character of the area, changes in transport infrastructure have left their mark on what is now the Fabian Way corridor east of the docks area.

3.3.10. Until the mid/late 19th Century the eastern approach corridor was a largely uninhabited area of coastal sand dunes and marshland.

3.3.11. The advent of the railways opened up the area's potential for development, most notably the foundation of a planned seaside resort adjacent to a new station at what is now Jersey Marine. The

development did not progress further than the construction of a hotel complex on the margins of the dunes including a castellated four storey octagonal tower built in 1867 from brickwork to house a camera obscurera, which still exists as part of a modern hotel complex.

3.3.12. Fabian Way was constructed around 1950 and originally linked to the A48 Briton Ferry Bridge crossing over the River Neath providing a new eastern coastal approach to Swansea. New industrial uses located along the northern side of this new dual carriageway including aluminium works and the Ford plant (built in 1965, which later became the Visteon car parts factory, before closing in 2010). This area has since partially regenerated



Fabian Way, or Jersey Marine Road, now A483, was constructed between May 1946 and September 1950. Amazon now lies to the right of the dual carriageway and the bay area was reclaimed for petro-chemical tanks, now the Swansea University Bay Campus.

with the Amazon distribution depot and Swansea Bay Studios. Some parts of the Ford plant still stand, such as the former offices facing Fabian Way.

3.3.13. The area's character has been shaped by its relatively short history as a road link (unlike other approaches such as Carmarthen Road which dates from Medieval times). This means it has a relatively open modern context with planted frontages and few distinctive features of note.



3.4 Economic Opportunities

3.4.1. The unique combination of proximity to Swansea City Centre, and the presence of the Bay Campus, UWTSD at SA1, Swansea Bay Studios and the SBTL make this a regionally significant economic development opportunity.

3.4.2. Whilst the sites are in multiple private ownership, the area offers a prime opportunity for research and development linked to the two universities as well as businesses that could spin off from the Tidal Lagoon. This area will complement the regeneration of Swansea City Centre and the regeneration of Neath and Port Talbot Town Centres. Plus it will also provide a different role to the main publically owned economic development sites at Felindre, Harbourside and the Baglan Energy Park.

- Felindre offers serviced sites for B1 and B2 uses. It is located off Junction 46 of the M4 and adjacent land is being considered alongside a candidate site for a new urban village with potential long-term capacity for over 2,000 homes.
- Port Talbot Harbourside: the site is currently being developed for mixed-use, including 7ha of employment land, some of which has already been developed for R&D. The site is strategically located, with direct access off the Harbour Way

Peripheral Distributor Road (PDR) providing excellent links to the M4 .

- Baglan Energy Park: the site offers 75ha of developable land, of which a large proportion is anticipated to be developed for non B uses, such as the energy sector. The regeneration of Baglan Bay is a long-term development proposal of strategic regional importance, benefiting from excellent transport links.

3.4.3. The Joint Economic Assessment and Employment Land Provision Study by Peter Brett Associates (2012) identified an anticipated increase in the number of jobs for CCS and NPT together with an employment land requirement. Whilst this study pre-dates the announcement of UWTSD at SA1 and the SBTL it did highlight the potential for an 'Innovation Zone' in the area (paragraph 2.3.16).

3.4.4. The concentration of spin off R&D uses along the Fabian Way Corridor will focus on taking ideas from concept to commercialisation, creating facilities that align with the image of the Innovation Corridor. This will complement rather than compete against the regionally significant sites at Baglan Bay, Felindre and Harbourside that seek to attract R&D uses that require larger manufacturing units (e.g. TWI's Research and Development unit which has recently located at Harbourside, Port Talbot).

3.4.5. The unique potential for the Bay Campus to trigger spin off activity in the area, specifically linking research and development activity with engineering and manufacturing was recognised as follows:

.....Within Swansea and Neath Port Talbot there are a number of specialist firms, along with the Universities, which are working on design and process (manufacturing) activities in low carbon technologies. To assist this, a flagship business park site that is strategically well located with flexible space for new and expanding firms, will help attract new investment. The location for Swansea University's second campus on Fabian Way would be a suitable example. An action to deliver green jobs is a green infrastructure project between Swansea and Neath Port Talbot. This would require collaboration between the two local authorities to facilitate green travel along the connecting strategic road corridors like Fabian Way, improving cycle lanes, promoting healthy lifestyles among the local population and workers, etc. Local businesses engaged in landscaping, architectural and environmental sectors could potentially benefit from such training and infrastructure projects. (paragraph 8.3.37, Joint Economic Assessment and Employment Land Provision Study 2012)

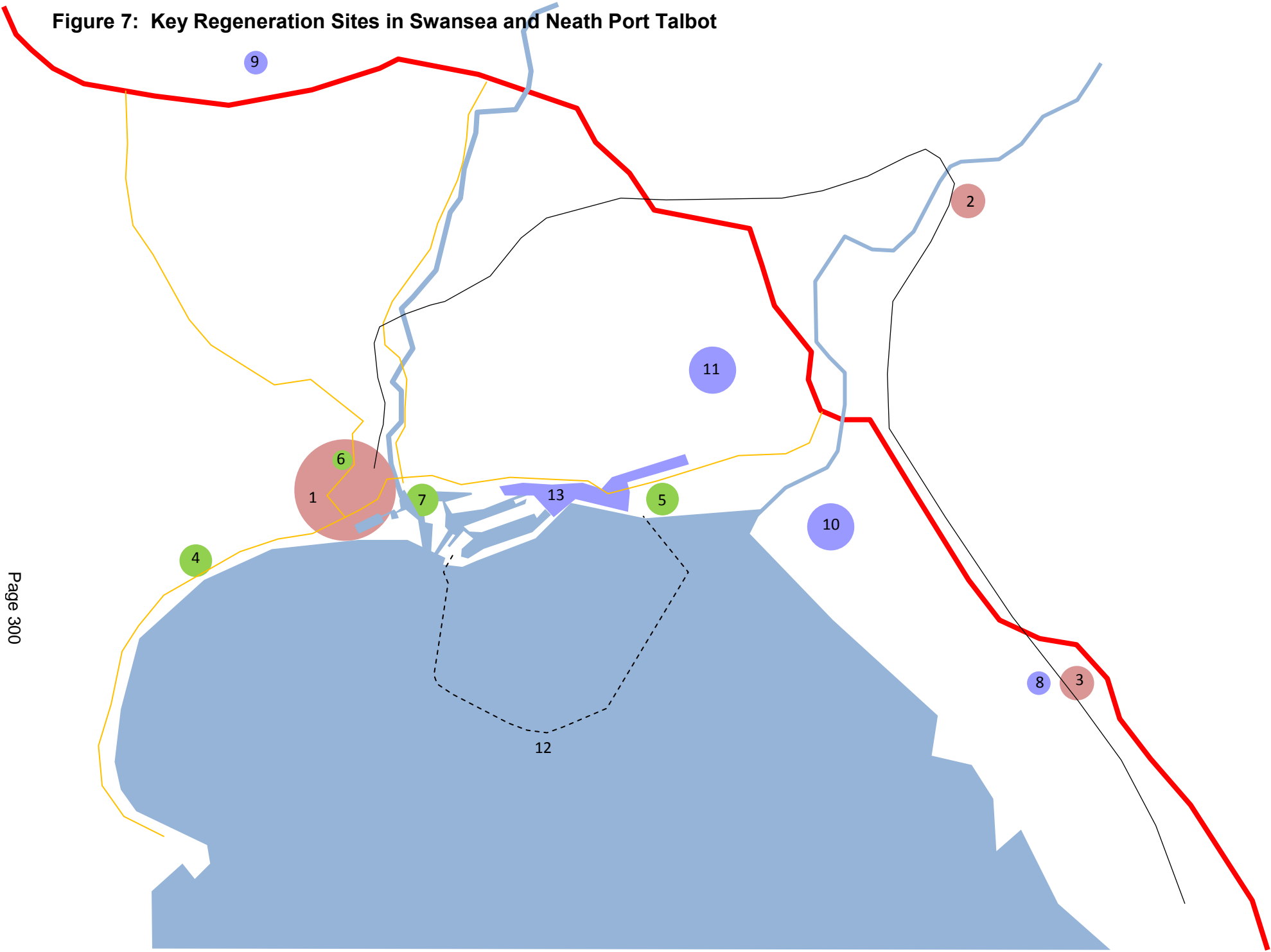
3.4.6. It identifies that the land around the Port should *because of its potential linkages with the Swansea second campus... be kept under review ... to support the potential for business spin outs from the campus. (paragraph 8.3.7)*

3.4.7. The City Region ERS also pre-dates the UWTSD at SA1 and the SBTL. It highlights the need to maximise the long-term economic impact of the new Bay Campus and this is a flagship initiative which offers the potential to support the transition of the City Region to an important knowledge based and innovation-driven economy. The new campus should be developed as part of a broader research and innovation strategy for the City Region based on the European Union guidance on 'smart specialism'.

3.4.8. The strategy also highlights the need to develop a long term strategic approach to nurturing new business. Innovation Centres should be located in Swansea City Centre to help drive the regeneration (such as the potential Tech Hub on Kingsway) but larger format business that are not suited to a high density urban location could be accommodated in the Fabian Way area as 'super sheds' with active frontages onto public realm areas.

3.4.9. The ERS sets out an aim of 'distinctive places and competitive infrastructure'. The Fabian Way Corridor offers a distinctive location overlooking Swansea Bay highly accessible by vehicle and sustainable travel modes. This differentiates the area from other economic opportunities.

Figure 7: Key Regeneration Sites in Swansea and Neath Port Talbot



- Key:
- 1. Swansea City Centre—focus of regional regeneration activities
 - 2. Neath Town Centre—regeneration focus
 - 3. Port Talbot Town Centre—regeneration focus
 - 4. Swansea University, Singleton Campus
 - 5. Swansea University, Bay Campus
 - 6. UWTSD, Mount Pleasant Campus
 - 7. UWTSD @ SA1
 - 8. Harbour side regeneration area
 - 9. Felindre Business Park
 - 10. Baglan Energy Park
 - 11. Coed Darcy—strategic mixed use development
 - 12. Swansea Tidal Lagoon
 - 13. Approximate extent of the Fabian Way Innovation area

3.5 Urban Design Assessment

3.5.1. The masterplan area is a significant tranche in need of co-ordination.

Visual Appraisal

3.5.2. Fabian Way is a modern approach into Swansea from the M4 motorway, it is primarily a post war environment. At present the area is mainly experienced at 30-40mph from the dual carriageway. This is defined by green edges, industrial buildings and glimpsed longer views to Kilvey Hill and from elevated points over Swansea Bay to Mumbles. Whilst the character becomes more urban closer to Swansea with the SA1 development, the Victorian frontage of St Thomas has been lost to post-war highway widening. Finally the sense of arrival in Swansea is defined by the bulk of Mount Pleasant rising up and the process of crossing the River Tawe. There is currently no outer gateway to the area.

3.5.3. Whilst the planted edges to the Corridor do a fair job of hiding unsightly development, the challenge as a step change is to design quality buildings that add to the sense of character and activity and do not require screening. The character of this outer approach is changing with the new Bay Campus which presents quality buildings of urban scale and the challenge is to link this urban approach back to Swansea.

3.5.4. At the eastern end of the masterplan area, the Jersey Marine Tower is an eye catcher. This predates Fabian Way by around 100 years and still manages to stand out alongside the horizontal mass of the Amazon Building.



3.5.5. From within the masterplan area, the scale of the sites becomes apparent. Most are devoid of features, but the context and sense of place can be grasped from views out to Swansea Bay and more locally to remaining dock features such as the 10m tall mobile cranes.

3.5.6. The 79m single wind turbine allowed at appeal on the Welsh Water land will become a prominent feature on the approach into Swansea if constructed.

Built Form

3.5.7. Historically the area was dominated by rail lines associated with the export of bulk materials. Therefore there are not many built precedents to draw in. However remaining examples such as J Shed and the Ice House in SA1 (both listed buildings) and D-Shed in the docks all display a strong character of red brickwork, punched openings and division into elements of a human scale. This offers the opportunity to reinforce the maritime/ industrial references through new development.

3.5.8. The modern Fabian Way Corridor has a complete variety of buildings from large-scale 'sheds' (such as Amazon) to 8 storey student accommodation. Because this is a new route through what was an industrial area, there is very little 'heritage' to the buildings. There is clearly an opportunity for bold contemporary buildings to redefine the character of this key approach into Swansea. This active frontage approach along Fabian Way is already in place with the Bay Campus and the SA1 area. Emphasis should be on further active frontages, not landscaped frontages. Whilst

this is a step change from many recent road schemes in Wales, it is fully compliant with MfS.

3.5.9. Unfortunately Swansea has a number of rendered buildings from the early 2000's boom that have weathered poorly. This has already been taken into account in recent developments at the eastern end of the Prince of Wales Dock that instead have a predominantly brick finish with a contemporary character. Not only will these buildings weather well, they also reference the industrial/ maritime heritage through the materials.

3.5.10. The challenge in this area will be to accommodate a range of uses and a range of building types all with active frontages, a human scale and a relationship to the place.

Movement

3.5.11. Although Fabian Way is one of the busiest non trunk roads in Wales connecting Swansea to the M4 motorway, this does not mean that it should not also be a 'place'. Whilst the Bay Campus is a statement of quality, much of the Corridor presents a poor quality appearance that detracts from this key approach to Swansea. This need not be the case and MfS 2 indicates that the place making approach can be applied to roads of all types.

It is clear that most Manual for Streets advice can be applied to a highway regardless of speed limit.

Speed Limit	30mph	40mph	50+mph
User Hierarchy	■	■	■
Team Working	■	■	■
Community Function	■	■	■
Inclusive Design	■	■	■
Pod/Cycle Support	■	■	■
Master Plans/Design Codes	■	■	■
Stopping Sight Distance	■	■	■
Frontage Access	■	■	■
Minimise Signs and Street Furniture	■	■	■
Quality Assets	■	■	■
Connectivity/Permeability	■	■	■

Note: ■ yes ■ subject to local context

3.5.12. Therefore the vacant and underused land along Fabian Way presents a tremendous opportunity to redefine this key approach into Swansea by linking the Bay Campus back to the City.

3.5.13. The vacant land offers the opportunity to create a new place based on a linking spine street that caters for all types of movement and is not solely for vehicles.

3.5.14. Despite the regeneration of the SA1 area, Fabian Way continues to separate the new community around Prince of Wales Dock from the established communities of St Thomas and Port Tennant. The busy roads to the south and east of the St Thomas area, coupled with the high ground to the north and wet land area to the east means that this significant established community of approximately 6,500 people feels detached from Swansea City Centre. This has been described by community representatives as an 'island feeling'. Whilst the eastern part of the St Thomas area is within a reasonable 800m walking distance of the City Centre, the actual and perceived barriers (which include the busy roads, pedestrian crossings that are not on desire lines, crossing the River Tawe, and the lack of active frontages in the Parc Tawe area) mean that many St Thomas residents choose to drive into the City Centre. This severance has not been tackled by the flagship SA1 regeneration project and this emerging masterplanning exercise for the Fabian Way Corridor must tackle this issue to ensure connectivity in all directions, not just east-west.

3.5.15. The Fabian Way road corridor itself has a functional character that is dominated by highways signage and a discordant mixture of street furniture/ street lights. In fact this key approach has no less than eight different types of street lighting (varied columns and lanterns). Clearly there is a need to rationalise street furniture and to work to a co-ordinated pallet in accordance with the place emphasis set out in MfS. There is also an opportunity to celebrate this route as an approach into the City by, for example, banners on street lights and possibly a gateway public art feature.

3.5.16. The access road to the Tidal Lagoon will be built to adoptable standards and will be utilised for access to the plots to either side. Much of this route will become the link between SA1 and the Bay Campus, so in accordance with MfS this 'access road' should be conceived as a 'spine street' in terms of the place function lined with active frontages. This is essential to support sustainable travel modes (walking, cycling and public transport) rather than a car dependant non place. This will require large format uses to adapt their standard approach to create street frontage with yards and parking behind.

3.5.17. Given that Ffordd Amazon provides the most direct link for the 4000 homes being constructed at Coed Darcy to Swansea City Centre, there is scope to apply the spine street approach to this corridor too to encourage walking and cycling.

3.5.18. The Framework will herald a co-ordinated place making approach to the former dock wasteland. There needs to be a move away from development based on a landscape structure to screen developments to an urban public realm framework that is activated by well designed building frontages. Emphasis will be on activity not screening. This is a definite shift from the previous land use 'zoning' based planning approach which has resulted in non-places that discourage sustainable travel.

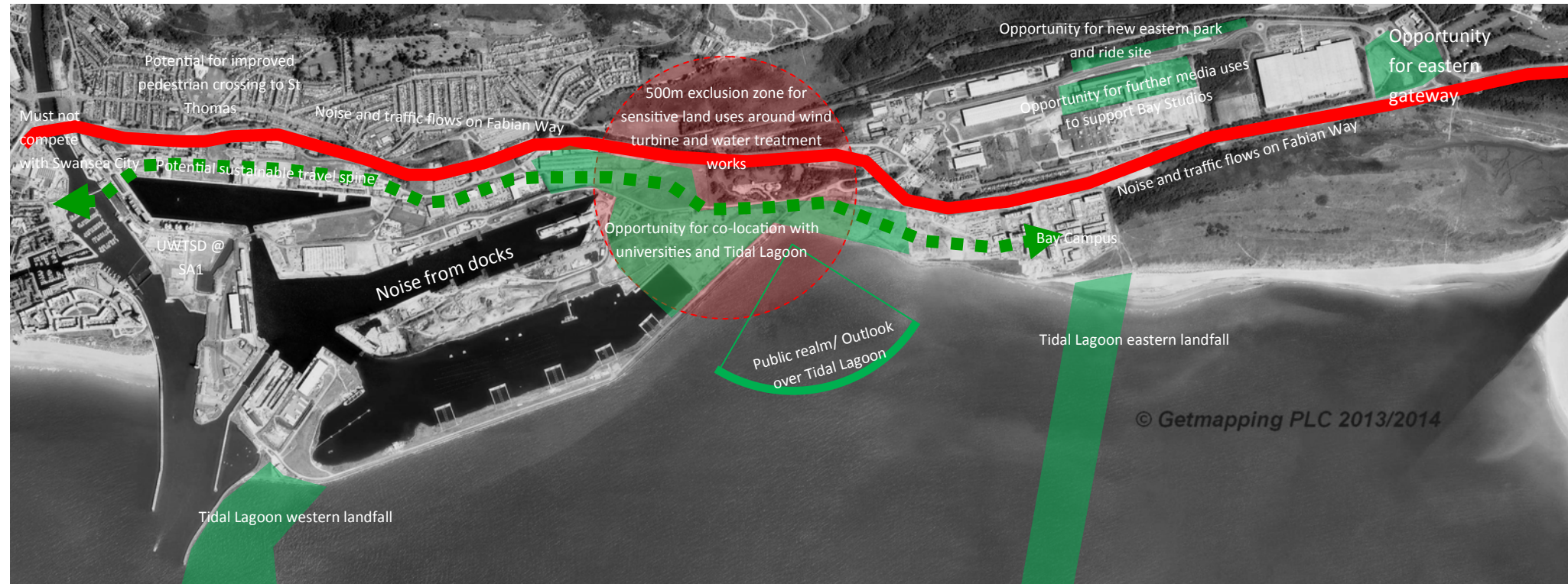


Figure 8: Summary of Constraints and Opportunities

3.6 Summary of Opportunities

3.7.1. The **opportunities** outlined in the analysis section can be summarised as follows:

- Triangle of opportunity created by the Swansea University Bay Campus, UWTSD SA1 development and SBTL
- Opportunity to link the Bay Campus to Swansea City using sustainable travel modes without using Fabian Way
- Opportunity to open up land between the Bay Campus and UWTSD for innovation uses that do not compete with Swansea City Centre or other regional priorities
- Opportunity to redefine the key approach into Swansea City Centre along Fabian Way and to create an outer gateway at Jersey Marine
- Opportunity to capitalise on the new public realm and outlook created by the Tidal Lagoon
- Opportunity to co-ordinate development to accommodate growth in a sustainable location
- Opportunity to accommodate R&D activities linked to the Universities and manufacturing businesses linked to the Tidal Lagoon construction and maintenance
- Opportunity to fund new crossings on Fabian Way to break down the north/south barriers to pedestrians
- Opportunity to promote the reinstatement of the Tennant Canal

3.7 Summary of Constraints

3.8.1. The **constraints** identified in the analysis section can be summarised as follows:

- Flood risk
- Potential exclusion zone for residential use around the wind turbine allowed at appeal within the WWTW
- Potential ground contamination
- Potential odour problems around the WWTW
- Other potential 'bad neighbour' uses e.g. the operating docks / waste facilities / Gower Chemicals
- Noise and potential air quality issues along Fabian Way
- Ecological considerations
- Poor pedestrian connections across Fabian Way
- Vehicle access restrictions on Fabian Way
- Baldwins Bridge junction
- Construction phase of Tidal Lagoon (2016-2021)
- Development sites in multiple private ownership

4 Vision and Objectives

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4.1 Vision

4.1.1. The Fabian Way Corridor has a unique combination of two universities, the UK's first Tidal Lagoon and is a key gateway approach into Swansea.



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4.2 Objectives

4.2.1. This strategic regeneration masterplan framework will co-ordinate the sustainable development of sites in multiple ownership along the Fabian Way Corridor. Its objectives are to:

- Provide employment opportunities and economic benefits for the City Region and complement other City Region regeneration priorities including Swansea City Centre
- Facilitate the future expansion of both Universities and enable the enhancement of their educational, economic and community functions
- Capture the associated socio-economic benefits from third party R&D and high technology businesses seeking to cluster close to the Universities and SBTL
- Facilitate the provision of sustainable residential accommodation in appropriate locations supported by the necessary infrastructure
- Guide development through a place making approach, promote high quality design and public realm building upon the environmental improvements already delivered at SA1, the Bay Campus and expected from the SBTL
- Enhance the City Region's eastern gateway to Swansea
- Identify priority actions that will bring about long term improvement to connectivity by sustainable travel modes to the wider City Region in-line with the Fabian Way Corridor Transport Assessment (TA)
- Support the development of infrastructure necessary to make the area competitive and sustainable
- Better integrate communities north / south of Fabian Way
- Strategically co-ordinate development of sites in multiple private ownership to overcome site constraints, avoid inappropriate ad hoc development that could hinder regeneration, and minimise conflicts between different land uses

4.3 Precedents

4.3.1. The regeneration of this Strategic Site can draw on the existing masterplans for the SA1 and Bay Campus areas. These are robust frameworks for the delivery of successful places. However given the step change needed in place making for non residential uses and the unique ‘triangle of opportunity’ there is no single perfect precedent. The images to the right have been selected for the following reasons:

1. The treatment of the Gilchrist Thomas industrial site in Blaenavon is considered a good example of how to develop modern employment buildings with active street frontages and yard areas concealed behind
 2. The SA1 development to date demonstrates how mixed uses can be developed to create active and attractive street frontages
 3. The Innovation Centre building at the Bristol and Bath Science Park is a good example of high quality contemporary employment development that provides a strong frontage with an entrance on the street corner
 4. The recently built TWI building at Harbourside, Port Talbot, gives an indication of the type of architecturally designed R&D developments that could be accommodated as street frontage buildings
 5. The McLaren Technology Centre gives an example of research buildings of the highest international quality with a water setting
 6. The ESRI building at the Bay Campus is a good example of a contemporary research building using traditional and modern materials
- 7a/b. Finally, the National Composites Centre building at the Bristol and Bath Science Park is a good example of a frontage office building which provides active street frontage that conceals a ‘super shed’ behind.





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5.1

Masterplan Framework

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5.1 Introducing the Masterplan

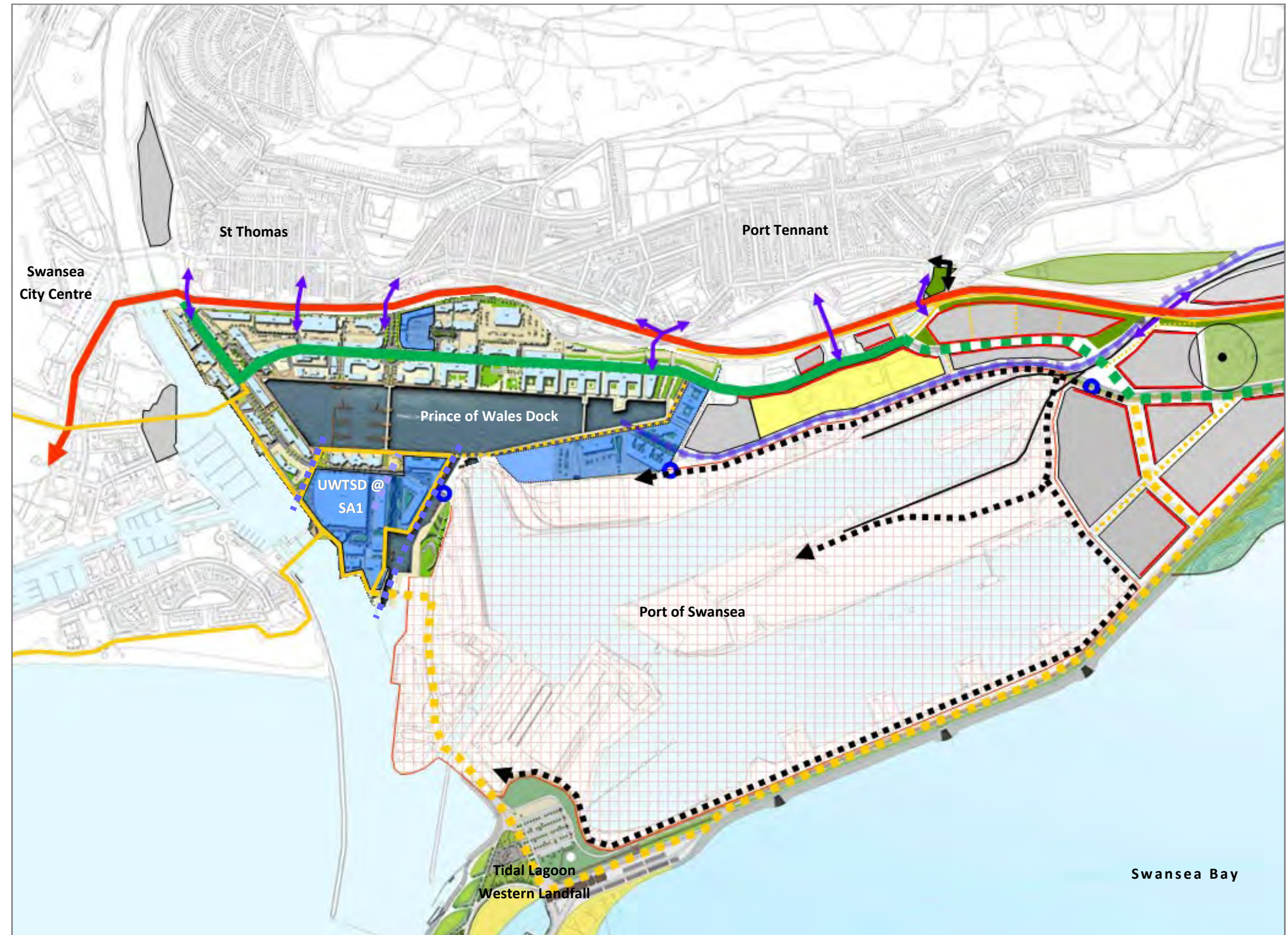
5.1.1. Successful masterplans provide a robust framework for place making. It is important to ensure that the key elements are delivered whilst allowing flexibility in other aspects.

5.1.2. In relation to the Fabian Way area, the masterplan framework will guide development by a number of different interests.

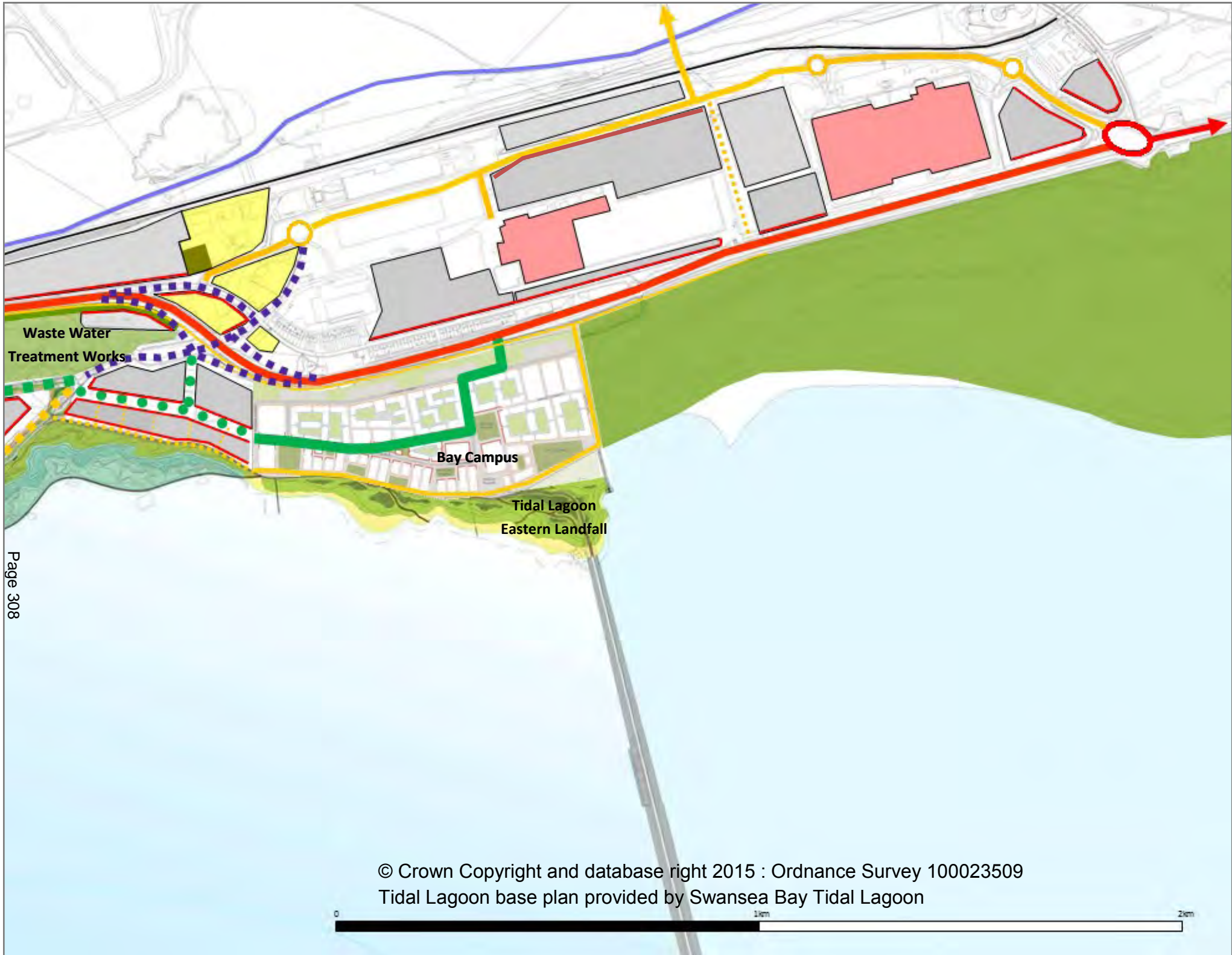
5.1.3. The Masterplan is based on 3 concepts:

- Movement
- Land uses
- Place making

5.1.4. These form the structure for the masterplan guidance on the following pages.



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- Key**
- Existing main arterial route (Fabian Way)
 - Existing stretches of spine street
 - Spine street elements to be constructed by Tidal Lagoon
 - New stretches of proposed spine street
 - Existing key pedestrian/ cycle connections
 - Potential improved pedestrian/ cycle connections
 - Potential improved crossings on Fabian Way
 - Retained rail link to docks
 - Potential revised access points to secure dock area
 - Potential improved recreation facilities
 - Protected canal corridor/ potential cycle route
 - Potential junction improvement at Baldwins Bridge
 - Potential development areas
 - Active frontages to potential development areas
 - Longer term development areas as existing uses relocate
 - Potential secure dock area
 - Land within SA1 controlled by UWTS
 - Existing major employers
 - Approved wind turbine and topple zone

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5.2 Movement

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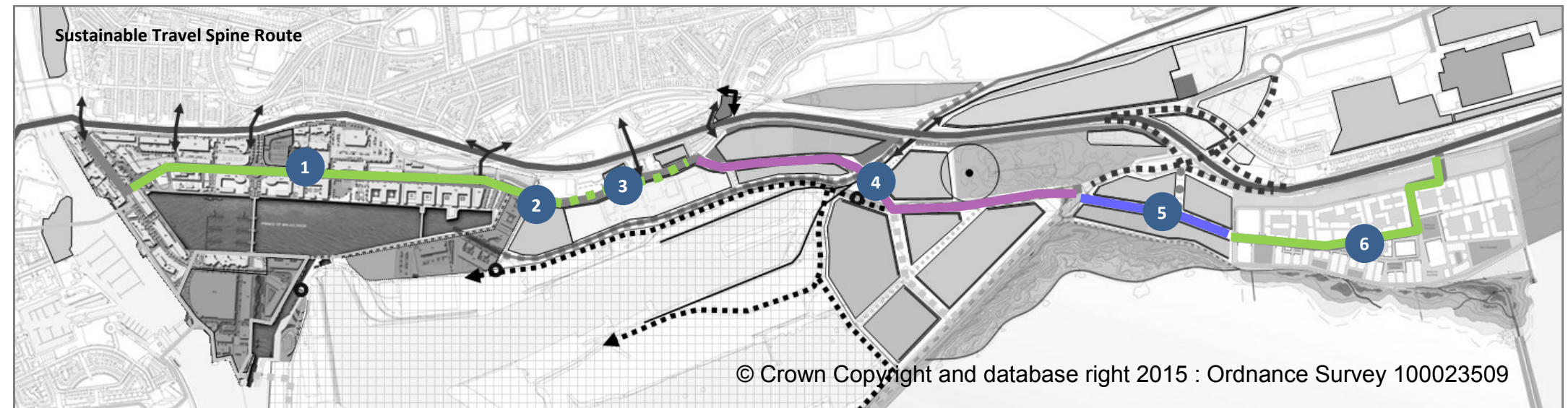
Introduction

5.2.1. The structure of streets and movement routes lie at the heart of successful places. Whilst buildings and uses may change over time it is the spaces between the buildings that endure. Furthermore it is from these areas that most people experience the place; from the public realm.

5.2.2. In the past, most employment/ business areas were planned around the private car. However in this case the presence of two universities and the Tidal Lagoon mean that all modes of travel must be designed to ensure a sustainable place making approach. Therefore all routes must be designed in respect of the user hierarchy with pedestrians at the top in accordance with MfS. This means considering the needs of pedestrians first when designing and improving streets.

5.2.3. Furthermore the Active Travel Act places a requirement on local authorities to continuously improve facilities and routes for walkers and cyclists and to prepare maps identifying current and potential future routes for their use. The Act requires new road schemes to consider the needs of pedestrians and cyclists at design stage.

5.2.4. The Fabian Way Corridor TA seeks to strike a balance between community benefits and transport efficiencies.



Sustainable Travel Spine

5.2.5. A key objective for this strategic site is enhancing connectivity by sustainable travel modes to the wider City Region. It needs to link the Bay Campus back into Swansea City Centre and the SA1 area to be occupied by UWTS.

5.2.6. The masterplan proposes a 'spine street' to connect and organise the area between Langdon Road in SA1 to the street network on the Bay Campus. The components of this route are as follows (refer to plan above):

1. Western Langdon Road in SA1; no work needed
2. Connection between Western and Eastern Langdon Road which are currently at different levels; pedestrian and cycle link only at present. Work to be undertaken by the Welsh Government as part of the

SA1 development to open this area during 2015/16 to restricted vehicle access

3. Eastern Langdon Road, requires new shared southern pedestrian/ cycle path (to be delivered by Tidal Lagoon Project)
4. Tidal Lagoon Road to be constructed and will potentially be available for public use from the middle of 2021
5. Link needed between Waste Water Treatment Works and eastern boundary of the Bay Campus. This will be delivered through co-ordinated development of the ABP land and the St Modwen/ Swansea University Joint Venture land. This could be a temporary pedestrian and cycle link prior to the development of the site

6. Existing spine street at the Bay Campus

5.2.7. It is essential that this route is made accessible and available for walking/ cycling/ public transport and as site accesses. The Development Consent Order for the SBTL requires this street be built to adoptable standards. Future accesses to the development plots can be achieved with planning permission once the street is available for public use.

5.2.9. This spine street has the potential to be a far more attractive walking and cycling route than the existing route alongside the busy Fabian Way and would provide public transport priority without the need to construct new bus lanes on Fabian Way. However it will require active edges to make the street feel safe and attractive. There is scope to divert the Wales Coast Path to run along the spine street away from the current alignment following the Tennant Canal and Fabian Way.

5.2.10. The public transport link would leave SA1

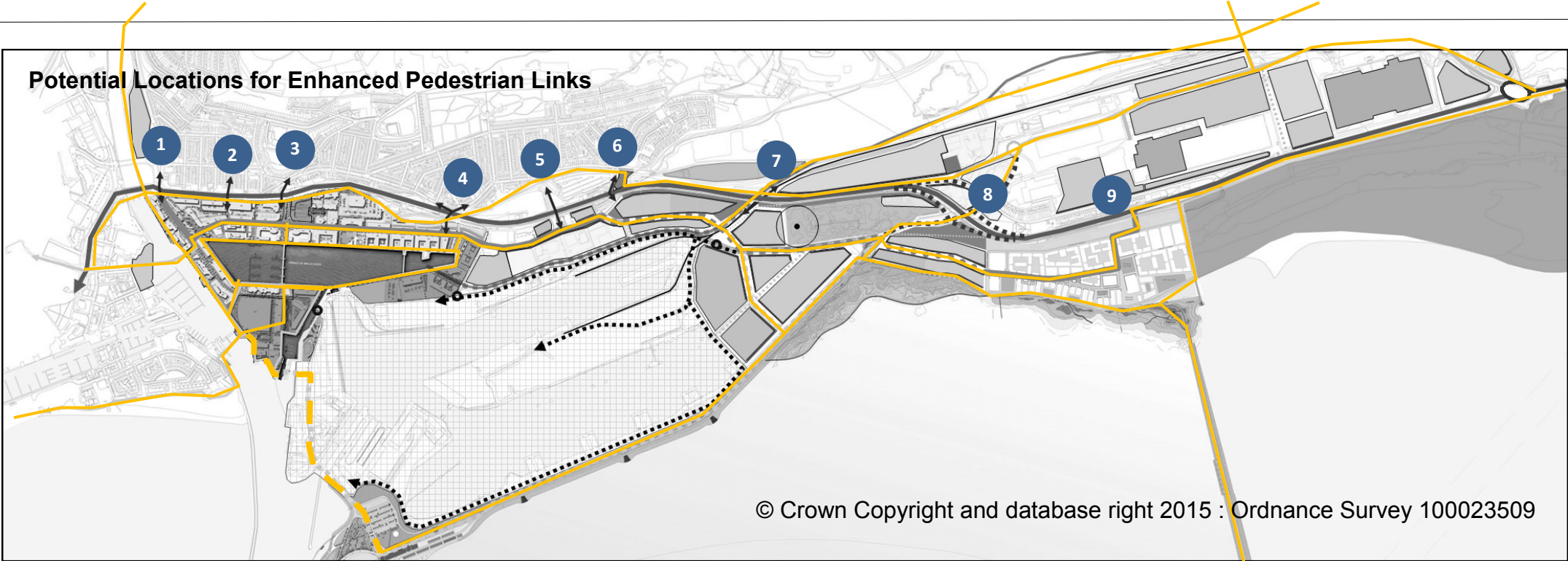
at the Kings Road junction whilst the combined cycleway and footpath would cross the River Tawe by means of the Sailbridge.

5.2.11. Clearly cars and service vehicles will need to use this route to access the development plots, but traffic controls would be required to stop this being used as a through route to bypass Fabian Way.

5.2.12. The Spine Street will comprise

- 5.5 m two way carriageway – suitable for public transport use
- Grassed verges on both sides. Initially this could include sustainable drainage and in future there may be potential for tree planting
- 3m shared pedestrian and cycleway – along the north side. A 2m footpath will need to be constructed at a later date as the plots are developed along the southern side
- The set back of building frontages can vary between back of footway and a 3m planting zone

5.2.13. The Ffordd Amazon Road which will be a key future connection for pedestrians and cyclists to the Coed Darcy Urban Village development also has potential to be treated in a similar manner with active frontages as vacant sites are developed.



North South Pedestrian Links

5.2.14. The Fabian Way dual carriageway has flows of 32,000 vehicles per day. In the past there have been a number of accidents between vehicles and pedestrians crossing the road including a number of fatalities. This has been addressed by introducing a 30/40mph speed limit and through the installation of a fence barrier along the central reservation from the SA1 gateway junction to the Tawe Bridges. However there is still the problem of poor connectivity between the established communities to the north (St Thomas and Port Tennant) and the areas to the south.

5.2.15. The pedestrian crossings that exist do not necessarily relate to desire lines and

the crossing experience is poor with considerable wait times. It is essential that the pedestrian connections are improved and increased in number.

5.2.17. The Fabian Way Corridor TA highlighted the need for additional north-south pedestrian crossings and the potential locations for these are shown in the plan above:

1. Tawe Bridges Gyratory - the pedestrian and cycle crossing have recently been upgraded but they do not relate to local desire lines
2. St Thomas/ SA1 crossing - potential for a new pedestrian crossing between the Tawe Bridges and existing Gateway Junction. This could link to Balaclava Street to the north
3. SA1 gateway junction - potential to reduce

the crossing distances and waiting times if junction can be simplified

4. Footbridge alongside sidings bridge - approaches could be made accessible to all and southern connection to Langdon Road
5. McDonalds Junction.
6. Bevans Row footbridge - upgrade/ replace the bridge to make accessible to all
7. Canal route - potential shared pedestrian and cycle underpass below Fabian Way
8. Baldwins Bridge - pedestrian and cycle links must be addressed as part of any junction upgrade.
9. Bay Campus bus stop crossing - this needs a defined connection to the established Baldwins Crescent community.

5.2 Movement

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Fabian Way

5.2.19. This route lacks a consistent identity and is disfigured by visual clutter. The recent work to create the new access to the Bay Campus with tarmac finish to the wide central reservation creates a very harsh environment and adds to the discordant appearance of Fabian Way. Therefore whilst Fabian Way will always be a traffic dominated environment, as opportunity arises, this corridor should be given a consistent identity through the use of street lighting and a consistent soft treatment of the central reservation. This can be guided by an agreed palette of street furniture.

5.2.20. It is understood that the Welsh Government are considering designating Fabian Way as a trunk road. This will have implications for the management of the road and the potential improvements at Baldwins Bridge.

5.2.21. The masterplan requires that pedestrian and cycle connections are made to Fabian Way from the new developments and that the verges are widened to accommodate low level planting to either side to help soften the road and to create a buffer between pedestrians/ cyclists and the main carriageway.

5.2.22. The Masterplan offers the opportunity to improve the environment and sense of approach into Swansea

through new frontage developments with quality architecture. The Bay Campus demonstrates the transformational potential of new developments fronting Fabian Way and a number of the masterplan plots offer similar opportunities for urban scale high quality frontages.

Access from Fabian Way

5.2.23. The capacity of the existing junctions on Fabian Way are considered below:

- The new junction to access the Bay Campus has significant restrictions on traffic movements, but it may be possible to utilise this for vehicle access to the undeveloped land to the west. The Bay Campus masterplan indicates a multi-storey car park at the western end of the campus abutting the undeveloped land. Therefore if the adjoining land were developed for university purposes then it is possible that the multi-storey could serve an enlarged campus.
- The 2013 Fabian Way Transport Development Study (TDS) highlighted that the Park and Ride junction is '*approaching capacity during the AM peak*' under existing conditions and that this will be subject to additional loading due to the public access to the Tidal

Lagoon and additional university traffic proposed from the UWTSD SA1 area. Therefore it is considered that this junction has limited capacity to serve new developments in the masterplan area.

- Baldwins Bridge is currently used as the main access/egress for Swansea Docks by HGVs, articulated vehicles and abnormal loads. The 2013 Fabian Way Corridor TDS notes that the Baldwins Bridge structure is '*in reasonable condition and maintainable in the foreseeable future with no plans or necessity to replace the structure*'. However the issues relate to the poor lane merge layouts. The past Transport Development Studies have considered various options including traffic lights on the slip roads, realigning/ lengthening the slip roads and an at grade junction.

5.2.24. Based on the junction analysis, it is considered that the key to unlocking the development in the masterplan area is to upgrade the Baldwins Bridge junction and developer contributions will be sought towards this improvement.

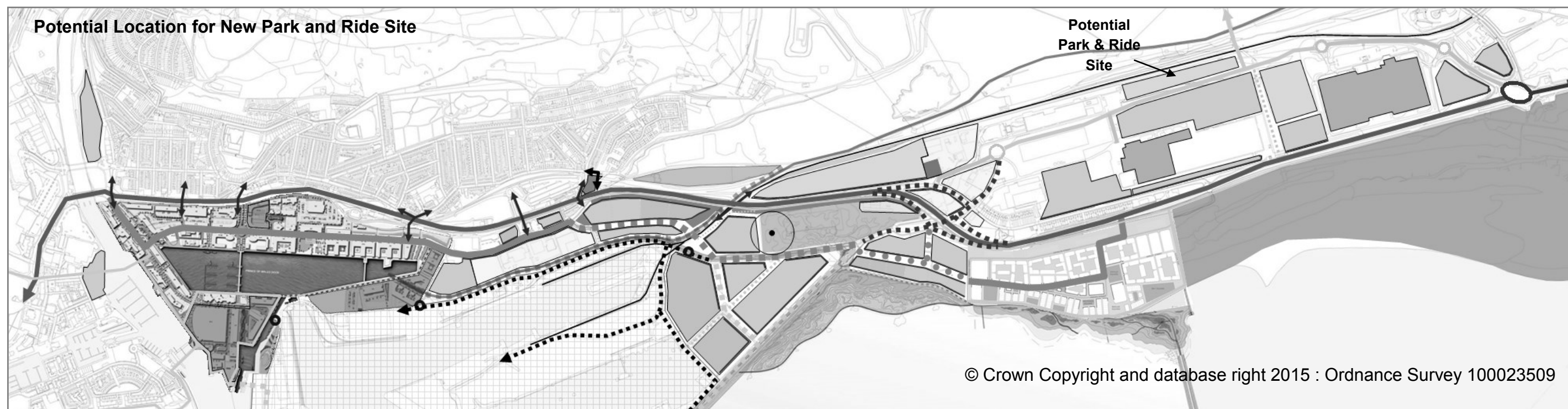
5.2.25. Funding has been secured for a full options appraisal of the Baldwins Bridge junction during 2015/16. This may require land not in Council ownership. Until the final proposals are known, a potential indicative road improvement area is shown

in the masterplan.

5.2.27. Whilst there is a presumption against the provision of new junctions onto Fabian Way to preserve the flow and capacity of this arterial route, prevailing transport policy also recognises the severance that the road can cause to the communities of St Thomas / Port Tennant. The limited connectivity causes traffic demand to be focussed at the two existing junctions which provide 'all movement accessibility'. The Port Tennant Road junction particularly suffers from peak hour congestion and capacity issues.

5.2.28. It is therefore proposed that a new junction be provided at the junction of Wern Fawr Road and Fabian Way; immediately east of the Vale of Neath Road. The provision of a junction at this point would provide connectivity for the residents in the eastern edge of Port Tennant and eliminate the need for this traffic to travel through residential areas when it would be better accommodated on a strategic distributor, such as Fabian Way. The provision of a new access road would also perform the function of distributing the traffic generated by the resident population to three principle junctions, rather than two.

5.2.29. It is proposed that this junction would provide good quality pedestrian and cycle connectivity to the emerging uses on the south side of Fabian Way and access to the green space at Crymlyn Burrows, Ashlands Playing Fields and the Tennant Canal Towpath to the north. This junction would interface with National Cycle Network Route 4, and is therefore an important connection for those travelling by bicycle.



Eastern Park and Ride

5.2.30. The Fabian Way Corridor TA sets out the need for an eastern park and ride because the current Fabian Way Park and Ride (550 spaces) adjacent to Port Tennant is considered to be too close to the city drawing unnecessary traffic along Fabian Way. As indicated in the 2013 TDS, it is likely that this existing Park and Ride will be retained and expanded into the vacant land immediately to the west (up to a further 300 cars) to serve both university sites, while a number of local employers have expressed interest in use of the site.

5.2.31. The 2013 TDS proposed a new Park and Ride to the north of the Amazon Distribution Centre off Ffordd Amazon, but an exact site/number of parking spaces was not specified. A potential new site at the eastern end of the Corridor adjacent to the MREC has been identified (as shown in the plan above) to address the anticipated demand likely from new developments along the Corridor and within the City Centre. This site could accommodate 800 cars plus the usual waiting facilities. As well as serving the City Centre, it could possibly also serve the Universities for students approaching from the east.

Secondary Streets

5.2.32. With the main spine street following the alignment as shown in the masterplan above there is flexibility in the positioning of secondary streets to access and sub divide the development plots. The exact network of streets should be designed to allow views to the wider context which contribute to the sense of place and will be determined as there is clarity over the exact mix/land take of uses.

Freight Rail Line

5.2.33. The 4 mile branch to the Swansea Burrows sidings is in regular use for coal trains from the Swansea Valley to run around and reverse. The single track rail line serving the north and south sides of the Kings Docks is not in use at present and requires upgrading. Nonetheless this is important infrastructure for the port which must be safeguarded.

5.2.34. The responsibility for the dock rail line passes to ABP at a point below the Fabian Way road bridge. Therefore the Tidal Lagoon access road which will become the spine street can cross the rail line by means of a level crossing. This will require the necessary infrastructure such as barriers but requires significantly less land and cost than a new over bridge.

5.2 Movement

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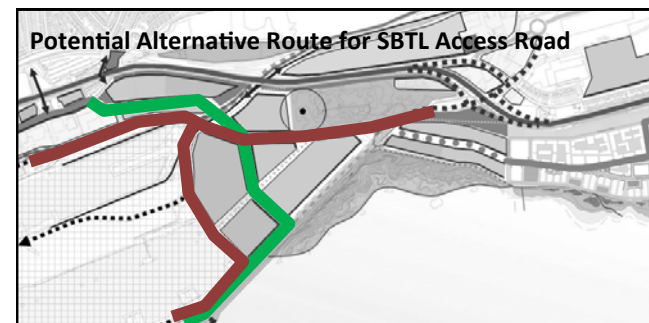
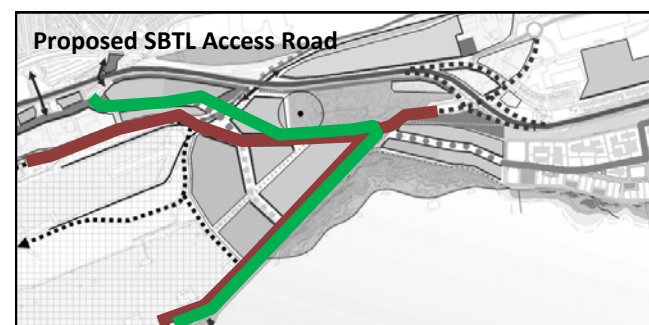
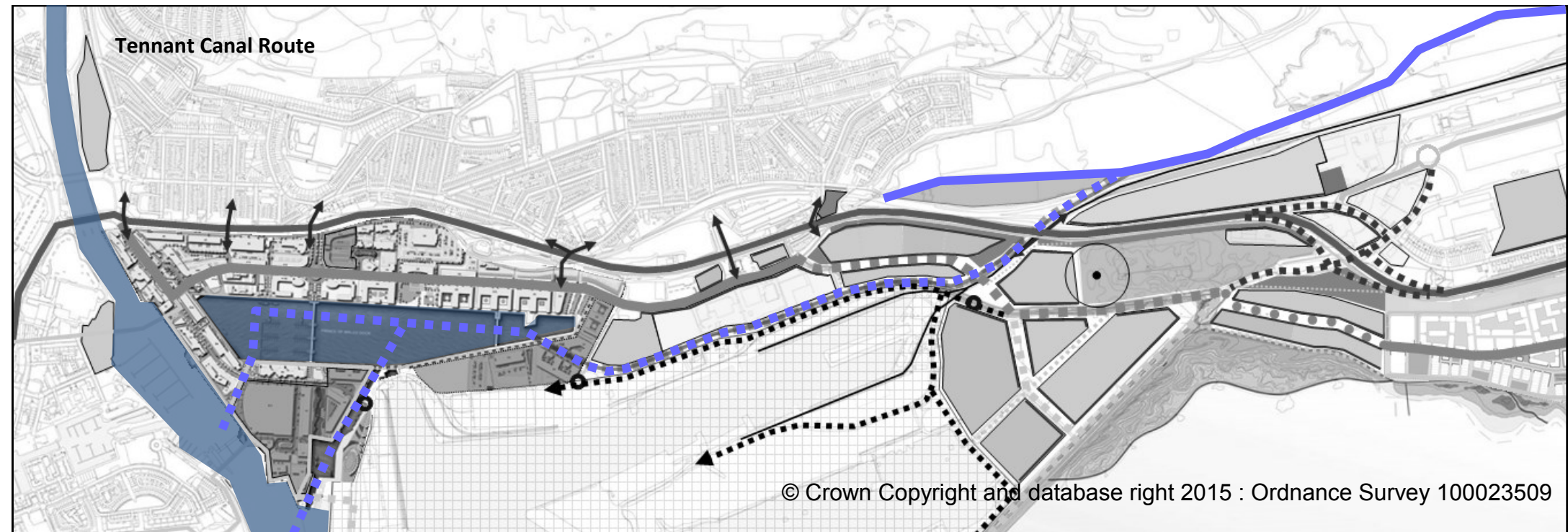
Port Access Road

5.2.35. The masterplan reflects the ABP desire to continue to use the eastern port access off the Baldwins Bridge junction for all movements including HGVs and abnormal loads (such as wind turbines).

5.2.36. The northern access adjacent to the SA1 area will be retained and could be re-opened. Plus the western access through SA1 will be retained primarily for emergency access.

5.2.37. The Tidal Lagoon access road proposals currently include a segregated HGV and public road with a dividing security fence. However with the development of the redundant ABP land for public uses and the relocation of the port boundary as shown in the masterplan, this removes the need for the segregated HGV access. The Masterplan has been developed in conjunction with ABP to suggest a shared public and HGV route from Baldwins Bridge to a relocated port gatehouse just before the level crossings. It suggests the HGV route to the western dock facilities is re-routed to run down the east end of Queens Dock rather than along the eastern end of the seawall.

5.2.8. The masterplan framework for the ABP land suggests a possible more direct future alignment for the Tidal Lagoon Access road (shown in adjacent plan).



Canal Corridor

5.2.38. The Masterplan proposals incorporate the protected canal route linking the derelict Tennant Canal to the eastern end of the Prince of Wales Dock. This is a new alignment as the original canal route lies partially under Fabian Way.

5.2.39. In the first instance it is proposed to safeguard the route (2km long approx. 13m wide) and to initially open it up as a 3m wide shared cycleway/footway with planting alongside in two phases:

- East from the spine street using the redundant space alongside the dock

rail line to connect to the existing towpath on the Tennant Canal. This will provide a traffic free pedestrian and cycle route under Fabian Way:

- West of the spine street at a later date to connect to the Prince of Wales Dock. This would run to the rear of the existing businesses and would require the port boundary and northern port road to be relocated.

5.2.40. The implementation of the canal including necessary locks and bridges will require significant funding that is not currently identified.

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5.3 Land uses

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Introduction

5.3.1 The masterplan proposes land uses in response to the opportunities and constraints summarised earlier.

5.3.2. As set out in Chapter 3, the masterplan area is a potential zone for collaboration and innovation. It could accommodate one of the focus clusters identified in the ERS by strengthening links between education and businesses; and creating attractive, well located sites for R&D activities and manufacturing linked to the Tidal Lagoon.

5.3.3. The masterplan area can complement the regeneration of Swansea City Centre and other City Region regeneration opportunities by accommodating larger format R&D with specific servicing requirements. These could be 'supersheds' with active frontages onto the spine street and Swansea Bay.

Education

5.3.4. A key objective is to ensure that the masterplan area supports the Higher Education presence in the area.

5.3.5. The **Swansea University** Bay Campus has an approved masterplan. The Bay Campus is based upon a masterplan of streets and spaces with buildings of an urban scale and shown in the adjacent photos .

5.3.6. In the future it is likely that Swansea University will require additional land for academic purposes and spin off R&D uses that want to be in close proximity to the Campus. Therefore the masterplan proposes that the area immediately to the west of the Bay Campus (area 8) is safe guarded for academic and university related uses as this area is directly related to the existing facilities offering easy access by foot in contrast to vacant sites to the north on the opposite side of Fabian Way.

5.3.7. This area immediately to the west of the Bay Campus has a 500m frontage onto Swansea Bay with expansive views. Therefore this area should only be developed for University uses and building typologies that mirror those established by the Campus masterplan to the east. The use of this area for single storey developments and shed type buildings will not be acceptable.



5.3.8. **UWTSD** has an emerging masterplan which is part of a Section 73 Planning Application to vary the relevant parts of the existing SA1 masterplan. This is also based on a masterplan of public realm with buildings of an urban scale.

5.3.9. The UWTSD proposals include significantly more land than it needs in SA1 and there is considered to be sufficient future land supply in the area to allow for UWTSD's future educational expansion.

Business

5.3.10. The Masterplan area supports the development of a knowledge economy cluster focussing on the potential for spin off R&D uses that will complement the function of the Bay Campus.

5.3.11. A further significant opportunity for the masterplan area is to provide accommodation for the companies linked to the marine technology sector in recognition of the unique relationship to the Tidal Lagoon.

5.3.12. R&D operations and manufacturing (use class B1) can occupy flexible buildings with ancillary offices. These could be key public parts of the strategic area and relate to the new streets and public areas with buildings that have an urban scale and active frontages.

5.3.13. Manufacturing type spin offs often require large single level internal/ external spaces. However these need not result in blank and dead frontages, instead these should be 'activated' though the orientation of ancillary office space and pedestrian entrances to face the spine street frontage.



The National Composites Centre at the Bristol and Bath Science Park is a good example of a Research and Development complex with three storey 'active frontage' onto a spine street comprising ancillary offices and a legible entrance with a single storey 'supershed' concealed behind.

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5.3.14. Given the importance for the City Region of regenerating Swansea City Centre, the masterplan does not propose any standalone office uses in the area. General office uses should be located within the City Centre or within the extant masterplan for the SA1 area.

5.3.15. The masterplan does not preclude 'trade counter' and forecourt sales type uses, but the design requirements for frontages onto the spine street and key public realm areas may make it difficult to accommodate these uses.

5.3.16. It may be that some of the existing businesses such as car dealerships and transport yards choose to relocate as the nature of the area changes.

Local Facilities

5.3.17. There are in effect three district centres around the area:

- SA1
- Bay Campus
- Port Tennant/ St Thomas

5.3.18. 400m walking distance is defined in TAN 18 as *optimal* walking distance for everyday needs.

5.3.19. It should be noted that the eastern end of the SA1 area has a closer relationship to the local facilities within Port Tennant (some 100m) rather than the SA1 local facilities (some 700m to the west). Therefore development of the remaining eastern SA1 plots to the north of Langdon Road should formalise the existing informal pedestrian route to the sidings bridge over Fabian Way which provide onward links to Port Tennant.

5.3.20. It is clear that the area is not well related to existing/approved local facilities, therefore the masterplan proposes a new local centre at the western end of the Heywood Land (area 11 on the following page) to the rear of Bevans Row.

5.3.25. This should comprise:

- Local needs convenience food shopping
- Café

5.3.21. The new local facility should serve the masterplan area and the existing Port Tennant community to the north to help reduce car dependency but should not generate additional traffic on Fabian Way.

Residential

5.3.22. The existing SA1 and Bay Campus masterplans have significant residential elements:

- SA1 masterplan makes provision for 1,500 homes of which 620 have been built. The land use mix and quantum of floor space in the SA1 area is being revised by UWTSO
- Bay Campus includes total of 4,000 student rooms on site. These are provided in a range of configurations including studio rooms, communal flats with shared facilities and town house type arrangements

5.3.23. Given the constraints outlined in the analysis section (including impacts from the proposed wind turbine, odour from WWTW, flood risk, and distance from a local centre), it is considered that the potential for additional residential accommodation is very limited to the areas outlined below:

- Within the University expansion area (Area 8) it is considered that there is scope to extend the approved Bay Campus masterplan concept in terms of layout and land uses. However, any proposal for student residential in Area 8 will need to overcome C2 flood risk which precludes vulnerable uses such as residential under TAN 15 national guidance. It would also need to be located in the part of the site outside of the turbine/ odour exclusion zone. The Student accommodation quantum in this University expansion area and the Bay Campus combined should not

5.3 Land uses

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exceed the 4,000 bedrooms currently with outline planning permission on the existing Bay Campus masterplan. Evidence would be needed that the student accommodation quantum on the existing Bay Campus has been reduced by the corresponding number of units. Due to the isolation of this site from general residential (use class C3) and the lack of any local facilities within walking distance, this area is not considered suitable for further residential development.

- Rear of Bevans Row in the area outside of the turbine/ odour exclusion zone and away from the boundary with the operating docks. This area has potential for general residential (C2) to link with the existing Port



Tenant community. This should take the form of town houses and apartments to provide strong frontages to Fabian Way and the new spine street.

- Extant planning permission on Elba Crescent for 50 homes as part of the established community north of Fabian Way



- Vacant sites along the north side of the eastern end of Langdon Road.
- Land immediately to the east of the SA1 masterplan area.

5.3.24. There is likely to be pressure for further student accommodation in the areas close to the two Universities. On one hand this may help relieve the pressure for HMOs in the established communities of St Thomas / Port Tennant, but conversely

could result in isolated and unsustainable residential development away from Swansea City Centre which should be the focal point of activity to underpin City Region regeneration plans.

5.3.25. Therefore as indicated above the land immediately to the west of the Bay Campus could be considered to be suitable for student accommodation (subject to overcoming other identified constraints including flood risk) with access to the campus facilities as part of a mixed use scheme with R&D/ education uses provided that the total quantum of student accommodation across this area and the Bay Campus does not exceed 4,000 units.

5.3.26. All other proposals for student accommodation within the masterplan area will need to be sequentially tested as the preferable location is within Swansea City Centre as defined in the Development Plan.

Creative Industries

5.3.27. Bay Studios, located in part of the former Visteon car plant, has the largest

indoor studio in Europe. There is scope for further cluster development to support this use, plus potential development along Fabian Way could help give the Bay Studios a stronger 'street presence'. The open 'lot' area to the east of the indoor studio may require improved security and privacy screening.



Other Uses

5.3.28. There may be proposals for uses not listed within this masterplan document. Some uses such as hotels are preferable in Swansea City Centre on the basis of accessibility and regeneration benefits. Therefore there will be a requirement for sequential testing.

Temporary Uses

5.3.29. Given that this masterplan area is not expected to start coming forward until 2021, following completion of the SBTL spine road, there may be scope for short term temporary uses (such as the SBTL fabrication sites) that are time limited so not to compromise the longer term sustainable travel and place making objectives.

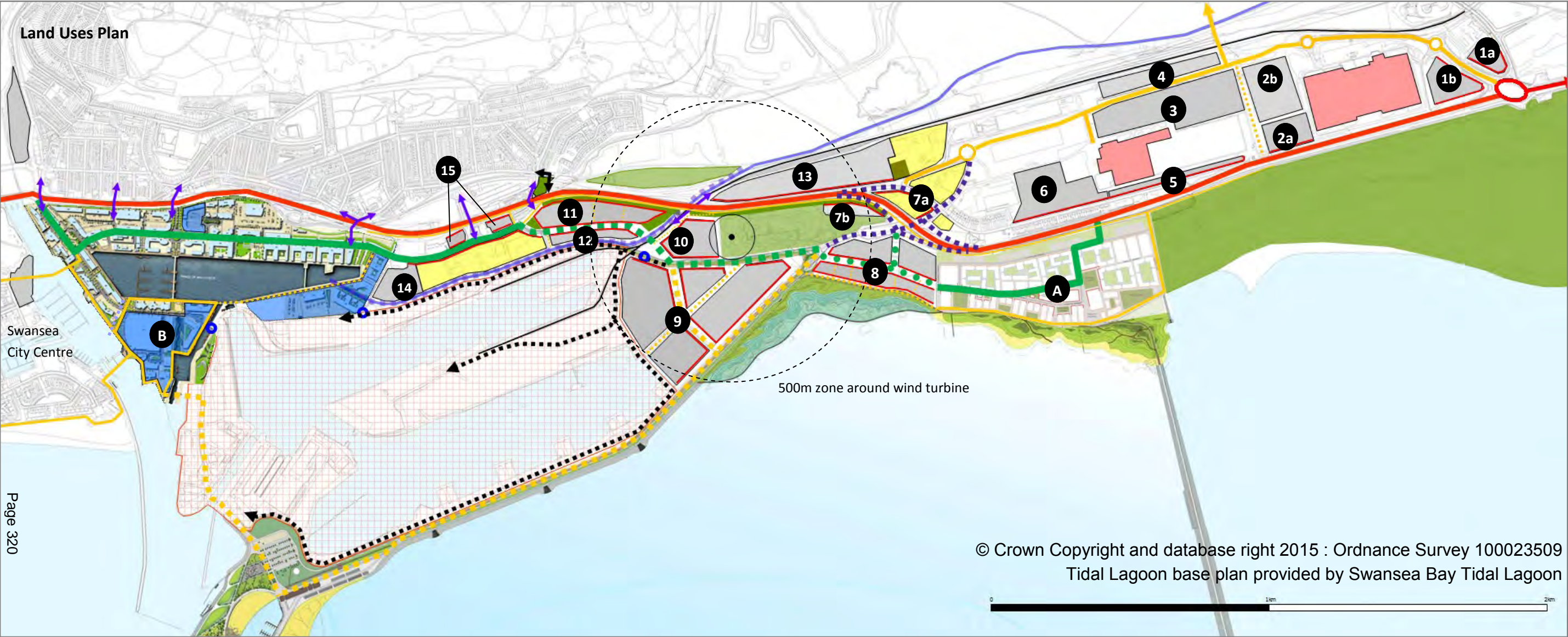
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5.3 Land uses

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Ref:	Ownership	Area	Potential use / capacity
1a	Welsh Government	1.5 ha	A landmark 'Gateway Development' to a minimum of 3 storeys for B1 use with ancillary retail to provide potential accommodation for high technology and R&D business to support the development of the Knowledge Economy Cluster that will complement the function of the nearby Bay Campus. <i>This should not include uses that are more appropriate in a city centre location.</i>
1b	Welsh Government	2.5 ha	
2a	Graceland Investments	1.7 ha	Potential for B1 use to provide accommodation for high technology and research and development business to support the development of a Knowledge Economy Cluster that will complement the function of the nearby Bay Campus. <i>This should not include uses that are more appropriate in a city centre location.</i> Redevelopment must contribute to a strong active frontage to Fabian Way. The site is currently used for Amazon car parking, if developed the displaced parking must be accommodated at a suitable alternative location.
2b	Welsh Government	3 ha	Site with potential to accommodate displaced parking relating to the Amazon site, in the event of the redevelopment of Plot 2a.
3	Welsh Govt./ NPTCBC Swansea Uni. Prospect	6 ha	Potential media uses to support Swansea Bay Studios. Redevelopment must provide an active frontage to Ffordd Amazon.
4	Welsh Government	1.3 ha	Potential to accommodate a Park and Ride service with up to 800 spaces
5	Graceland Investments Roy Thomas	1.3 ha	Potential reuse of existing office space or redevelopment to a minimum of three storeys for B1 use with ancillary retail to provide potential accommodation for media uses to support Swansea Bay Studios; high technology and research and development business to support the development of a Knowledge Economy Cluster that will complement the function of the nearby Bay Campus. <i>This should not include uses that are more appropriate in a city centre location.</i> Consideration given to large footprint "Super Shed" development at this location. Redevelopment must contribute to a strong active frontage to Fabian Way.
6	Graceland Investments	4 ha	Allocated within the NPT LDP (H1/LB/ 3) for 50 residential units.
7a	Multiple ownerships	9.9 ha	Potential road improvements to the Baldwin's Bridge junction (feasibility study underway). There are a number of existing businesses located within this area which is seen as a longer term redevelopment opportunity
7b	Four Counties		Potential for employment/ R&D uses to a minimum of 3 storeys once the access has been improved as part of the Baldwins Bridge junction project
8	St Modwen/ Swansea University/ ABP	2.7 ha	Priority area for university expansion with potential for academic teaching space and R&D. On the parts of the site not affected by the wind turbine and WWTW buffer there could be potential for student accommodation (within the 4,000 bedrooms on Bay Campus), but this is currently precluded by the C2 flood risk status of the land. Uses must create active frontage of minimum 3 storeys onto spine road and Tidal Lagoon. The north part of this area may be affected by improvements to the Baldwins Bridge Junction.
9	ABP land onto Swansea Bay	11.6ha *	Potential for employment/ R&D uses. Development must create active frontage of minimum 3 storeys onto spine road and Tidal Lagoon. This site is affected by the exclusion zone due to wind turbine and WWTW, and flood risk which preclude sensitive uses such as residential. Potential for employment 'buffer uses' (plots 50m deep) alongside operational docks. Potential for more direct route of Tidal Lagoon access road through this site. * note additional 1.6ha available if eastern end of Queens Dock is infilled
10	Morrissey land	3.0ha *	Potential for employment/ R&D uses. A high quality design with at least three storeys is required to relate to the Fabian Way Corridor and the spine street. *Note 0.2ha of site within wind turbine topple zone
11	Heywood land	3.3ha	This site is affected by the exclusion zone due to wind turbine and WWTW which precludes sensitive uses such as residential on the eastern parts of the site. Potential for higher density residential development including open space on western parts of the site (low rise apartments and town houses (similar to SA1) with a density range of 40dph-50dph—capacity of approx.60-75 homes) as part of mixed use scheme and employment/ R&D uses and local needs retail on the eastern end. The eastern end includes the protected new route for the Port Tennant Canal.
12	Morrissey land	1.4ha	Potential for employment 'buffer uses' (plots 50m deep) alongside operational docks. Frontage onto spine street and must be compatible with potential residential use opposite. Southern part of site includes protected route of canal.
13	Network Rail		This site is affected by the exclusion zone due to wind turbine and WWTW which precludes sensitive uses such as residential. It is considered that this site has potential for employment/ R&D uses once the access has been improved as part of the Baldwins Bridge Junction Project
14	Multiple		Potential for residential uses (north end) and employment buffer uses (south end) alongside operational docks. Southern part of site includes protected route of canal.
15	Multiple		Potential for residential development of 2-3 storeys with frontages onto Fabian Way and spine street.



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- A - Swansea University Bay Campus
- B - Proposed UWTSD Innovation Quarter

5.4 Place Making

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5.4.1. The urban design principles that underpin the masterplan are based on a place making approach to create a mixed use development that supports sustainable travel. This is a significant step change away from the zoned and landscaped industrial parks that are car dependent.

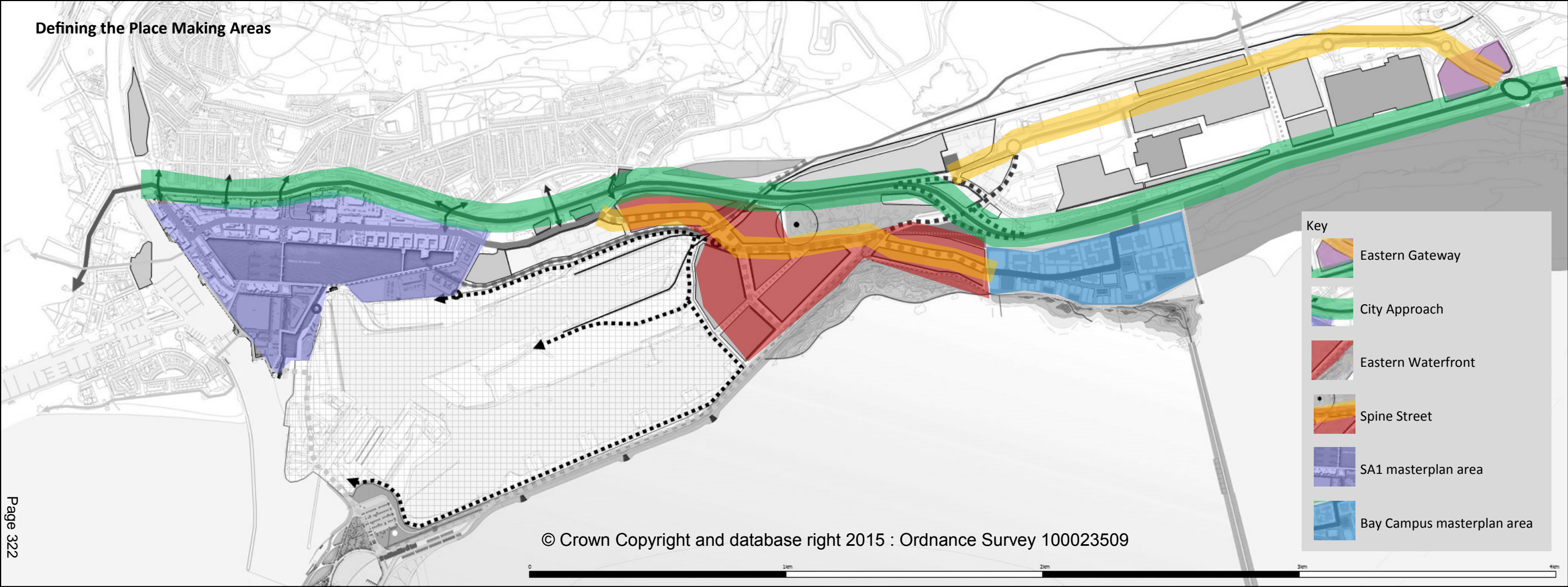
5.4.2. A key requirement will be that all new development in the area must have a street frontage that combines activity and architectural quality. The area should have a contemporary character that draws on its industrial and maritime heritage.

5.4.3. It is imperative that all development in the masterplan area contributes to a place making approach irrespective of land use. This requires definition of the public realm by active frontages, legible entrances and an urban scale. It is in effect a continuation of the masterplans for SA1 and the Bay Campus albeit with potential for larger footprint uses. The following pages set out the urban design guidance for each character area.

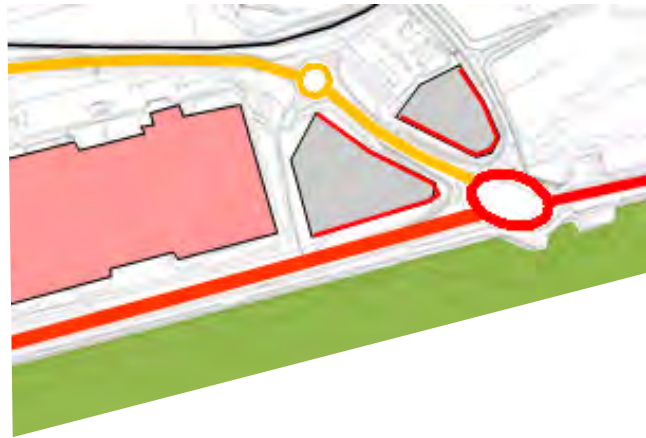
5.4.4. The Masterplan area can be split into four different (but overlapping) areas as shown in the plan opposite:

- Eastern Gateway
- City Approach
- Eastern waterfront
- Spine Streets (inc Ffordd Amazon)

5.4.5. The Bay Campus and UWTSD SA1 areas have their own detailed masterplans including design codes and the Tidal Lagoon has approved public realm and building designs. This masterplan is compatible with these existing proposals and acts to 'fill in the gaps' on the intervening land.



E astern Gateway



5.4.6 *This area is effectively the outer gateway to Swansea from the M4 and development must respond positively to this opportunity. New development must be designed to be legible to fast moving traffic as well as slower walking and cycling.*

Plot Definition

5.4.7. All developments within the Eastern Gateway area should have active frontages sited to define the street edges and public realm areas. This should help screen/ break down the monolithic side (east) elevation of the Amazon warehouse.

5.4.8. Buildings should incorporate pedestrian entrances and a high degree of fenestration on the street frontages. Corner buildings should have two public elevations.

5.4.9. Forecourts and secure areas with boundary fencing to public edges are not acceptable forms of development in this gateway area.

5.4.10. Where sites are proposed to be developed on a phased basis possibly by different developers, there should be a coherent building line to provide continuity of frontages/ street edges.

Scale

5.4.11. To help create a sense of approach into Swansea, this gateway area should have a general urban scale of 3-4 storeys.



5.4.12. Tall buildings are not considered acceptable outside the two areas being developed by the Universities. Single storey buildings will not be acceptable.

Sense of Place

5.4.13. The image of this key approach needs to be changed, so further car sales, drive through restaurants and similar buildings are not considered appropriate.

5.4.14. The two plots to the north of the Amazon roundabout are especially important to make a strong architectural statement of quality as a gateway (see for example the Ellipse Building at the SA1 'gateway' junction).

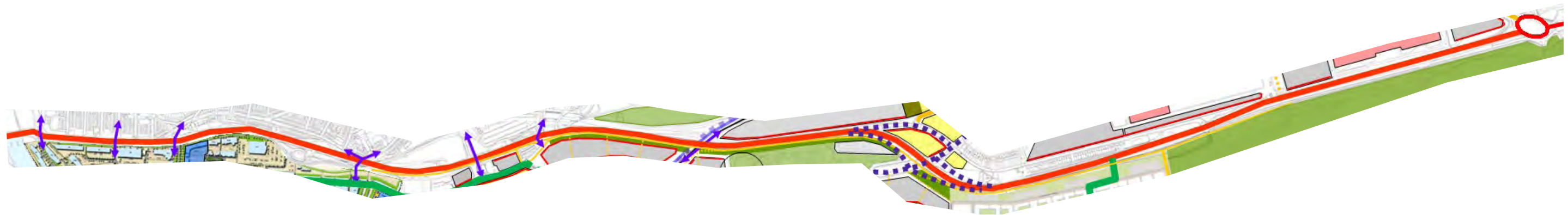
5.4.15. Large scale elevations must be broken down and extensive areas of sheet cladding will not be acceptable.

5.4.16. Large expanses of render is not considered appropriate given the problems with weathering in other developments and the importance of this Corridor.

Public Realm

5.4.17. The development of the land alongside Fabian Way will allow the implementation of an enhanced planted frontage with a pedestrian and cycle route set back from the carriageway.

5.4.18. Future highway works should be guided by a streetscape manual to ensure continuity of street furniture, street lighting and median treatments.



5.4.19 This 4km corridor needs a change in nature from a traffic artery to a place.

Plot Definition

5.4.20. All developments along the City Approach corridor should have active frontages sited to define the edges to Fabian Way and public realm areas. This should include pedestrian entrances and a high degree of fenestration.

5.4.21. Where secure areas are required, the buildings should be used to define the street edge. If this is not possible then high quality railings may be acceptable. Palisade security fencing and timber fences will not be acceptable along this corridor.

5.4.22. Where sites are proposed to be developed on a phased basis possibly by different developers, there should be a coherent building line to provide continuity of frontages/ street edges.

Scale

5.4.23. To help create a sense of approach into Swansea, this City Approach corridor should have a general urban scale of 3-4 storeys.

5.4.24. Tall buildings are not considered acceptable outside the two areas being developed by the Universities. Single storey buildings will not be acceptable.

Sense of Place

5.4.25. This corridor must be defined by architecture of the highest quality

5.4.26. Large scale elevations must be well articulated broken down to a human scale with vertical emphasis.

5.4.26. Architectural details should be legible to both fast moving traffic and slower walking and cycling.

5.4.27. Large expanses of render is not considered appropriate given the problems with weathering in other developments and the importance of this corridor. Brickwork is preferred as this references the industrial

history whilst weathering well in the exposed location. Panel cladding and glazing systems are also acceptable provided these are broken down as part of the human scale elevation.

5.4.28. The image of this key approach needs to be changed, so further car sales and similar buildings are not considered appropriate.

Public Realm

5.4.29. The development of the land alongside Fabian Way will allow the implementation of a cycle route set back from the carriageway. Planting should complement but not screen the new buildings.

5.4.30. Future highway works should be guided by a streetscape manual to ensure continuity of street furniture, street lighting and median treatments.

Eastern Waterfront



5.4.31. *With the development consent of the SBTL, this will create significant new public realm with waterfront access onto Swansea Bay. There is an opportunity for development to face this new place with active frontages.*

Plot Definition

5.4.32. All developments within the Eastern Waterfront area should have active frontages sited to define the public realm areas such as the promenade and spine street. This should include pedestrian entrances and a high degree of fenestration. Corner buildings should have two public elevations.

5.4.33. Where sites are proposed to be developed in a phased basis possibly by different developers, there should be a coherent building line to provide continuity of frontages/ street edges.

5.4.34. Large format uses can be accommodated in the core of this area away from the spine street frontage and promenade area. Forecourt parking and service areas are not acceptable onto the promenade and public realm areas.

5.4.35. Given the constraints presented by the wind turbine and WWTW, flood risk, and its isolation from community uses, much of this area is not suitable for residential accommodation. However business uses must still provide active frontages and architectural character to the key public realm areas.

Scale

5.4.36. This area should have a general urban scale of 2-4 storeys. Tall buildings are not considered acceptable outside the two areas being developed by the universities. Single storey buildings will not be acceptable fronting onto the promenade area and spine street.

Sense of Place

5.4.37. The waterfront aspect onto the Tidal Lagoon offers a unique opportunity that requires a quality architectural approach.

5.4.38 Large scale elevations must be well articulated broken down and extensive areas of sheet cladding will not be acceptable.

5.4.38. Large expanses of render is not considered appropriate given the exposed maritime location. On the key frontages to the promenade frontage, brickwork is preferred as this references the industrial history whilst weathering well in the exposed location. Panel cladding and glazing systems are also acceptable.

Public Realm

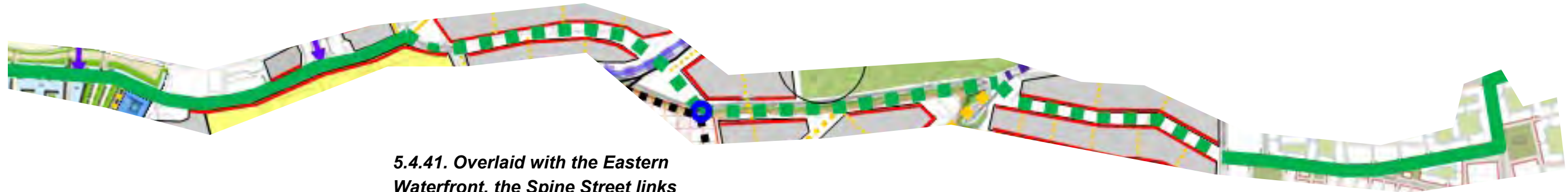
5.4.39. Multiple access points should be provided from public areas such as the spine street to the Salt Marsh and promenade area proposed by the Tidal Lagoon. The design of new streets and public realm should integrate with the materials of the Tidal Lagoon.

5.4.40. Sheltered 'pocket parks' should be provided in safe and accessible locations that are defined by active frontages.



S pine Street

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5.4.41. Overlaid with the Eastern Waterfront, the Spine Street links Swansea City Centre via SA1 to the Bay Campus. This needs coherent and active edges to support sustainable travel modes.

Plot Definition

5.4.42. All developments must create active frontage to the Spine Street. This should include pedestrian entrances and a high degree of fenestration and materials/ designs befitting a public route. Corner buildings should have two public elevations.

5.4.43. Blank elevations and those that engage poorly will not be acceptable fronting the main spine or key public areas.

5.4.44. Where secure areas are required, the buildings should be used to define the street edge. If this is not possible then high quality railings may be acceptable provided they do not make up more than 1/4 of the street frontage to the plot.

5.4.45. Where sites are proposed to be developed on a phased basis possibly by different developers, there should be a coherent building line to provide continuity of frontages/ street edges.

Scale

5.4.46. This area should have a general urban scale of 2-4 storeys.

5.4.47. Tall buildings are not considered acceptable outside the two areas being developed by the universities. Single storey buildings will not be acceptable along the spine street.

Sense of Place

5.4.48. The frontages along the spine street must be broken down to a human scale with architectural interest for walking and cycling.

5.4.49. Large expanses of render is not considered appropriate given the problems with weathering in other maritime developments. On the key frontages to the spine street and the promenade frontage, brickwork is preferred as this references the industrial history whilst weathering well in the exposed location. Panel cladding and glazing systems are also acceptable provided they are broken down.

5.4.50. This area must achieve an environmental enhancement and large expanses of signage is considered unacceptable.

Public Realm

5.4.51. The edges to the Spine Street must be defined by active frontages within 0-3m of the rear of the footway. This allows space for planted frontages. Pocket park spaces will need to be provided within the plots as informal amenity space for residents and workers.

5.4.52. The masterplan envisages the canal route to be 'safeguarded' with a 11m landscape corridor incorporating a 3m shared pedestrian/ cycle route. This width allows the canal to be implemented at a future date should the entire route be secured and funding identified.

5.4.53. Where servicing such as yards, car parking, etc. are required, then these must be located behind the buildings away from the spine street or key public realm areas. Vehicle entrances to these areas should be minimised and kept as narrow as possible. Vehicle accesses should also be combined (for example to serve two sites) to minimise the number of junctions.

5.4.54. The spine street requires continuity of character in terms of materials and planting. It must include street furniture that reflects the status as a walking and cycling route.

5.4.55. These principles can also be applied to Ffordd Amazon in recognition of the link to the Coed Darcy development to encourage sustainable travel and a step change to a place making approach.



6

Implementation and Delivery

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6.1 Material Planning Consideration

This Framework will form a material consideration in the evaluation of planning applications in the Fabian Way Corridor area. It informs residents, land owners, developers, businesses and the Local Planning Authorities on how planning applications will be considered. The document will be monitored to ensure it is responsive to changing conditions and reviewed as appropriate. It will firstly be reviewed and updated on adoption of the Swansea LDP, anticipated in early 2017.

Development will be expected to be carried out in accordance with the development framework set out in this document. The Design and Access Statements that accompany developments in the masterplan area must demonstrate how the proposals accord with the framework.

To ensure that the architecture is of the highest quality, proposals within the masterplan area should be the subject of a Design Review by the Design Commission for Wales to provide expert impartial feedback.

Proposals that do not accord will be resisted as they could for example put the long term regeneration of the Corridor at risk or result in undesirable conflicts with existing land uses / environmental factors.

6.2 Implementation

In addition to the masterplan framework detailed in Chapter 5, developers will be expected to have considered and addressed in their planning applications the issues which apply to the site in question as outlined in Section 3.2 such as:

- Flood Risk
- Ground Conditions
- WWTW and wind turbine impacts
- Air quality and noise impacts
- Consideration of surrounding existing land uses and operations
- Biodiversity
- Traffic impacts

Utilities should be provided in a way that serves the wider development area as a whole and allows for future upgrading/extension to serve future phases/plots.

6.3 Phasing

Tidal Lagoon Construction Period

Much of the spine road upon which the development area is based will be provided by the Tidal Lagoon. The access road will not be available for public use until completion of the Lagoon works (currently envisaged to be 2021). Chapter 5 has shown which sites would appear dependant upon this spine road being completed ahead

of their development. Furthermore, potential conflict with Lagoon construction facilities and operations will mean that it is not expected that development in this area will come forward ahead of the Lagoon's completion.

Baldwins Bridge Improvements

Key to unlocking much of the development in the masterplan area is to upgrade the Baldwins Bridge junction.

The Councils intend to carry out a full options appraisal of the junction in 2015/16 to inform the future improvements required. This will require additional consultation with stakeholders, landowners and local communities. The implementation of the preferred option may be subject of a funding application.

The traffic generation of significant proposals in this area will be assessed by a Transport Appraisal report and this may result in developer contributions being sought for the Baldwins Bridge junction.

6.4 Developer Contributions

Developer contributions will be sought to mitigate the impact of developments.

In particular, contributions will continue to be sought inline with the most up to date Fabian Way TA to address transport impacts and make developments acceptable in terms of accessibility. Sites may also be required to contribute to transport and accessibility improvements related to their development which are not included in the Fabian Way TA (e.g. necessary missing parts of

the spine road link; the cycle/canal route).

Other requirements depending upon the nature and context of the planning application may include, but not be limited to:

- Affordable housing
- Biodiversity
- Education
- Outdoor play space
- Public art
- Social benefit clauses

Developers may be asked to provide contributions in several ways. This may be by way of planning obligations in the form of Section 106 agreements, Section 278 Highway Agreements, and longer term (in the City & County of Swansea) the Community Infrastructure Levy.

Contributions will be sought having regard to the planning application's impact and site viability.

6.5 Partnership Working

The Framework has evolved following stakeholder engagement including with the land owners, developers, key existing operators (the Universities, ABP and DCWW) and local Councillors, and will benefit from wider public consultation. To achieve the regeneration vision for this area will require the stakeholders and landowners/developers concerned to work in co-operation. This Framework encourages the parties to align their plans and activities

with the principles outlined. It will be essential that meaningful and continued communication and engagement is maintained between the Councils and the parties involved.

A **ppendix**

DRAFT

Statement of Consultation and Engagement

To be completed following consultation.....

DRAFT

Report of the Head of Economic Regeneration and Planning

Planning Committee – 13 October 2015

WELSH GOVERNMENT CONSULTATION – SECONDARY LEGISLATION: STATUTORY CONSULTEES/DESIGN AND ACCESS STATEMENTS/HOUSES IN MULTIPLE OCCUPATION

1.0 Background

- 1.1 The Planning (Wales) Act 2015 came into force on the 6th July 2015 and the Welsh Government (WG) are currently in the process of consulting a range of related secondary legislation as part of its agenda to provide a more effective Welsh planning system which facilitates appropriate development.
- 1.2 This current consultation, therefore, aims to:
- update the consultation thresholds for statutory consultees in the General Development Management Procedure Order 2012 (DMPWO),
 - reduce the scope/content of Design and Access Statements and reduce the amount of applications that they will be required for,
 - amend the Town and Country Planning (Use Classes) Order 1987 to create a new use class for small Houses in Multiple Occupation (HMOs) and related amendments to the Town and Country Planning (General Permitted Development) Order 1995. The aim of this proposal is to allow local authorities the opportunity to consider the impacts of small HMOs on the local area through the submission of a planning application.

The Authority's draft response to this consultation is provided at Appendix A.

2.0 Consultation Thresholds:

- 2.1 When applications meet certain thresholds, the Local Planning Authority (LPA) are statutorily required to consult with certain bodies, for example, when an application includes the laying out of a new road, the LPA are required to consult with the Highways Authority.
- 2.2 Discussions with statutory consultees have suggested that consultation thresholds should be amended in respect of four bodies, so that the consultation requests they receive better reflect their available skills and expertise. Water and sewerage undertakers (WASU) operating in Wales are also becoming new statutory consultees and so relevant consultation thresholds are also proposed in this respect.
- 2.3 The amendments are intended to either increase or decrease the number of applications referred to each consultee. In some instances the amendments to the DMPWO will result in fewer consultations with a statutory consultee and thus allow them to redirect resources to focus on high priority planning applications. The provision of standing advice for lower risk proposals will ensure that LPAs are still able to make informed decisions.

- 2.4 Alternatively, some bodies would have an amended consultation threshold to attain input on a greater range of applications. This may be due to a change in their role or remit, or the lack of clarity of the existing threshold definitions to inform LPAs on when to consult.
- 2.5 Changes are proposed for the Coal Authority, CADW, the Theatres Trust and Natural Resources Wales. The LPA are generally supportive of this approach to clarify roles and responsibilities subject to some further comment which are referenced at Appendix A.

3.0 Design and Access Statements:

- 3.1 Design and Access Statements (DAS) were introduced in 2009 as a communication tool to explain how both good and inclusive design principles have been considered and applied from the outset of the development process and how they will be achieved. However, a WG commissioned report found key criticisms of DAS, such as perceptions regarding the process and additional costs, and recommended that the scope and content of DAS should be clarified in order to speed up and improve the validation of planning applications.
- 3.2 As a result, the WG have proposed changes that would result in DAS only being required for major planning applications (excluding minerals and waste development). Major developments have the greatest impact on both their immediate area and wider surroundings, therefore, a DAS provides an important way for developers to clearly communicate the design and access considerations to the LPA, the public and those making comments on planning applications to enable them to assess the application in an informed manner. S73 applications (developing land without compliance with a condition) would be excluded from the requirement to submit a DAS.
- 3.3 Applications for Listed Building Consent would still require a DAS (required under different legislation) and the consultation also proposes DAS with lower thresholds (e.g. one or more dwelling) for development within Conservation Areas and in World Heritage Areas. Whilst this is welcomed, it is considered that applications impacting on Historic Parks and Gardens and the AONB should also require a DAS. Further proposals include Heritage Impact Assessments for applications to Listed Buildings, Scheduled Ancient Monuments and Conservation Area Consent.
- 3.4 It is also proposed to simplify the content and structure of Design and Access Statements. Whilst this approach is supported it is considered that there still needs to be a contextual and character analysis undertaken and that developers should fully justify their proposal.

4.0 Houses in Multiple Occupation:

- 4.1 High concentrations of HMO's can lead to substantial changes and problems in particular locations for the settled communities as the nature of a neighbourhood can change. Issues and problems relating to HMOs can manifest themselves in many different ways, such as increased waste, noise nuisance and disturbance.

- 4.2 Concerns have been raised about the problems associated with concentrations of HMOs in parts of Wales, including within Swansea, and their effect on local communities, particularly within the Uplands, Castle and St Thomas Wards. As a result there have been calls for a change to planning regulations to enable local authorities to more effectively manage the use of properties as HMOs.
- 4.3 WG research has, therefore, recommended changes to the Town and Country Planning (Use Classes) Order 1987 to enable local authorities to manage future growth of HMO concentrations. Any change to the Use Classes Order would not be retrospective and therefore the research recognised that it would not lead to any immediate change in communities affected by HMO concentrations. However, as indicated, it would mean that a local authority would have the opportunity to manage the future growth of HMOs, both in existing high concentration areas and to prevent high concentrations occurring in other areas. Such an approach should, however, be supported by robust Development Plan policy and where necessary the introduction of Supplementary Planning Guidance.
- 4.4 The research also identified difficulties for local authority officers and property owners arising from the different definitions of an HMO for housing and planning purposes. This can result, for example, in a licence being required for a proposed HMO, but not planning permission.
- 4.5 The WG are proposing to amend the Town and Country Planning (Use Classes) Order 1987 by introducing a new use Class C4 (houses in multiple occupation occupied by not more than six residents). The definition of HMO's used for planning purposes will align with that used in the Housing Act 2004. Permitted development rights will also be amended to allow a HMO to be converted to a dwelling without requiring planning permission.
- 4.6 This proposal would increase the number of new HMOs which require planning permission, allowing LPA's the opportunity to consider the impacts of proposed new HMOs. Local authorities will be able to adopt local policies to control the density and spread of this type of housing.
- 4.7 This approach is, therefore, welcomed as the most straightforward way to control issues surrounding HMO's in Swansea, however, it should be recognised that to be successful the proposed amendments to the Town and Country Planning (Use Classes) Order 1987 must be supported by robust Development Plan policy and where appropriate Supplementary Planning Guidance.

5.0 RECOMMENDATION

- 5.1 It is recommended that the content of the consultation response set out in Appendix A be approved.

Background papers:

Welsh Government Consultation Document - Proposed amendments to secondary legislation for development management covering: Statutory Consultees, Design and Access Statements and Houses in Multiple Occupation – 3 August 2015 - <http://gov.wales/docs/desh/consultation/150803-further-secondary-legislation-for-development-management-en.pdf>

Contact Officer: Ryan Thomas
Date of 4th October 2015
Production:

Extension No: 5731
Document Name: WG Consult - Secondary legislation: Statutory consultees/design and access statements/houses in multiple occupation

Consultation Reference: WG26011

Consultation Response Form

Proposed amendments to secondary legislation covering: Statutory Consultees / Design and Access Statements / Houses in Multiple Occupation

We want your views on our proposals for amending secondary legislation in relation to the provisions on statutory consultees, when to submit a design and access statement, and the classification of houses in multiple occupation.

Please submit your comments by 26 October 2015.

If you have any queries on this consultation, please email:

planconsultations-b@wales.gsi.gov.uk or telephone Kristian Morgan on 029 2082 3360.

Data Protection

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

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

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

Proposed amendments to secondary legislation covering: Statutory Consultees / Design and Access Statements / Houses in Multiple Occupation

Consultation Reference: WG26011

Statutory Consultees / Design and Access Statements / Houses in Multiple Occupation		
Date of consultation period: 3 August 2015 – 26 October 2015		
Name	Ryan Thomas	
Organisation	City and County of Swansea	
Address	Civic Centre, Oystermouth Road, Swansea, SA1 3SN	
E-mail address	ryan.thomas@swansea.gov.uk	
Type <i>(please select one from the following)</i>	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Consultation Reference: WG26011

2.0 Statutory Consultees

Q1	Do you agree with the proposal to amend paragraph (i)?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: The amendment of the definition to exclude householder development and clarification of consultation requirements with the Coal Authority is welcomed.</p> <p>Clarification is required where part of the site is within a High Risk coal mining area and part is within a Low Risk coal mining area, particularly on smaller development plots - is consultation required if any part of the site is within the High Risk area or is there a % of the site required to be within the area to trigger consultation. We have had instances where part of the site has been within a High Risk area and Coal Authority have advised us that they shouldn't have been consulted.</p>				

Q2	Do you agree with the proposal to amend paragraph (k)?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments: Clarification of the triggers for consultation with CADW is welcomed.</p>				

Q3	Do you agree with the proposal to amend paragraph (r)?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: Clarification of the triggers for consultation with the Theatres Trust is welcomed.</p> <p>The definition of a theatre should be clarified/ included in the schedule if it is to</p>				

Consultation Reference: WG26011

include all theatres, historic, contemporary and new, including theatres in current use or disused.

Q4	<p>Do you agree with the proposed changes as set out in Table 4:</p> <p>(a) To remove paragraph (n)?</p> <p>(b) To remove paragraph (u)?</p> <p>(c) To add paragraph (y) to Natural Resources Wales’ statutory consultation requirements?</p>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>Generally supportive of the revised consultation requirements for NRW including the removal of Paragraph (u) as the operation of fish farms is regulated by separate legislation and the addition of a new flood risk description at Paragraph (y), however, it is considered that NRW provide valuable input on all applications for the deposit of refuse or waste, even if under the EIA thresholds. Removal of paragraph (n) is not supported.</p>				

Q5	<p>Do you agree with the proposed new consultation thresholds for Water and Sewerage Undertakers identified in Table 5?</p>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p>Consultation with Water and Sewerage Undertakers on all residential development including single dwellings is considered too onerous particularly where there are no constraints locally. In addition it is not clear why water and sewerage undertakers need to be consulted on applications for the use of land for renewable energy schemes or for applications that are contrary to the development plan. Further clarity on the rationale behind this would have been</p>				

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useful. The latter could encompass a whole range of applications that are contrary to the development plan that have little/ no discernible impact on water/ sewerage undertakers.

Q6	Are there any other thresholds that should be included in/or excluded from Schedule 4 of the Development Management Procedure Wales Order? If so, please identify these and explain why they should be included or excluded.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

3.0 Design and Access Statements

Q7	Do you think that major development, as described under c, d and e of paragraph 3.19 (of the Consultation Document) and the Development Management Procedure Wales Order, is the right threshold for requiring a Design and Access Statement? If not, what would be an appropriate threshold?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation Reference: WG26011

Q8	Do you agree with our proposals to have different thresholds in Conservation Areas and World Heritage Sites? If not, what other sensitive areas, if any, should a smaller threshold apply?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: The proposed threshold for Conservation Areas should also be applied to applications within AONBs as well as for applications within or affecting the setting of Historic Parks and Gardens. It is noted that paragraph 3.29 of the consultation document states that Historic Parks and Gardens will be considered in the future, however, it is considered that these should be included now given their special designation and historical value.</p>				

Q9	Do you agree with our proposed threshold for Design and Access Statements in these sensitive areas? If not, what would be an appropriate threshold?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				

Q10	Do you agree with the proposal to incorporate the requirement for a statement on design within a Heritage Impact Assessment when preparing an application for listed building, scheduled monument or conservation area consent?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: Agree subject to the requirement of a specific section setting out the design implications of the proposals rather than a number of separate and disjointed sentences related to design spread throughout the various parts of the HIA text.</p>				

Consultation Reference: WG26011

Q11 What do you consider should be the circumstances in which a Heritage Impact Assessment would also need to be accompanied by a statement on access?

Comments:
 Any proposals for an existing or proposed use requiring access by the public. Any proposals for other uses involving a change to access arrangements which impact upon the character and appearance of the conservation area or the setting of a listed building or other historical designation (Historic Parks & Gardens etc.).

Q12	Do you agree with our proposals to simplify the statutory content of Design and Access Statements?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
 A lot of the issues raised regarding DAS documents related to to small scale schemes where the document was far too onerous a requirement. Removing the requirement for DAS for such applications will eliminate this issue to a substantial degree. However removing any specific requirements to control the content of DAS for the remaining 'major development' schemes could impact upon the quality of these documents which may then not follow a logical or rational approach to design and may not add any additional information to aid planning officers nor help to explain the scheme to the public. This will diminish the usefulness of DAS for these applicable schemes.

Furthermore removing some statutory content such as 'character' and 'context' also reduces the likelihood of a rational approach to design being undertaken which should be based initially on an analysis of the character and context of the locality. Such an analysis-design approach would not preclude more innovative or contemporary designs but would ensure that developers fully justify their proposals especially if these depart from the established character of the area. As such, a level of prescription in terms of the contents of DAS or an alternative requirement to provide a rational process of context analysis is required to ensure that the quality and usefulness of these documents is retained.

By advocating an approach based on an 'individual scheme basis to reflect specific circumstances' (as highlighted in paragraph 3.31 of the consultation document) with no prescription of content will likely lead to delays in the planning registration and determination processes as DAS contents are

Consultation Reference: WG26011

negotiated back and forth between LPA's and developers on an individual application basis. Such an approach will therefore not aid in streamlining the planning process.

It would also appear sensible to include the Pre-Application Consultation Report (as recommended in the Frontloading consultation document) within the Design and Access Statement (where they are required) if the former is to be required by statute.

This would ensure that the explanation/ evolution of the design process is closely linked to the consultation responses received at the pre-application stage and would prove useful for all users.

4.0 Houses in Multiple Occupation

Q13	Do you agree that a new use class C4, whereby planning permission will be required for Houses in Multiple Occupation with fewer than seven residents, should be introduced?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q14	Do you agree with our proposal to align the definition of an Houses in Multiple Occupation for planning purposes with the housing definition set out in section 254 of the Housing Act 2004?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments:				
The definition set out in S254 of the Housing Act is not particularly clear.				
It is imperative that the definition for planning purposes is clear to ensure the proposals operate effectively.				

Consultation Reference: WG26011

Q15	Do you agree with our proposal to enable small Houses in Multiple Occupation (new use class C4) to revert to use as a dwellinghouse (Class C3) without requiring planning permission by amending the Town and Country Planning (General Permitted Development) Order 1995?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

Q16	We have asked a number of specific questions. If you have any related queries or comments which we have not addressed, please use this space to report them.
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Comments:

I do not want my name/or address published with my response (please tick)

How to Respond

Please submit your comments in any of the following ways:

Email

Proposed amendments to secondary legislation covering: Statutory Consultees / Design and Access Statements / Houses in Multiple Occupation

Consultation Reference: WG26011

Please complete the consultation form and send it to :

planconsultations-b@wales.gsi.gov.uk

[Please include **‘Proposed amendments to secondary legislation covering: Statutory Consultees / Design and Access Statements / Houses in Multiple Occupation’** in the subject line]

Post

Please complete the consultation form and send it to:

**‘Proposed amendments to secondary legislation covering: Statutory Consultees / Design and Access Statements / Houses in Multiple Occupation’
Development Management Branch
Planning Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3 NQ**

Additional information

If you have any queries on this consultation, please

Email: planconsultations-b@wales.gsi.gov.uk or

Telephone: Kristian Morgan on 029 2082 3360

Report of the Head of Legal, Democratic Services and Procurement

Planning Committee – 13 October 2015

APPLICATION TO REGISTER LAND KNOWN AS CASTLE ACRE GREEN, NORTON, SWANSEA AS A TOWN OR VILLAGE GREEN

APPLICATION NO. 2731(S)

Purpose:	To inform the Sub-Committee of the recommendation of the Inspector
Policy Framework:	None
Statutory Tests:	Section 15 Commons Act 2006
Reason for the Decision:	The Authority has a statutory duty to determine the application
Consultation:	Legal, Finance, Planning and Local Members
Recommendation	It is recommended that: <ol style="list-style-type: none">1) the application for the above registration be GRANTED;2) the land of the application site be added to the Register of Town or Village Greens under Section 15 of the Commons Act 2006.
Report Author:	Sandie Richards
Finance Officer:	Aimee Dyer
Legal Officer:	Sandie Richards
Access to Services Officer:	Phil Couch

1.0 Introduction

- 1.1 The Council has received an application made by Dr. Robert Leek on behalf of "The Friends of Castle Acre Green" under Section 15(3) of the Commons Act 2006 in respect of land known locally as Castle Acre Green, Norton, Swansea. The application seeks to register the 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 and the Council has made an objection to the application.
- 2.2 The Head of Legal, Democratic Services and Procurement has used the delegated authority granted by this Committee on 15th February 2012 to instruct Counsel to act as an Independent Inspector to advise on the application and the appropriate procedure to be adopted in determining the application.
- 2.3 As reported to members of the Rights of Way and Commons Sub-Committee on 8th October 2014 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 or objector, other than in the context of receiving evidence from the Council in those capacities, as one of the parties to the disputed issues relating to the application.
- 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(3) 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 ceased to do so before the time of the application but after the commencement of this section; and*
- c) *the application is made within the period of two years beginning with the cessation referred to in paragraph (b)."*

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 application was received by the Commons Registration Authority on 29th March 2011. The application states that use of the claimed land “as of right” ceased on 21st April 2009, which was less than two years before the time of the application. 21st April 2009 is therefore the date from which the relevant 20 year period needs to be measured (backwards).

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(3) 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(3) 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 4th March 2015 [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 11.6 to 11.14 of the Inspector’s Report. The Inspector concludes that the identified ‘neighbourhood’ of Norton sits, and for all material purposes sat, within a legally significant ‘locality’ which accords with the interpretation which the courts have chosen to give to that term.

7.3 **“A Significant Number of the Inhabitants” [of the Neighbourhood]**

This issue is dealt with in paragraph 11.15 of the Inspector’s report. He notes that the Objector conceded that the Applicant was able to show that a significant number of local inhabitants from the neighbourhood had used the land over the requisite period.

7.4 “Lawful Sports and Pastimes”

This is addressed in paragraph 11.16 of the Inspector’s report. Again, it is noted that the Objector had conceded that those local inhabitants had indulged in ‘lawful sports and pastimes’ on the application land.

7.5 “For a Period of at Least 20 Years”

As noted in paragraph 11.17 of the Inspector’s report, the 20 year period for the purposes of this application was the one ending when ‘permissive’ signs were erected on the land on 12th April 2012.

7.6 “On the land”

It will be seen from paragraphs 11.18 to 11.24 that there was some discussion between the parties regarding the exact extent of the application land. The Inspector has concluded that the hook shaped area referred to was included.

7.7 “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 11.25 to 11.70 of the report.

7.7.1 The Council, as objecting landowner conceded that local people from Norton had used the application site for more than 20 years up to April 2012 when signs were erected. However, they argued that the local people had been doing so either be implied permission, or possibly ‘by right’ as the exercise of statutory powers by the Council would have given the public the right to be on the land.

7.7.2 Particular consideration is given by the Inspector to the judgment of the Supreme Court in the case of R (Barkas) –v- North Yorkshire County Council [2014] UKSC 31. One of the main points decided by the Court in that case (referred to at paragraph 11.30 of the Inspector’s report) might be that where a local or public authority, having statutory powers to do so, has deliberately provided a piece of land for recreational purposes, it can be taken to have ‘appropriated’ the land for such purposes, even if it has not gone through a formal process of appropriation under section 122 of the Local Government Act 1972. As such, the local people using that land recreationally are not there as trespassers, or ‘as of right’ but are using the land ‘with permission’ or ‘by right’.

7.7.3 However, the Inspector emphasises (as paragraph 11.32) that the Supreme Court in Barkas very specifically did not say that its judgment meant that no open land belonging to a local or public authority can ever be registered as a town or village green if the statutory criteria are otherwise met.

- 7.7.4 Consideration was also given by the Inspector to the evidence provided to the inquiry regarding the way in which the land had been seen by the Council and its predecessors over the years. This point is considered in paragraphs 11.38 to 11.55 of the Inspector's report.
- 7.7.5 The Inspector makes a judgment that the application land is more akin to a piece of open local authority land, acquired for a different purpose and not laid out or identified for public recreational use, but which just happens, through circumstances, to have been available for use by local people for 'lawful sports and pastimes'. He does not view it as land which the Council and its predecessors had allocated for public recreational purposes, even by some less formal process of appropriation or allocation.
- 7.7.6 The Inspector concludes (at paragraph 11.57) that even though the land is owned by the Council it **is** nevertheless capable of being registered under the Commons Act.
- 7.7.7 Consideration was also given to three further issues which the Objector argued showed use of the land to be by permission rather than 'as of right', these being medieval tournament camping, dog fouling signs and bins and signs associated with the Mumbles Development Trust and the Mumbles Way.
- 7.7.8 The Inspector concluded that the evidence resented regarding these issues did not undermine the Applicant's case under the Commons Act.

8.0 Formal Conclusion and Recommendation

- 8.1 The Inspector's conclusions and recommendations are set out in paragraphs 11.71 and 11.72 of the Report.
- 8.2 He concludes that the Applicant has succeeded in making out the case that there was 'as of right' use for lawful sports and pastimes of the whole of the application site by a significant number of the inhabitants of the neighbourhood of Norton for at least the relevant 20 year period.
- 8.3 The Inspector recommends that the application site should be added to the Register of Town or Village Greens, under Section 15 of the Commons Act 2006.

9.0 Representations made by the Council in its capacity as the objecting owner of the application land

- 9.1 The Council (in its role as objecting landowner) and Applicant were provided with a copy of the Inspector's report prior to this meeting.
- 9.2 Mr. Rhodri Williams, Queen's Counsel who represented the Council (in its capacity as the owner of the application land) at the inquiry disagrees with the Inspector's interpretation of the law. He has given his consent for his advice

to his client to be disclosed to this Committee and this is attached as Appendix 3. The Council (as objecting landowner) wishes the Committee to know that it is felt that the Inspector has failed to deal with the Council's express submission that evidence existed which was wholly consistent with its case that the land was held for open space purposes for a significant period of time within the requisite 20 year period and, notably, after 2008.

- 9.3 Furthermore, it is argued on behalf of the Council that the Inspector has not properly applied the law as established in *Barkas* either to the facts of this case, or to the case as submitted on behalf of the Council in its capacity of objector.

10.0 Response of the Inspector and the Applicant to the Landowner's representations

- 10.1 The Advice of Mr. Williams QC was sent to both the Applicant and Inspector for comment.
- 10.2 The Applicant's comments are attached as Appendix 4.
- 10.3 The Inspector has addressed the issues raised by Mr. Williams in an Addendum to his original report with the benefit of having also considered the Applicant's comments. The Addendum is dated 4th September 2015 and is attached as Appendix 5. Members will note from the final sentence of paragraph 8 of the Addendum that the Inspector emphasises his neutral and non-partisan standpoint.
- 10.4 The Inspector states [at paragraph 13 of the Addendum] that nothing in what Mr. Williams says in his Further Advice contains, in his judgment, any new or persuasive points which suggest that he applied the legal tests wrongly.
- 10.5 He concludes [at paragraph 21] that he remains of the view that the land of the application site in this case **should** properly be added to the Register of Town or Village Greens, under Section 15 of the Commons Act 2006.

11.0 Implications of not following the Inspector's Recommendation

- 11.1 If Committee decides not to follow the Inspector's recommendation to register the land as a town or village green members should be aware that the Applicant may bring a claim against the Council by way of Judicial Review in the High Court.
- 11.2 If leave was given by the Court for such a claim to be made the Court would review the law and the correct interpretation of the case law.
- 11.3 The Applicant would only succeed in getting the Committee's decision quashed if it was held by the Court to be a decision no reasonable authority could make.

11.4 The Inspector emphasises at paragraph 8 of his addendum that an authority in its quasi-judicial role should not readily go against the conclusions of its independent legal adviser on such a matter unless there are clearly evident, convincing reasons to do so.

12.0 Recommendation

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

13.0 Equality and Engagement Implications

13.1 There are no Equality and Engagement implications to this report.

14.0 Financial Implications

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

15.0 Legal Implications

14.1 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 4th March 2015

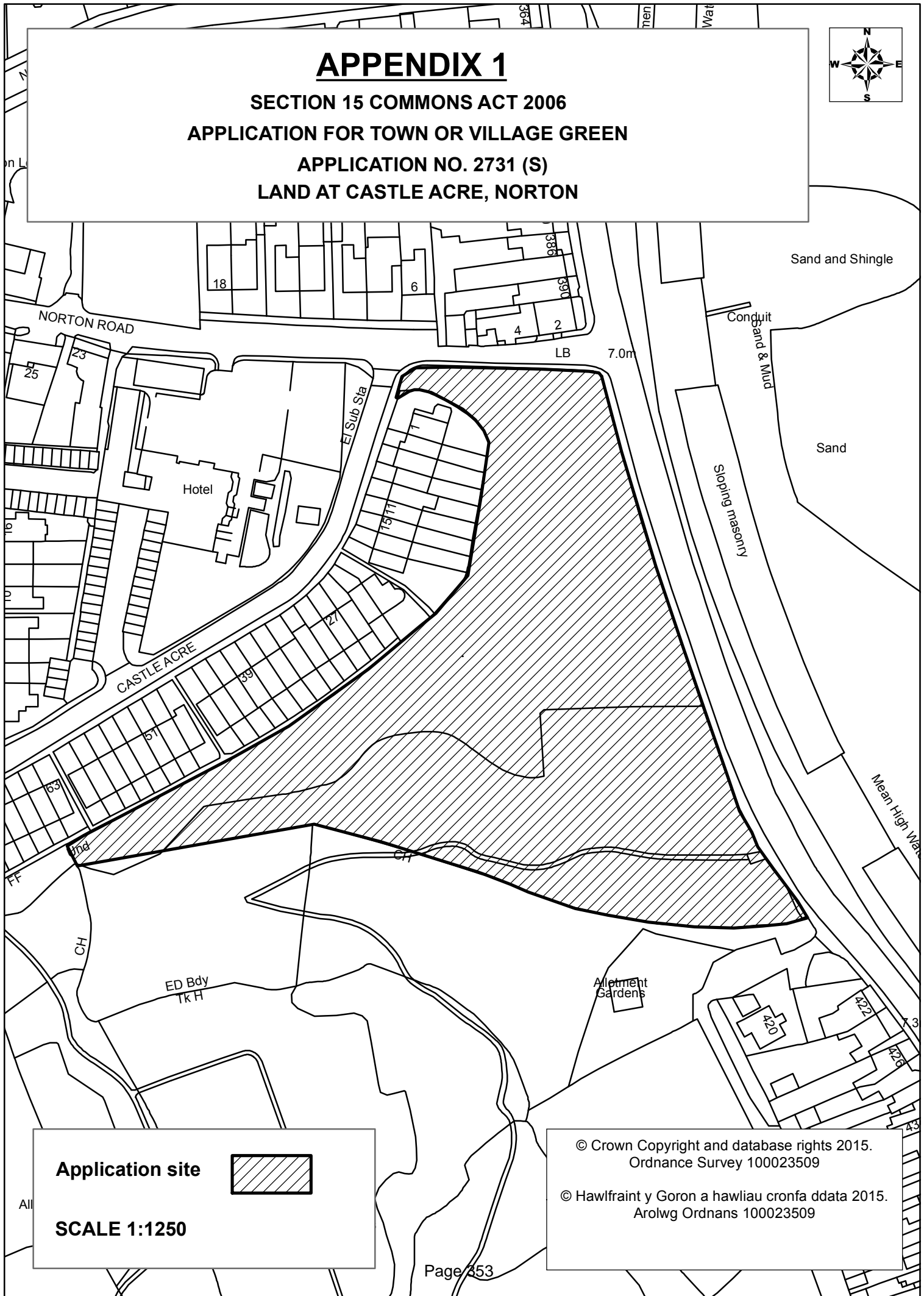
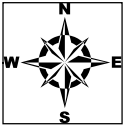
Appendix 3: Advice of Mr. Rhodri Williams QC, Barrister at Law, dated 9th March 2015

Appendix 4: Comments of the Applicant on the advice of Mr. Rhodri Williams QC

Appendix 5: Addendum to the Inspector's Report dated 4th September 2015

APPENDIX 1

SECTION 15 COMMONS ACT 2006
APPLICATION FOR TOWN OR VILLAGE GREEN
APPLICATION NO. 2731 (S)
LAND AT CASTLE ACRE, NORTON



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 CASTLE ACRE GREEN,
NORTON,
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 20th September 2012, for the registration of an area of land known locally as Castle Acre Green, at Norton, in the Mumbles area of Swansea, as a Town or Village Green under **Section 15** of the **Commons Act 2006**. The site is within the administrative area for which the Council is responsible, and is also entirely within the freehold ownership of the Council.
- 1.2. The Council, in its capacity as owner of the site concerned, was the principal, and by the time of the Inquiry the only, objector to the application. It is important to record 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 its capacity as landowner or objector, other than in the context of receiving evidence and submissions from the Council in those capacities, as one of the parties to the disputed issues relating to the application.
- 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 duly 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.

2. THE APPLICANT AND APPLICATION

- 2.1. The Application was itself dated 19th September 2012, and noted as received by the Council on the following day, 20th September 2012; it was made by Dr Robert Leek, of 47 Castle Acre, Norton, Mumbles, Swansea, SA3 5TH, who in the Application indicated that he was making it on behalf of “The Friends of Castle Acre Green”. Dr Leek, in that capacity, is therefore “the Applicant” for the purposes of this Report. The application form indicated that the application was based on **subsection (3)** of **Section 15** of the **Commons Act 2006**, and mentioned by way of explanation that Notices had been erected [on the land] by the City & County of Swansea for the first time on 12th April 2012 which gave permission to use the land for recreation.
- 2.2. On the question of the relevant ‘neighbourhood’ and ‘locality’, the form as submitted referred to two maps accompanying the application, and stated: “The neighbourhood of Norton is situated in the West Cross Electoral Ward”. One of the two maps or plans showed a very clear delineation of a suggested Neighbourhood of Norton, and the other one showed (among other things) what I

understood to be the boundaries, at the time it was produced, of the Council electoral ward of West Cross. In the run-up to the Inquiry the Applicant produced a slightly amended plan of the Neighbourhood of Norton, showing it somewhat enlarged at its western end. The Objector did not object or take any issue with this amendment, and in the event the identification and boundaries of a 'Neighbourhood' of Norton was not a 'live' or disputed issue between the parties by the time of the Inquiry. I shall refer to the questions of 'neighbourhood' and 'locality' again in the concluding section of this Report, but 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 very clearly shown on a plan which accompanied the application. A curious 'quirk' of the papers lodged with the application is that a set of completed evidence questionnaires included in those papers all contained a plan which showed a slightly different area, which excluded a small hook-shaped piece of land on the western side of the northern extremity of the land, at the entrance to the site from Norton Road. However, as I have indicated, the application plan itself was completely clear in its identification of the boundaries of the intended application site at this location, and was at a good scale. I shall consider the implications of the 'quirk' or anomaly which I have just referred to, at an appropriate point later in this Report.
- 2.4. The site is currently (as I was able to see it) a reasonably well maintained area consisting mostly of mown grass, but the grass merges into woodland along virtually the whole of the site's long southern boundary. Mainly within the woodland part there are some obvious paths, parts of which have clearly had their surfacing improved to make them more commodious to use. The site slopes generally down from west to east.
- 2.5. The site's (short) northern boundary, and its longer eastern boundary to Mumbles Road, are generally marked by a continuous wall, which can be seen over by an adult, but which does not include any entry points along its length. It is possible to gain entry to the site by a well-marked footpath entrance at the southern end of the eastern boundary, about which I heard a certain amount of evidence, which will be referred to later. There is a very obvious and wide entrance to the site, from Norton Road, at the western end of its northern boundary.
- 2.6. There is then a long stretch of what I shall call the site's north-western boundary, where the site abuts the back garden fences of the street called Castle Acre; along this stretch there are a number (which I believe to be three) of narrow passageways between pairs of houses, along which it is possible for a pedestrian to gain access through from that street onto the site.
- 2.7. The site's short western boundary is not obvious on the ground. It is sufficiently clear, because of the scale and clarity of the application plan, where it is intended to be, but on the ground the narrow area of open, grassy land continues to extend westwards (and uphill) for some distance, without it being apparent why the application site's western boundary has been drawn as it has been. A footpath

route into that extended western area links with other parts of Norton, and thus can be used to gain access to the application site.

- 2.8. The long southern boundary of the site is, as I have already noted, largely in woodland. Woodland generally continues southwards (and uphill) beyond the southern boundary of the application site, and there is generally no fence or otherwise effective modern boundary to separate off the site from that further area to the south. However it is also generally the case, as I saw on my site visit, that there are features on the ground, such as the (low) remains of old walls or banks, or established lines of trees, which in a visual sense ‘explain’ where the southern boundary of the site is intended to be. As well as the general point that most of this southern boundary can be crossed fairly easily by anyone who is in the woodland, there are some specific footpaths which head off southwards (and uphill) from the site, through the woodland, in the general direction of Oystermouth Castle.

3. **THE OBJECTOR(S)**

- 3.1. As I have already noted, by the time of the Inquiry, it had become clear that the only substantive objector to the application is the Council of the City and County of Swansea itself, as the owner of the area of land covered by the application. The Council in that capacity is therefore “*the Objector*” for the purposes of the remainder of this Report.

- 3.2. When the application was originally made public by the Registration Authority, a letter commenting on it was received from Councillor Mark Child, which was somewhat ambivalent as to Councillor Child’s views as to the strength of the application as a claim under the Commons Act, but did not express opposition or objection to the application. In the event Councillor Child played no further part in the proceedings, and in particular did not take up the opportunity to participate in the Inquiry.

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 2014. 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 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.

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 the morning of 4th December 2014, 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 Ostreme Centre, Newton Road, Mumbles, over three days, on 2nd, 3rd and 4th December 2014.

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, which I have referred to 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 already noted above, the original Application in this case was supported and supplemented by a number of documents; these included plans, witness statements, completed evidence questionnaires, photographs, and other supporting material.

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. *Ms Julie Vallack* lives at Myrtle Cottage, 23 Norton Road. She lives there with her mother Jean Vallack, and her son Adam had lived there until recently. Ms Vallack had completed one of the evidence questionnaires which accompanied the original application.
- 7.8. She said that her parents had purchased Myrtle Cottage in 1980, and although she did not live there at that time she was a daily visitor. She herself has purchased different properties in the Newton and West Cross areas which are close to Norton. She would often stay in Norton at weekends, and reside there in between moves. If her parents went abroad she would stay at the cottage for extended periods. She has always considered the cottage as her home.
- 7.9. They are a close family, where her parents supported her and she has in later years supported them. When her son was born in 1984 her parents became the daily carers to her son on her return to work. Both her parents would take her son down to “the Field” (the application site) for games and exercise. In 2003 her son and she moved into Myrtle Cottage on a permanent basis, and in 2006 she herself purchased it. Her parents both remained there with her up until her father’s death in 2013. Her mother is now 84 years old and still lives there with her.
- 7.10. From 1980 onwards they as a family would use the application site on Castle Acre Green, which they always referred to as “*the field*”, mainly for walking. Her late father had problems with both his knees and needed gentle walking exercise on a daily basis, for which he would walk around the field, as it is the closest open space to Myrtle Cottage. Her father finally had both knee joints replaced in 1997. She would often accompany him after work for fresh air, or her mother would.

- 7.11. In 1993 she had a Jack Russell puppy, who lived for 17½ years until October 2011. That dog would be taken around the field at least twice if not three times a day. The dog would be let off the lead on the field. In all that time they were never denied access or told that the dog should be on a lead.
- 7.12. Mostly she or a member of her family would walk in a large loop around the bottom of the field, and the dog would make forays into the wooded area. At other times Ms Vallack would vary the walk and enter from the top of the field, from the Druids Close entrance. Her father rarely did that walk as it was too strenuous for his knees. It was normal to meet other residents on the field, also walking their dogs. There were many happy dog walkers there.
- 7.13. As the field has a high wall to its seaward side it is quite a contained and safe area for young families. Whatever was the trend of fad of the year, the younger families would engage in it on the field. One particular phase was a bouncy castle used for children's parties. She had seen small vans with generators blowing these items up on the field. Over the years there had been kite flying, conker picking and primary school parties for nature rambling.
- 7.14. As there is a large copse or wood adjoining the field, children would make wigwams from fallen branches, which also doubled up for goal posts or even cricket stumps.
- 7.15. It was not only children who would play such sports there. This is also an area used by picnickers, as opposed to the hustle and bustle of the sea front. Mushrooms also occurred there, and the blackberries were picked. In later years she had even seen wedding parties taking a photo-shoot on the field, as well as on the sea front.
- 7.16. In all that time she has never been prevented from entering the field, nor has she been told that any of the activities she had spoken about were prohibited.
- 7.17. *In cross-examination* Ms Vallack explained that the area where blackberries were picked was around the edge of the field. In fact all of the activities she had mentioned were carried on both on the open field and into the woodland part of the site, she said. She agreed that about 30% or so of the application site is woodland.
- 7.18. She also agreed that the woodland part of the application site seemed to correspond approximately to the part of the site which was shown on a plan as currently being managed by the Mumbles Development Trust.
- 7.19. In that southern area there are some fairly new paths which have been constructed, but they follow the ways that dog walkers already walked. Garlic used to grow there near those paths, and blackberries. She thought on reflection that the extent

of the wooded area on the site has grown. But the aerial photograph which was part of the Applicant's bundle gave the impression that the site was more wooded than it is in reality.

- 7.20. Her dog had died in 2011, which was before permissive signs appeared on the land in April 2012. She did not think that she herself had walked up to the top of the application site in April 2012, near to the position where one of the photographs produced by the Objector showed one of the signs. Nevertheless she has subsequently seen that sign there and wondered why it was there.
- 7.21. She would say that she has always used the field, i.e. the application site. Indeed she would not go anywhere else and let her dog off the lead. She had always used that land without permission, and indeed she thought it was a bit of a cheek when the sign did eventually appear. She herself did not know if it was the appearance of this sign that had spurred the making of the application.
- 7.22. She recognised one of the photographs showing a path coming out of the woodland into the open area. There were two pathways in there in the woodland which she would walk with her dog. Those paths were more formally made up at some point but she could not recall the year in which that happened.
- 7.23. She had in fact been aware of something going on in relation to the land with the Mumbles Development Trust, something about a path being made right the way through to Newton, some kind of walk being produced. She was aware that there was an access into the footpath and the woodland from the Mumbles Road and that there were signs there, although she could not remember in which year those were put up. For many years one could walk straight out onto Mumbles Road, before the present wooden gate structure at that location was put in place. She thought that the year could have been 2006, because she did see them before her dog died. She did not recall seeing any other signs in relation to the path other than the one at the Mumbles Road exit.
- 7.24. In relation to a sign about dog fouling which had been attached to a lamppost near the Norton Road entrance to the field, that was a sign which was on the pavement, not on the field. She had never to this day seen a sign of that kind on the field. She thought that that sign referred only to the fouling of pavements.
- 7.25. She agreed that the sign was immediately at the point where the grass area of the site starts, but to her the sign was obviously linked to the pavement. There had indeed been a problem with respect to dog fouling on the pavements in the area. And such signs went up all along the Mumbles sea front. There had been letters and complaints in the local newspaper. It was a sign put up on a lamppost, as had been the case elsewhere in Mumbles.

- 7.26. She had never heard of complaints about dog fouling on the grass field. Certainly on the area of the field that she knew, if any of the local people's dogs made a mess they would pick it up. No-one had ever brought to her attention dog mess on the field that had not been cleaned up. She had of course seen dogs defecate onto the field. However she did not believe that the sign that had been erected was to do with that.
- 7.27. As for the permissive signs which had been erected, she accepted that there was now one near Norton Road too. She had seen it. She had understood that there were rumours that the Council was making noises about local people needing a permissive right to go onto the land. That sign does say that permission could be withdrawn. In her recollection the ball had already started rolling locally even before the signs appeared; village green status had previously been sought for some land at West Cross, and this is a small locality and people had heard about it. Certainly in the local community there was some surprise that the Council put up these signs on the field when they did so. But the signs appeared, in her recollection, after communications had started to flow about a possible 'village green' claim.
- 7.28. She herself had completed one of the questionnaires produced by the Applicant about battle re-enactments at Oystermouth Castle in the period 1999 to 2002. In that she had stated that she could remember a camp on Castle Acre Green in connection with such a re-enactment, on one occasion. Among other answers she had given were that she was during that period free to walk through the camp site, if she chose to, as normal.
- 7.29. Ms Vallack identified pictures of some of the dog fouling notices which had been photographed along the sea front, as well as the dog fouling notice on the pavement near the application site. She also acknowledged that a sign advertising the Norton House Hotel had stood in the corner of the application site, by the junction of Norton Road with Mumbles Road. There had previously been a sign there for the Beaufort Hotel as well, although that had gone because that hotel is now temporarily closed and up for sale. Her understanding was that the Beaufort is owned by a brewery, whereas the Norton House Hotel is privately owned.
- 7.30. One of the photographs produced to the Inquiry showed a relatively new picnic table and benches erected in the wooded area of the site. However the picnicking on the site which she had referred to in her evidence had been on the field itself.
- 7.31. Reverting to the medieval pageants or battle re-enactments, she reiterated that she could only recall one medieval battle occasion. She thought it was the first time that such a thing had occurred; she recalled it because she went down to the field with her dog and was surprised to see that there were ordinary tents and vans on the field, all along the southern side of the grassy area. She had been shocked because she thought the site had been invaded by itinerants. There were no public facilities for the campers, and no warning had been given, so it had stuck in her

mind because she thought that they in the local area had a problem. She did not want to take her dog down there again in such circumstances. Her impression had been the campers had just come onto the site off the road. She had not in fact gone up to the Castle or seen what was going on up there, so she did not know why the people were camping on the site. She was not that concerned, as she herself does not live facing the field; she was subsequently told that it was to do with the medieval re-enactment. She had not been aware in subsequent years of that type of event taking place.

- 7.32. *In re-examination* Ms Vallack said that in about 2011 she had been aware of the publication of a list of local development plan candidate sites for potential housing development, and that there had been a petition against it in the case of this site, with some 200 objections.
- 7.33. She had never seen signs to do with dog fouling, or dog bins, on the land of the application site.
- 7.34. In relation to the entrance to the land and the footpath from Mumbles Road, she pointed out that some of the old entrance posts which survived at that location were visible in photographs which had been produced to the Inquiry. In the woodland there were in fact quite a lot of paths; some of them were shown on photographs produced in the Applicant's evidence.
- 7.35. As far as the re-enactments were concerned, she confirmed that she had only found out about them after she had seen the tents on the field for the first time. She had been a little afraid to walk through the tents as she had a Jack Russell with her, and to her eye the people had seemed to be itinerants. However that circumstance had not stopped her from using the rest of the field. She was still able to go on her walk.
- 7.36. *Mrs Mandy Thomas* lives at 100 Castle Acre, Norton. She has lived at that address with her family since April 1991, and had brought up her family there. Her son and daughter are now 20 and 23 years old. She had completed one of the evidence questionnaires in support of the application.
- 7.37. On first arriving in Castle Acre they were fortunate that there were four families with children of roughly the same age as theirs. The green space of Castle Acre was a happy and safe playground for all those children. They learned to ride their bikes there, kites were flown, dens were made and dogs played with. As they grew older ball games such as football, cricket, rounders and rugby were played there. The space was in daily use, a green oasis much appreciated by the families of the area. Several people who lived nearby would come down, bringing their children with them and great fun was had. The green open space provided a flat, safe open area for all.

- 7.38. They used the woods a lot, and their children thoroughly enjoyed those experiences. They learned a lot about the natural environment, the prolific wild life, etc. They watched owls, bats and foxes every week. They are now able to identify a range of wild birds such as woodpeckers, jays and finches. That would not have been the case had they not been able to access this green space.
- 7.39. There are now other young families living in the area, and they are using the space in the same way as Mrs Thomas's children did. Dog walkers use the space to walk their dogs every day. Their dogs are usually either on leads or running about retrieving balls etc. Recently she herself had been walking dogs for friends who are still working, and she too still uses the space for that purpose. All owners clear up after their dogs, and the fact that she has never been concerned by this or by litter in general suggests the space is valued and respected by all.
- 7.40. This land is one of the few open green areas available to the public in Mumbles. It is perfect as it is fringed by an area of woodland, which is regularly used in many different ways. This community and school use has been developed over a number of years. It has been very pleasing to see groups of school children walking and exploring this small safe area. The wildlife in the area is extensive. They hear the owls calling each evening, and screeching in the mating season. Bats frequent the area, and the bird song is wonderful. Although foxes can be an urban problem they do not have much trouble with them. Every night a fox trots past her window, and they look forward to seeing him.
- 7.41. As a family they had benefited greatly from being able to access this area, just as many other families are now continuing to do. The area contributes greatly to the wellbeing of families growing up in Norton and Mumbles.
- 7.42. One of the things that children love about this space is that the woods are so close. The application site had been almost in daily use by her children she would say.
- 7.43. As a mother of small children she would have been worried if the site had been covered in dog mess. It was not, but the pavements were covered in dog mess all over Swansea, and there had in fact been a campaign about it. They as a family had not had dogs, but their neighbours had had dogs which her children had been very fond of.
- 7.44. On the site there had been a huge range of bird life and it was very special to have it on one's own doorstep.
- 7.45. She had felt affronted by the permissive signs when they first went up on the site, and it made her suspicious of what their underlying purpose was. In her view the Council does not really own this land. They the local people own it, and the Council look after it. They had had no letter explaining why the signs went up; she did ring the Council's offices but only got a vague answer.

- 7.46. She had been delighted when the Mumbles Development Trust became more active in the area, and improved the footpath. Previously the paths could be difficult for the elderly. That had been done relatively recently, about 2008 she thought, possibly in the period 2006 – 2008.
- 7.47. There are new young families in the area now, which is very nice; some of them use the land in the same way as her family had done. She herself walks dogs for her neighbours. She reiterated that there was never a lot of mess in the field; she would have been very concerned if there had been. Most people walking their dogs on the field certainly did pick up after them.
- 7.48. This space is very much valued and respected by local people, and indeed is one of the few areas available to the local public. There are other parks and open areas in other parts of Mumbles, but not many other flat open space areas.
- 7.49. She herself is a retired teacher, and sometimes goes on the land just for a walk; it is very nice to hear the owls in the woods for example, and to see or hear the rest of the wildlife.
- 7.50. *In cross-examination* Mrs Thomas said that most people who own dogs do have connections with small children, so in general they are not worried by dog mess in the field. She was not aware of any complaints about dog mess being specifically focused on this field. However she had been aware of a campaign about dog mess all over the whole of Swansea. There had then been a tightening up around Swansea in general, and some control over this; signs and dog poo bins had been put up all over Swansea. In this local area she remembered seeing signs going up, including on the lamppost near the bottom of the site. However she had never seen there being a dog poo problem on the application field. Things did improve somewhat on the streets after the signs and bins went up, and nowadays she thought the majority of dog owners probably did pick up after their dogs.
- 7.51. She accepted that one of the wooden signs which had gone up in connection with the improved footpath in the woods contained on it the words “*Respect, Access, Enjoy*”. The appearance of those signs was a surprise, but Mrs Thomas did not see that they were signs giving permission to use the path. She supposed signs like that would have let strangers know that this area could be accessed. However she herself had certainly not seen that sign as some kind of permission being given to her to go there. She accepted that the application site had always been walled from Mumbles Road, and just round the corner into Norton Road; but other than that the site had had no fencing around it.
- 7.52. *In re-examination* Mrs Thomas said that the sign in the woodland area also carried a symbol for a path which she thought was the Mumbles Way. It is a way marker sign. She did not think that she had seen such signs elsewhere on the application

- site, but was not sure. She thought that since the paths had been improved, both this part of the path and the part at the top, she had seen more people using the path. She had sometimes seen ramblers there; indeed some people had wandered up her own drive.
- 7.53. Locals had always understood that there were paths through the woods. The original paths were made by people walking dogs. There were countless little paths through the woods, and only a few of them were later surfaced.
- 7.54. There had never been any dog bins or notices on the green. As for the medieval re-enactments, her children had taken part in the first one which was great fun. Her understanding was that there was some overspill of tents onto the application field, from the area around Oystermouth Castle. There had only been about 5 tents down on the application field, and one could certainly walk through them if one wanted.
- 7.55. **Mr Haydn Lewis** lives at Callander, Glen Road, Norton. He has lived there for 43 years. He had completed one of the evidence questionnaires originally lodged with the application.
- 7.56. He said that he had been using the green for 43 years for relaxation, for his wife and himself and their three children, who are now 42, 40 and 38 years old. They used the green daily as it was the only safe environment in their area. They would go there to play games such as 'touch', using the two manhole covers there as safe spots, and also catch-ball, tennis, cricket, kick-a-football and throw-a-rugby-ball. So it made for a varied number of games; the other favourites were hide and seek in the woods, and climb the trees, as children do. The children felt they could play in safety and unrestricted in a relaxed atmosphere, at any time, day or night, as the green is never closed. Without this green space the local population would have nowhere in the Norton area to meet socially and relax with their families or the family pet. He had spent countless hours there from 1986 with his dog, firstly training him and then playing by throwing anything for him to bring back. He would walk the dog before work at 6am, through the green and the woods, where he would enjoy the various animal scents. Then he would walk again after work from 5pm onwards, this time a longer walk cutting through the Castle field and back to the green and his home.
- 7.57. He still uses the green up to the present time, and sees many people using both it and the woods. There are children playing with their parents, or just children playing on their own. There are doggy people training their dogs, and people just sitting relaxing. These days he has grandchildren, and they still use the green and the woods when the children come down, so they go to play and go walking just as they did with his own family in previous years. He also walks his neighbours' dogs for exercise, usually 3 to 4 times a week, and they walk the green and the woods as well.

- 7.58. When one enters the woodland part it is calm and quiet, with only the birds chattering and the breeze blowing in the branches. One is in another world and the whole area is of priceless value.
- 7.59. *In cross-examination* Mr Lewis said that he had played the game of touch on the application field with both his own children and other children. The field was often used for picnics as well. As for pathways, there were several pathways into the field, from the top, and from the Castle, and via the allotments. Formalised pathways subsequently developed in the woods.
- 7.60. Nowadays his grandchildren use the field as well. He himself had come to this area from the other side of town, where there were former greens which had now been built on. He did not wish that to happen in this part of Swansea.
- 7.61. He used to work in a steel works. It was a joy to come home to his home here from there. He would walk to the application site at various times after coming home from working a shift at the steel works, and it was a real joy. This lovely green area made him feel great. It was a priceless gift. He did recall a past rumour about putting chippings on this land and using it as a car park, but nothing came of that. As for the re-enactments on the site, the people involved were fine, they were no bother and did not interfere with anybody, and access was available at all times. As for dog mess, he had never walked in any on the green. On the streets he certainly had, but not there on the site.
- 7.62. **Mr Brian Jenkins** lives with his wife at Elm Cottage, 37 Norton Road. He and his wife had completed one of the evidence questionnaires lodged with the original application.
- 7.63. He said that he and his wife had lived in Norton Road since 1968, and had walked and played with their three successive terrier pet dogs, on all parts of Castle Acre Green. Two of the dogs would be off the lead and one on a long extendable lead. This was mostly twice a day, from 1968 until 2011, with two short breaks over that time. They were free to come and go, and used most entrances to the green according to the dogs' choice. In the early days it was common knowledge that the site was earmarked for a road linking from Mumbles Road to Langland Road.
- 7.64. Over the years they saw many other residents of Norton exercise and play with their pet dogs just like them. They also saw children and parents playing football or cricket, and sometimes teachers accompanying young school children on nature study outings. In later summer they frequently saw locals picking blackberries around the edge of the wooded area bordering the green.
- 7.65. 'The Field', as they called Castle Acre Green then, was overgrown in its early days until sometime, probably in the late 1970s, when the grass started to be cut, presumably by the City and County of Swansea. They assumed that that had been

because the field had become a bit of an eyesore, especially for visitors entering Mumbles along Mumbles Road. There did not seem to be any effort to exploit the area by putting seats there, for example by the wall near the sea, or by planting any shrubs or flowers. Thus it was and remains basically an open space with some trees that is used extensively by the neighbourhood and others, often to allow dogs to run freely, unlike on the prom where dogs have to be on a lead.

- 7.66. There were no signs showing who owned the land or restricting how it could be used, until the signpost appeared out of the blue in 2012.
- 7.67. **Mr Nigel Phillips** lives at 36 Glen Road, Norton. He had completed one of the evidence questionnaires lodged with the original application.
- 7.68. He said that he has been a resident of the Norton area since 1970. He was a child during the period 1970 to 1979, and along with many other children from the locality they accessed all parts of Castle Acre Green, although they referred to it then as Lower Castle Fields. They engaged in various activities such as football, cricket, picnics, blackberry picking and just as a general hanging out and meeting place, all year round. Access to the land has always been unrestricted from all entrances.
- 7.69. When he got married in the 1980s and had children, the tradition of using this area was passed on to his two children and many of their friends, between 1990 and 2013. As a dog owner continually, since 1990 through to the present time, he and his family used the green at least three times a day all year round, along with numerous other dog walkers. The breeds he has kept, such as Labradors, Retrievers and Spaniels, and currently a Collie cross, have all required plenty of exercise, and the green has always been a safe and stimulating place for all their dogs and their friends to spend quality time together.
- 7.70. Over the years he has witnessed various activities on the land, and only recently had he seen an outdoor class from Oystermouth school being conducted near the raised manhole cover at the bottom end of the green. That group had been in the woodland on a ramble.
- 7.71. Even though the Council had only put up a sign a couple of years ago, he had always assumed that Swansea Council owned the green, because he had witnessed them cutting the grass. But he never saw any other work, apart from the recent repairs to the perimeter wall at the junction of Norton Road and Mumbles Road. Around that time he believed the Council had put up the sign to the effect that they owned this land, but he could not recall any such signs prior to that. Castle Acre Green has functioned uninterrupted as a community facility in the way he has described for at least the last 40 years.

- 7.72. *In cross-examination* Mr Phillips said that he did not recall the Council cutting the grass back when he was a child in the 1970s; he thought it might have begun to be done in the 1980s.
- 7.73. *In re-examination* Mr Phillips said that he assumed that the grass cutting had been done for aesthetic reasons, and possibly to a degree to encourage people to use the land. A lot of people use this land, it is an iconic focal point. Cutting the grass certainly made it easier for people to use the land, particularly when it was wet.
- 7.74. **Professor David Boucher** lives at Bath Cottage, 4 Norton Road. He and his wife had completed one of the evidence questionnaires lodged in support of the original application.
- 7.75. Professor Boucher explained that he, with his wife and two daughters, took up residence at 4 Norton Road in March 1992. The property overlooks Castle Acre Green, westwards towards the woodland and allotments. The three front bedrooms, but not their rear bedroom, have unobstructed views across Castle Acre, and out towards Mumbles Pier. Their house has a small back garden with some flower beds, but no play area.
- 7.76. From 1991 to 2000 he had worked at Swansea University, and frequently worked at home for part or the whole of a day. In 2000 he moved to Cardiff University as a Research Professor, and was able to work at home for two or three days a week. His wife had not been employed until 1999 when she became a Librarian at Swansea University. Up until 1999 she had the primary childcare responsibilities in their household. At the time of moving to Norton Road their younger daughter was 3 years old and their elder daughter was 8. One daughter started going to St David's School, West Cross Avenue for a few hours a day in September 1993, and full time from 1994 to 1999. Their other daughter attended the school full time from 1991 to 1994.
- 7.77. From 1992 to 1999 Castle Acre Green was used by their family as their principal recreational area. Weather permitting, they played all sorts of games, including rounders, football, cricket and hurling. They would also have races across the field, and he even taught his daughter Lucy to ride her bicycle on the field, because she was nervous of riding on the cycle path. Often after school, twice a week or so, the children would play in Castle Acre with their friends. It provided a safe environment, free of traffic for them to play unhindered. The games varied according to fashion.
- 7.78. After 1999 their use of Castle Acre Green for games was much less frequent, but occasionally, until their daughter Lucy was about 16, the balls and bats would be got out again and they crossed the road over into the field and played games until dinner time.

- 7.79. In 2006 Professor Boucher took up running as a sport, using Castle Acre Green almost every day to build up his distance and speed, over a 6 month period from March to September. The give in the ground makes much less impact on the knees and ankles. He continues to use Castle Acre at least twice a week to train, by running around the perimeter of the field, and for improving speed. He does this from one end to the other. However for longer distances he uses the cycle path and the coastal path, away from the application site.
- 7.80. Overlooking Castle Acre Green from their house, they are particularly well placed to notice the variety and frequency of use. The area is large enough to accommodate groups of children, and more often than not other games are played in different parts of the field. The field is used by families and groups of children, usually for ball games of one type or another. The frequency of use varies over the seasons, but during the summer months it is used almost every day for such purposes. Also during the summer months various adults use Castle Acre to sit and read newspapers in the sun.
- 7.81. He himself usually gets up about 7am to open the curtains, and finds throughout the year people from the area exercising their dogs on the land, usually throwing a ball or stick repetitively. Weather does not seem to deter them. During the winter, except when the field is flooded, dog owners put on their protective clothing and wellington boots and set their dogs loose. The walled environment makes it safe to let the dogs run free without causing a hazard to traffic. During the 1990s he had thought the main hazard for children playing games was dog dirt, until the Council became much stricter about the responsibilities of owners. He himself had never stepped in any and nor had his children, but he was conscious of the problem.
- 7.82. He was not aware of any interruptions to use of the land or of access to Castle Acre for recreational purposes. Access was restricted to the Norton Road entrance from 26th October 1998 to 5th February 1999. During that period a small area to the far east of the field, adjacent to Norton Road had been fenced off to carry out sewer works. However the field was still accessible and usable from the Oystermouth Road entrance.
- 7.83. When the signs went up in 2012, implying that people were using the land by permission, he had a kneejerk reaction to that. He thought that people were using the land by right of a long tradition of doing so. Even when they bought their house they were under the impression that anyone could use the field.
- 7.84. He recalled the time when Swansea had been named in the press as the *dog dirt capital of Britain*. People certainly did complain a lot about dog dirt on the cycleway and path around the coast.
- 7.85. As far as the battle re-enactment tents were concerned, the Council had never informed local people about giving permission for such tents. The area where the tents were was not roped off. He had walked through that area, feeling a little bit

intimidated but okay. He understood that the tents in this field had been overspill from the area around the Castle.

- 7.86. *In cross-examination* Professor Boucher said that during the 1990s there was a general problem in Swansea of dog dirt. He personally had been afraid that that might be the case in Castle Acre, although he never saw any there. But there had been a lot of fuss about dog dirt in Swansea generally. He himself had been pleased when the Council became more strict about the responsibilities of dog owners. The dog poo signs which went up were part of that campaign.
- 7.87. *In re-examination* Professor Boucher said that he was not surprised to see the sign to dog owners erected more or less opposite his house. It was part of the general campaign against dog mess in Swansea.
- 7.88. **Dr Robert Leek**, the Applicant, gave evidence. He said that he had resided at 47 Castle Acre since he purchased the property in 2006.
- 7.89. He had regularly used the land for play with his grandchildren since that time, and had observed many residents of the neighbourhood of Norton use the land for a variety of purposes, especially exercising dogs or playing with children, over the period up until the present day.
- 7.90. However the principal purpose of his evidence was to present the results of his researches into the public archives in relation to the history, acquisition and use of the land for which registration as a village green was sought. As part of his evidence he produced a series of maps, or composite maps constructed from a number of separate maps. He would also make reference to internal memoranda and formal minutes in relation to the land.
- 7.91. He produced a copy of the conveyance document between the Duke of Beaufort and the County Borough of Swansea in 1927, in which land surrounding Oystermouth Castle was transferred to Swansea Council. Of note was an accompanying map, on which the proposed road linking Mumbles Road and Castle Road could clearly be seen even at that time.
- 7.92. He also produced copies of the map associated with the 1938 Swansea Local Planning Scheme No.1, which again showed the proposed road linking between Mumbles Road and Castle Road, and of the key to that map.
- 7.93. Among various other historic documents, Dr Leek identified a document from February 1964, referring to an internal Council meeting, which clearly showed an intention of the then Council to construct an extension of Glenville Road, which might be revised in order to create an alternative route that would impact less on potential residential development.

- 7.94. He also produced a 1964 Report of the Borough Engineer and Surveyor, relating to a proposal to change the line of the proposed by-pass, and possibly to enable more development to take place on the north side of the by-pass line, while retaining the idea of open space on the southern side of it, nearer to Oystermouth Castle. He had unearthed a minute of the Council's Highways Committee of July 1964 in relation to this. That minute also included a comment that "*to preserve the open space zoning and provide for the new traffic route the land originally intended for development should be acquired by the Council*". It had been resolved among other things that the Borough Estate Agent be authorised to negotiate for the acquisition of the land referred to.
- 7.95. There was a minute of the Estates Committee recommending loan sanction for the purchase of the land, for £16,000 plus fees. Dr Leek commented that that was a generous premium at the time, if it was suggested that the land would be acquired just for open space purposes. Indeed he had unearthed a confidential memorandum of May 1965 from the District Valuer to the Town Clerk in which the District Valuer confirmed that the acquisition of the relevant land had been for "*highways and other purposes*".
- 7.96. Dr Leek also produced a copy of the 1965 conveyance by which the Council acquired the land concerned. The plan accompanying that conveyance showed the land being acquired coloured both pink and blue.
- 7.97. He had also unearthed other historic documents relating to the road proposals for the possible construction of the Newton Road By-pass. He had found an approved drawing dating from 1959, showing the relationship of the line of the Glenville Road extension with the yet to be constructed Castle Acre Housing Scheme. The road as then envisaged clearly ran through the present subject land. Dr Leek had produced a composite map, with scales adjusted in order to show how the road line then envisaged related to the pink and blue areas on the 1965 conveyance map. Those areas could be compared with the present application site on Dr Leek's composite map. The conclusion to be drawn was that it was clear that the land of the application site was acquired predominantly for road construction.
- 7.98. It was also possible, by comparing the conveyance map of 1965 with the planning scheme map of 1938, to see that the blue land on the conveyance map was almost precisely coincident with the area envisaged in 1938 for public open space, whereas the pink land on the conveyance seems to correspond with land which was in 1938 envisaged as being used either for the new road construction, or for what must be presumed to have been the development of dwelling houses. The land of the present application site almost entirely coincides with the land coloured pink on the conveyance plan and envisaged in 1938 as being used for highway or development purposes.

- 7.99. Dr Leek explained that there were major gaps in the Council's records over the period from 1965 up to 1997, but it was clear that the issue of the Newton Road – Mumbles – Oystermouth by-pass remained a live issue during that period. He produced a minute from February 1987 of the Council's Mumbles Regeneration Forum, which he said showed that the Oystermouth by-pass was still a live issue at that time, and the effects of it were to be studied. However then in 1998 the Newton Road by-pass was deleted, following the instructions of an independent Inspector who had held a Local Plan inquiry, because schemes should only be included in such plans if the Council intended to commence work within the following 10 years. The Newton Road by-pass scheme, which went through the present application site, was accordingly deleted from the Council's plans.
- 7.100. However subsequently a substantial part of the claimed green was then designated for parking under policy M7 of the Swansea Local Plan Review No. 1, which covered the period 1993 to 2003. Dr Leek was able to produce a letter to local residents from the Council, dated 14th April 2005, which showed that there was still an intention to include the same land as a car park in the pre-deposit stage of the Council's intended Unitary Development Plan. It was clear from an associated briefing note that although policy M7 was challenged at the Local Plan Public Inquiry, the allocation was not recommended for removal from the final version of the plan. It was clearly therefore still envisaged that the car park proposal would take place, and thereafter the Council designated the land of the application site in a way which differentiated it from the way it had designated the open land around Oystermouth Castle, for example.
- 7.101. Dr Leek also produced a map extract which he said was part of Swansea Council's promotional publicity material, which purported to show open green spaces in Mumbles and the surrounding area. That map did not put forward Castle Acre Green as a green space, even though it showed nearly all of the other public green spaces in Mumbles. This map is a current document which is downloadable off the Council's website.
- 7.102. Dr Leek mentioned that the earlier witness, Mr Lewis, had recalled that the grass was cut by the Council in 1983 having previously been overgrown. It was Dr Leek's understanding that had the grass not been cut it would have been a potential fire hazard.
- 7.103. He produced a number of photographs showing signs on and in the vicinity of the application site. One photograph showed one of the new permissive signs which appeared in 2012 near to the Norton Road entrance. He also produced photographs of some of the dog fouling signs along the Mumbles promenade, and a photograph of the Norton House Hotel sign within the corner of the application site, and of the posts which used to carry the Beaufort Hotel sign. His understanding was that the man who ran the Beaufort stopped paying, and his sign was taken down. From that it can be seen that Swansea Council gain financially from the signs placed there.

- 7.104. He observed that where the Mumbles Way footpath goes through the land, it is currently labelled as such. He produced a photograph showing a picnic table and some benches in the woodland part of the application site, but said that those had appeared only about three weeks before the Inquiry, and were not there before. There were also photographs of the informal paths through the woods, which existed a long time before the Mumbles Way was set up, and before the bench and picnic tables had been erected there.
- 7.105. In relation to the medieval tournament camping which had taken place on the application site, Dr Leek had contacted Mr Roger Parmiter, who as chairman of the Friends of Oystermouth Castle had organised and staged medieval tournaments there. Mr Parmiter had signed a statement, which Dr Leek produced, which among other things explained that the main camp site associated with the tournaments had been in the castle grounds, and that only sometimes Castle Acre field (the application site) had been used as an overspill campsite.
- 7.106. *In cross-examination* Dr Leek acknowledged that the adjusted aerial photograph he had produced, with the application site boundary notionally marked onto the photograph, had excluded a small 'hook' of land on the west side of the northern tip of the land, which had been included in the original application plan. The intention had been to identify the site to mirror land which Swansea Council had put into its Local Development Plan 'Choices' documentation. The original application showed that little hook of land included on the edge, to some extent by an oversight. However the area including the small hook of land was what the actual application plan showed.
- 7.107. The western tip of the application site as shown on the application plan had been the same as on the Council's planning document. The site boundaries were not based solely on that, but also on the use made by local people. It was really for convenience that the application site had been based on the LDP candidate site. There was, it had seemed, logic in copying what the Council's own LDP did. Also the western end of the site was approximately where an existing footpath came through before the houses were built. That footpath had originally been in the grounds of the Norton House Hotel.
- 7.108. As far as the southern boundary of the application site is concerned, there is a delineation within the woodland along that boundary. There are some old railings buried in the soil. So it is an old boundary with some railings, part of a wall and a tree line following it. That boundary is clearly visible on old maps.
- 7.109. As for the historic planning documents from approximately 1938 which Dr Leek had found, the key to the Town Map showed that the land at the time was zoned mostly for residential. Dr Leek did not know what the extant plan was at the time when the Council purchased the land. He believed it may have been the Development Plan Town Map from 1955, an enlarged copy of which had been produced by the Objectors. From that it appeared that the area to the south of the

intended new road was designated 'POS', for public open space. However, from the key it seemed that the horizontal hatching on that land showed that it related to the second period of the plan; in other words it was shown as an aspiration, not the current state of affairs.

- 7.110. Dr Leek noted that a Council minute from February 1964, which he had produced relating to this land, referred back to a 1938 agreement which had mentioned that some land adjacent to Oystermouth Castle was intended to be retained for public open space. Similarly the Borough Engineer's report from July 1964 which he had found referred to some of the land being scheduled for a public open space. However Dr Leek did not think that reference related to the 1955 plan, but back to the 1938 agreement. Dr Leek's view was that the 1964 documentation showed that the land intended to be acquired by Swansea Council was for two purposes, partly to preserve an open space zoning, and partly for a new road. He noted that the District Valuer's letter about the acquisition of the land, written in May 1965 had confirmed that the acquisition was for "*highways and other purposes*". He accepted that 'other purposes' could mean public open space; clearly the reference to highways meant acquisition for highways purposes. So one of the major purposes of acquiring the land was to build a road.
- 7.111. The conveyance of 1965, by which Swansea Corporation acquired the land which included the present application site, did not recite a statutory purpose for the acquisition, nor explain the pink and blue colours on the plan. However Dr Leek noted that someone, on the Council's own copy of this conveyance, had written the word 'highway' in handwriting. On the other hand the reference in the District Valuer's letter to Highways and other Purposes did *not* say or mention public open space, or mention what the other purposes were.
- 7.112. Dr Leek agreed that even the most drastic plans for highway schemes which he had produced, dating from about 1959, did not say that all of the land concerned would be going to highway purposes. However, they did not say that the land would be going to public open space either. It was quite clear, in Dr Leek's view, that the Council's original objective for acquiring the land was to build a road.
- 7.113. As for the Council's 1989 Local Plan document (copies of the proposals map for which had been enlarged by both parties), Dr Leek accepted that pink dots marked on the plan to represent open space and landscaping extended to the north of the then still proposed road. The relevant policies at the time were said to be A1 and R6. A1 is a policy to do with allotments. R6 was a policy to do with informal incidental open space. There was also reference on the plan to the intended new road under policy T2; however the map with the local plan document was not an engineering plan showing exactly where the road would be. It was a planner's representation of the approximate line of the proposed road.
- 7.114. By 1998 it was apparent that the policy for the provision of the new road had gone. The intention by then was that the policy in favour of the road would be deleted.

- 7.115. The Swansea Local Plan Review No.1 was adopted in January 1999. That contained a policy M7 which envisaged the use of a substantial part of the present application site for the provision of public parking for cars. The other part of the application site was covered by a policy NE2, which related to defined landscape protection areas. A briefing note which Dr Leek had unearthed, dating from May 2006, had referred to there being an overlap between the M7 and NE2 allocations, to ensure that any car park included a landscaped buffer to the properties in Castle Acre. It was also noted in that briefing note that the car parking allocation here had not been included in the draft Unitary Development Plan for Swansea, which was under preparation, but that the Council's Highways and Engineering section had requested that the car parking allocation nearest to Mumbles Road should be retained as it was still an aspiration at that time for the Council's next local transport plan. It was stated that in a consultation exercise in 2004 it had been agreed that the car park allocation would be retained.
- 7.116. The extant plan for the area now is Swansea Council's Unitary Development Plan. That was adopted in 2008. In that plan the present application site is shown covered by Policy EV24, which the key shows as relating to Greenspace Protection. Paragraph 1.7.13 within the document showed that the areas covered by the policy had been defined on the basis of one or more of the following values: landscape significance, nature conservation value, local amenity benefit, local character, links to the countryside and informal recreational potential. That wording is in supporting text rather than being an actual policy. The policy EV24 was aimed at protecting the greenspace system, and in general not allowing development proposals adverse to the greenspace areas.
- 7.117. Dr Leek noted that in respect of the application site land there was no reference at all to UDP policy HC23, which is a policy about 'community recreation land'. That policy does not cover this present site.
- 7.118. Dr Leek agreed that the signs erected on the land in April 2012 did purport to give permission for use of the application site. He also agreed that some of the photographs showed paths on the site which had been made up so as to make them easier to use. However he did not agree that the making up of a path on the site implicitly gives people permission to use that path. Indeed the path concerned was there many years before it was made up. All that happened was that the Mumbles Development Trust decided to improve some of the paths through the woods.
- 7.119. None of the residents previously had permission to use the paths or the land, so he accepted that might make them technically trespassers. People might well have thought that they had a right to use the land by custom and practice.
- 7.120. An agreement between the Council and the Mumbles Development Trust was apparently signed in 2014. He did not think that there had been an agreement in 2006. It was his understanding that none of the money for the Development

Trust's work had come from Swansea Council. The funding had come from the European Commission and other bodies, but no money or manpower or equipment came from Swansea Council.

- 7.121. The wooden sign at the entrance to the path which the Development Trust had improved went up in 2007. In Dr Leek's view it was not a sign which was indicative of permission being given. All that the word "access" on the sign meant was to say that one could come in and use the path. However people could access the land perfectly well before the sign went up.
- 7.122. It was completely clear that the dog sign on the lamppost on Norton Road was to do with the pavement, and did not apply to the field constituting the application site. He did not see this as being a sign at the main entrance to the land. It was attached to a lamppost on the pavement, like all the other ones about dog fouling along the seafront. The reference on the sign to "this area" means the general area, not this particular piece of land. It signals an obligation on pavement users not to allow their dogs to mess there. It is not for example a sign which "allows" people to use the pavement; that would be nonsense. It is Dr Leek's understanding that the relevant piece of legislation authorising these signs allows that such signs are applicable to highways. It is clear that this legislation can be applied to pavements in an area subject to speed limits. If it had been desired to make it clear that the sign was intended to apply to the application site, the sign should have been put on the site, or indeed at all of the five entrances to the site. At every other place where there are council dog bins there are associated signs on the same site. In this instance there is only one sign, near one of the entrances to the site, which is not in fact used as frequently by the neighbours as a number of the other entrances. If this sign was intended to relate to the application site, why is there only one sign? Why are there no dog refuse containers on the land itself?
- 7.123. As far as the battle reenactments were concerned, Dr Leek accepted that some people must have been given permission to camp on the site. However he had not seen any paperwork saying that people had permission from the Council. Nothing had signalled to the people around the area that those people had been given permission to camp on the land. Many local people had felt that it was a bit like a hippy site.
- 7.124. As far as the hotel and pub signs in the corner of the application site are concerned, it appears that the Council has the right to give permission to people to put those signs up. It would be surprising if that was something that was allowed to be done on a public open space or a piece of parkland. Surely signs like that would not be permitted on that category of land.

8. Submissions for the Applicant

- 8.1. In submissions produced before the Inquiry, the Applicant argued that for many years the land of the application site was a component part of a substantially larger parcel that was held in private ownership. During that time some of the land located outside the application site was, it seems, zoned as public open space in earlier local plans. The application site however was not part of that zone.
- 8.2. Specifically, the application site was a small proportion of a larger parcel acquired by the County Borough of Swansea in 1965. The application land was designated mainly for a proposed highway, in the form of the Newton Road By-pass, up to and beyond its acquisition by Swansea in 1965.
- 8.3. The Principal Objector (Swansea Council) has not demonstrated that the land was acquired or held either under the *Open Spaces Act 1906* or the *Public Health Act 1875*. Indeed holding the land under one or other of those Acts would have been inconsistent with the stated aim of highway construction. No evidence has been produced by the Principal Objector to support the claim that the public use of the land has been made under a statutory right conferred by its having been held under either of those Acts.
- 8.4. Up until April 2012 there was no signage on the land which expressly or implicitly indicated ownership by any party, or gave permission to use the land for recreation. In April 2012 Swansea Council erected signs near two of the many entry points to the land, which purported to give revocable permission to use it for public recreation. There is no signage at any other points of entry.
- 8.5. Several years after they acquired the land, Swansea Council began to cut the grass on part of the site. The Applicant believes that that was done in recognition of the prominent location of the site, and the importance of tourism to the local economy. However the Council did nothing to actively promote the use of the land for recreation by the public. As a consequence the use of the land by the neighbourhood remained substantially the same under public ownership as it had been when it was privately owned.
- 8.6. Swansea Council neither planted shrubs nor laid out the land as a playing field, nor provided any sporting equipment or other amenities. In fact, the obvious raised manhole covers on the field, built when the highway was planned, act more as a hindrance to the full exploitation of the site, as well as detracting to some extent from its visual attractiveness. The Council has merely maintained the land on a care and maintenance basis for aesthetic reasons, rather than actively developing the site or encouraging its use.
- 8.7. Use by local people has been made of the whole of the land. Entrances to the land have never been barred to prevent access, even temporarily, nor have there been restrictions or conditions applied, nor any charges made for access to the land.

- 8.8. It is believed that use of the land by local people meets the tests of *Section 15(3)* of the *Commons Act 2006*.
- 8.9. The Applicant's definition of "*neighbourhood*" had been based on the pronouncements of the courts in relevant cases. The boundary of the neighbourhood of Norton had been drawn to reflect considerations derived from those cases, notably the cohesiveness of the community recognised as Norton.
- 8.10. In summary this land can be distinguished from the *Barkas* case in several respects, including that the land was neither acquired nor held for public recreational purposes; its use was not under a statutory right, even under housing legislation for example. It was acquired principally for highway construction. The land has never been laid out as a municipal recreation ground to encourage its use, or for example as a sports field. Members of the neighbourhood have never used the land for sport with the Council's licence or permission. Within the requisite time frame there have never been any notices on the land, or other publicity to communicate either permissive use or local bylaws, at any of the multiple entrances to the land.
- 8.11. In opening at the Inquiry itself Dr Leek emphasised that the land on the application site had been regularly used by local people for legitimate sports and pastimes. The contention is that this use was 'as of right'. There had been about 115 evidence questionnaires completed by inhabitants of the neighbourhood. They showed general use by local people rather than some kind of sporadic trespass. The most common activity would be dog walking or general walking. The evidence of the forms clearly demonstrates the level and range of use that was made.
- 8.12. Dr Leek explained the slight revision and expansion which had been made to the area which was being suggested as the neighbourhood of Norton. The issue of identifying the neighbourhood appeared no longer to be in contention.
- 8.13. The plan which was sent round with the questionnaires which were completed by local people did not in fact show as included the small hook shaped piece of land in the north-west corner, albeit that that had been included as part of the site on the plan with the application itself. Clearly the plan that went round with the evidence questionnaires has some status. However the plan with the application did include that hook shaped small piece.
- 8.14. It might be noted that when land on the application site was put forward in the Local Development Plan context for possible development it was described by Swansea Council as "*grassed area with some woodland*", and not for example as open space or a public recreation ground.

- 8.15. It appears that right back to the 1930s, as far as planning was concerned, part of the area subsequently acquired by Swansea Council was zoned for residential, part for open space and part for highway. Most of the area which back then was zoned as open space was later given over to allotments when acquired by Swansea Council. About three quarters of the application land was zoned for highway construction, and part of it would appear to have been intended for housing development.
- 8.16. It was not acquired by the Council under either the 1906 or the 1875 Acts. Therefore local people were not using the land pursuant to any kind of statutory right, or because the Council had provided the land under some sort of statutory power, but they were using the land as of right. There was no express or implied permission ever given to use the land.
- 8.17. The land was never fenced to prevent access, nor was access restricted nor any charges ever made. There are a number of means of access to the land, and the land has certainly been used for lawful sports and pastimes. The evidence shows frequent use for dog walking and the like, and a range of other activities. A lot of this activity had gone on for very significantly longer than the 20 years specifically relevant to the *Commons Act* proceedings.
- 8.18. There had originally been two objectors, one of whom was Councillor Child. He does not live in the neighbourhood, and his comments were not relevant; indeed they do not appear to support the Objector's case really. The non-observation of events by an infrequent observer is not evidence. His involvement in the proceedings can be dismissed as not relevant.
- 8.19. As far as the Council's objections are concerned, the Council appear to concede a level of use over the 20 year period. In their original objection they said that that was either with an implied licence or by statutory right. They are not clear themselves as to what the basis of their objection is. The Council have produced few documents to show how the land of the application site was originally acquired or held by them. It might be noted in passing that Swansea Council had made a super-human effort to tidy up the land in the last month or so before the Inquiry, with some six people there with power blowers, blowing the leaves off the grass into the trees. Also a nice bench and table had latterly appeared in the woodland part of the land.
- 8.20. In his final submissions Dr Leek noted that Swansea Council as Objector had now conceded that there had been 20 years use of this land for lawful sports and pastimes, by a significant number of inhabitants of the neighbourhood. The Objector had not proved that residents had been excluded from the land for any part of the relevant 20 year period. As far as the Council's case was concerned there had been very little paperwork provided, and a lot of reliance on other officers' memories etc.

- 8.21. Use of the land by schools had not been really proved, but anyway even if schools using the land had ever been permitted to use it, use of the land by residents of the neighbourhood was not. Such school use of the land as might have taken place did not interfere with the use by local residents. The same applied to such use as was made by campers associated with the medieval re-enactments. To the extent that they were on the land they did not interfere with the use of the land by local residents.
- 8.22. As for the important question as to whether there were implied rights or permission to people to use the land, the Objector has not shown that the land was acquired as open space under the **1906 Act**. The drawings that Dr Leek had managed to find show that about 75% of the grassed area of the site was intended to be occupied by highway construction. That intended highway was shown in the 1938 planning scheme, and then through all local plans right through to 1998. Even thereafter some 80% of the grassed area of the application site was intended to be used as a car park.
- 8.23. The **Open Spaces Act 1906** in **Section 10** envisages that a local authority will hold land to which that provision applies on trust for open space purposes and for no other purpose. So this land could not possibly have been acquired under the **Open Spaces Act** by the Council. There clearly was another purpose here, to build a road. **Section 10** of the **Open Spaces Act** could not apply if the land was purchased for the inconsistent purpose of road construction. Clearly the land required for the highway could not have been purchased under the **Open Spaces Act**.
- 8.24. Even if Swansea Council had held the land *pro tem*, pending the construction of the road, that cannot have created a statutory trust, as the trust only arises where land is actually held for public open space purposes.
- 8.25. Dr Leek had yet to understand under what exact power the land was acquired by Swansea Council. It clearly was not acquired for open space purposes, and nor has the Council shown any subsequent express appropriation under the **Open Spaces Act**. There had been no by-law signs under either the 1875 or the 1906 Act.
- 8.26. As far as the zoning in the current Unitary Development Plan is concerned, zoning in a document like that is a question of planning policy, not the actual use of the land. Zoning for planning purposes is in no sense equivalent to appropriation. The development plan sets out the Council's broad intentions; it is not an appropriation of land for the purpose envisaged in those intentions. Nor is land appropriated or held for a purpose simply because that purpose is the use to which land is currently put.
- 8.27. The fundamental position must surely be that unless land is appropriated to some other purpose by a local authority it remains held for the purpose for which it was previously held, or originally acquired.

- 8.28. Turning to the present case, if Swansea had (say) zoned a substantial part of this land for open space purposes since 2006, that would not mean that the land had been appropriated to public open space. Swansea Council had a chance in 1974 to transfer the land to its Parks Committee. Instead they transferred it from Highways to the Estates Department. In fact later on there was a conscious decision by the Council to split the land, and transfer some to Leisure and some remaining with Estates, with no record produced as to the reason for that.
- 8.29. The various planning intentions which the Council had produced for the land are merely indicative. For example the 1989 planning map produced by the Council shows both A1 and R6 uses with no delineation between them. This is ambiguous and confusing. The same map also shows an inaccurate representation of the then proposed by-pass road. Then in 1998 there was a deferment of the road project. Here Swansea Council had an opportunity to appropriate the land to recreational activities, but they did not do so. Instead they included part of the land, a large part of it, as an intended car park. Then under the new Unitary Development Plan they designated the land as an EV24 site, not an HC23 site. This difference is very significant, and does not just reflect ownership by different committees of the Council. HC23 is in effect a policy which could be described as being ‘owned’ by the Council’s Parks and Leisure Department, relating to land put to that sort of purpose. In contrast EV24 reflects land owned by the Council’s Estates Department.
- 8.30. The explanatory text to policy EV24 does not in fact explain the basis under which particular pieces of land are given that designation. It is clear from the text that it could have been on landscape or nature conservation grounds, or local amenity benefit, or local character. It is not a designation which says that the land concerned is devoted to recreational use at all. Supporting paragraph 1.7.14 rather indicates that the intent of the policy is not to prevent appropriate socio- economic development. That is quite distinct from the policy provisions for HC23 sites, which are in community recreational use. There was obviously a deliberate policy to distinguish between the two types of land.
- 8.31. As far as the grassed part of the site is concerned, extensive use has been shown by the evidence. It may well be that the Council as owners have tolerated this use, but it cannot be said that they encouraged such use. There was no seating provided, nor any pitches, and the Council did not address deficiencies in the site. There were no signs around the land in the way that they are normally provided for the Council’s parks. The Council did not identify this site in their Green Spaces Guide for the Mumbles area.
- 8.32. As far as dog fouling was concerned, there was a single sign near the site, close to only one of the multiple entrances to it. That sign was sited ambiguously, and not visible to users who were actually on the land. Yet those signs are ubiquitous throughout Swansea, as can be seen on the Mumbles seafront promenade. If the Council had intended that dog fouling sign to relate to use of the application site, it could have moved it to the permissive sign which it erected on the land fairly close

by in 2012. Furthermore the wording on the dog sign refers to ‘the area’, which obviously means the area along Norton Road. No witnesses have ever said that they requested that the Council erect a sign to do with dog fouling on the application land. No bins were ever provided on the land, as are required under the legislation relating to dog fouling. However a bin was provided further along the pavement of Norton Road.

- 8.33. In any event dog fouling signs, even if they did relate to the land, cannot be seen as having been equivalent to the giving of permission to use the land. There were no signs to label this land, especially the grassed area. The only signage on the land appeared after the objection had been made to the Local Development Plan’s proposed allocation of the site. There have never been any by-law signs on the land. The signs that were erected for the two nearby hotels were a beneficial use for which the Council received payment. This is unlike the normal use of a public park, indeed it may signify a lack of commitment on the Council’s part to the use of this land for recreation purposes.
- 8.34. It is true that the Council’s Parks Department have cut the grass, but that does not imply that they were giving permission to use it. One should note that one of the criteria for the Council’s policy designation EV24 relates to landscape significance, and it would be logical to cut this grass for cosmetic reasons. Cutting the grass does not signify active intent to encourage use of this land for lawful sports and pastimes.
- 8.35. As far as the medieval camps were concerned, it was clear that local people were not excluded, and no part of the present application site was within the area which people had to pay to get into. The fact that permission was given to actors to camp on the site is not relevant. They were not resident in the neighbourhood, and the whole business was incidental to the fair being held up at the Castle. In any event there was mutual deference between the local people and the campers, of the same kind that had arisen in the *Redcar* case which the House of Lords had pronounced upon.
- 8.36. The paths which go from the grassed area into the woodland were well established before any work was undertaken to improve them, and they were not created by Swansea Council. Also there was no encouragement by Swansea Council to use the grassed part of the site.
- 8.37. As far as the woods now managed by the Mumbles Development Trust are concerned, that Trust is a community company limited by guarantee. Swansea Council has no representative on its Board. The Mumbles Development Trust is not mandated by the people of Mumbles. If the Trust had been given a permission by the Council to do something on the land then that permission was given to it as a corporate body. Indeed there was not actually a management agreement between the Council and the Development Trust signed until 2014. Even if there had been some kind of permission involving Mumbles Development Trust, that does not

equate to permission given to the community of Norton. The actual agreement between the Trust and the Council was from February 2014.

- 8.38. Mr James had said that such an agreement had been on the cards since 2008. It seems therefore that we are being asked to accept that another agreement pre-dated the formal one, and that its terms were the same as the ones eventually agreed in 2014. That is hard to believe, and there is no proof of it. It is improbable that even if there was an informal agreement the terms remained unchanged, or that no wrangling took place, if it in fact took so long to sort the issue out and get the formal agreement entered into. Indeed there had been a remarkable inability by Swansea Council to turn up papers relevant to this case. The only document with any status really is the February 2014 agreement.
- 8.39. As for the footpaths on the site, Mr James had said that they were created by the Mumbles Development Trust. However the only piece of path created by the Trust was outside the application site, on the section in the woodland where steps were created. On the site itself the only thing done was to improve the existing paths in selected places. It is accepted that the instigation of the Mumbles Way opened up use to the rambling fraternity to an extent. They might well use the path as a transit route. However local residents use the path both for lawful sports and pastimes and for transit purposes. Witness evidence had been quite clear about local children playing in the woods, engaging in typical lawful sports and pastimes. So it is clear that use of the paths in the woodland has been made for both purposes by local people. Indeed local people generally get into the wood by walking across the grassed area. Use by local inhabitants is more likely to occur from the grass to the woodland, and there were no signs anywhere to encourage use of that kind.
- 8.40. As for the signs at the entry to the wood, the Council claims that these are permissive. However to be permissive they have to be clear and unambiguous which they are not. The signs seem to relate to the Mumbles Way paths. Also the signs are only at the ends of the path, and not in the woods. It also needs to be asked, who erected the signs? There is no evidence that Swansea Council had anything to do with the erection of the signs or made any contribution to them. The signs are coincident with the Mumbles Way path, both in their location and their timing. Swansea Council was a passive participant in this process throughout.
- 8.41. Also, what are the signs for? They are partly to advertise the organisations associated with the project. In that sense they are somewhat like the adverts which companies place in local papers. They clearly show that those organisations were supporting the Mumbles Way.
- 8.42. But Swansea Council did not put up signs around Castle Acre Field. The signs relating to the Mumbles Way path simply cannot be regarded as permissive in respect of use of the woodland, still less the remainder of the land, for lawful sports and pastimes.

- 8.43. As for the important *Barkas* case, the land there was held under recreational enabling legislation. Land of that kind would have been HC23 land in Swansea. It is clear that the land in *Barkas* looked like a recreation ground, with a pitch laid out for football. There were dog fouling notices at each entry. It was clearly fundamentally different from Castle Acre Green.
- 8.44. Our land here was not acquired or held under recreational enabling powers. Nor is the use that has been made of it similar to that in *Barkas*. There are no pitches, seats, benches or facilities, or indeed dog bins.
- 8.45. Even Lord Carnwath in the *Barkas* case in paragraph 64 recognises that a local authority must validly and visibly commit the land to public recreation before it can be exempt from registration as a town or village green. In this present case the Council took money for the erection of hotel signs, and it also failed to advertise this land as any kind of open space. They even distinguished this land from other EV24 land which they do advertise on their map as open green space. Facts such as these clearly trump the existence of a dog bin on a pavement in the vicinity of one of the entrances to the present site.
- 8.46. It should also be noticed that the *Barkas* land was not dual purpose land. This land is also not like that which was the subject of the *Beresford* case, where the Supreme Court in *Barkas* said that the House of Lords had come to the wrong decision. The Supreme Court were not saying in that case that the grass cutting in *Beresford* implied permission. The land there was a sports arena, for which cutting the grass was critical. But cutting the grass in this present case does not indicate implied permission.
- 8.47. It is to be accepted that *Barkas* has raised the barrier for village green applicants in the case of local authority land. Indeed it may be thought that the very pieces of land which look least like village greens now seem to have become the most likely to be registrable. In the *Barkas* case it was clear that the land was intended for some kind of public recreational use right from its inception. That is quite unlike the present case, where the land seems to have been acquired for road building. Our land here was not acquired for public open space, nor was such a use intended from its inception. In fact the road building was the intended dominant use of the land right from the inception of the Council's ownership. It is not at all clear that Swansea Council had ever held this land under a statute enabling them to use the land for recreational purposes. They have never done anything to display that intention in relation to the land. This is quite unlike the situation in the *Barkas* and *Beresford* cases. The land in *Barkas* was provided under Housing Act legislation which permitted the provision of recreation grounds, and the land in *Beresford* was acquired and provided under the *New Towns Act* which, among many other purposes, would have permitted provision of the sports arena in that case. There is no similar background in the present case. There is no background power which conveys statutory powers to the Council to provide this land for recreation. One of the most important points to appreciate about the *Barkas* case is that it expressly recognises that not all local authority land is exempt from registration as a town or

village green. Castle Acre Green is an exemplar crying out for registration, as an archetypal village green which meets the statutory criteria.

9. THE CASE FOR THE OBJECTOR – EVIDENCE

- 9.1. *Mrs Wendy Parkin* is a legal executive employed as a Senior Lawyer in the Property Team of the City and County of Swansea. She said that the Council's records show that the application site was originally acquired by the Council's predecessor by a conveyance of 23rd July 1965. That conveyance does not recite the reason for the Council's acquisition of the site. She produced a minute from July 1964 which appeared to authorise the Borough Estate Agent at the time to negotiate for the acquisition of land between Norton Road and Oystermouth Castle. No copy of the plan submitted by the Borough Engineer and Surveyor, referred to in that minute, can be found. It appears from the minute that part of the site was acquired for highway purposes, and part for the purpose of holding as proposed open space land between Oystermouth Castle and Glenville Road.
- 9.2. She produced a copy of the Council's record card for the site which set out the history of the site's ownership by the Council. Such a card would normally set out the purpose of acquisition, and in this particular case the record card shows that the site was originally held by the Council's Highways Department and/or committee. The card also shows that since local government reorganisation in 1974 the land has been vested in the Council's Estate's Committee. It appears that no formal appropriation from one council purpose to another took place. The land is still owned by the Council's Estates Department, which is in fact now known as Corporate Property and Building Services. That department of the Council pays the Council's Parks Department to mow the grass on the site each year.
- 9.3. To all intents and purposes the site is being maintained by the Council so that the public can use it for recreation, just like any of the Council's parks, and indeed the original acquiring minutes refer to part of the land acquired under the 1965 conveyance as being for open space.
- 9.4. Under the Council's current Unitary Development Plan the site is designated as a "Greenspace" which is protected by Policy EV24. Under the proposed Local Development Plan, this site, along with various other sites in Swansea, has been withdrawn from the process of allocating potential development sites at present. At a future stage the Council will publish proposal maps that identify land allocations and settlement limits, mainly for housing proposals. There will then be public consultation about this.
- 9.5. The Council's objection to the application is supported by the fact that it took action in the early 2000s to erect notices under the *Dogs (Fouling of Land) Act 1996* (now repealed). That could only have been done under *Section 1* of the *Act* if the land in question was open to the air, and was land to which the public was entitled or permitted to have access with or without payment. She considered that this was entirely consistent with the Council's case that the land was allocated or

designated and dealt with by the Council as recreational space. That is further evidenced by the fact that the Council's Parks Department maintains the area by grass cutting at least 14 times a year, thereby allowing use of the land by the public at large.

- 9.6. *In cross-examination* Mrs Parkin agreed that someone had handwritten the word "Highway" onto the 1965 conveyance in the Council's record. She thought that was because it was the Council's Highways Committee that originally acquired the land. She thought that the reason for the land acquired in 1965 being coloured in two different colours on the conveyance plan (pink and blue) would be something to do with previous conveyances of that land; otherwise she could not say what the reason for it was. It was unlikely to be to do with a designation in a planning document. It was possible that the two areas may have been owned by different people in the past. The boundary between the pink and blue land is not an obvious line on the ground. She did nevertheless accept that there was a remarkable similarity between the boundary line between the pink and blue and a line which was apparent on the planning document from 1938 which Dr Leek had exhibited. However there was no explanation for this in the conveyance in 1965.
- 9.7. She agreed that it seemed fairly convincing that a plan from the 1960s which Dr Leek had found in the Council's records was the plan referred to by the Borough Engineer in the third paragraph of a report from 2nd July 1964, which had also been produced both by Dr Leek and Mrs Parkin.
- 9.8. As far as she was aware it was generally true that the old minutes of the Council's predecessor, and in particular the ratifying minutes, did not tend to refer to the acquisition power being used when land was acquired. She accepted that in this instance there was a note from the District Valuer (dated 17th May 1965) which gave the purpose of the acquisition as "*highways and other purposes*". Often records do show somewhere which Act a piece of land was acquired under, but that is not always the case. There is no reference to the *Open Spaces Act* in the Council's terrier record. What we do know is that the land was acquired for highways and other purposes, but we do not know what the other purposes were. The land is now with the Council's Estates Committee.
- 9.9. However the records show that part of the land acquired in 1965 must since have been passed on to the Council's Parks and Leisure Committee. None of the land acquired in 1965 went to West Glamorgan County Council (then the Highway Authority) when it was formed in 1974. Everything then went to the new Swansea Council's Estates Committee. Subsequently, at an unknown date, part of the overall area of land was put under Parks and Leisure. There must have been something happening at the time within the Council to cause that to occur, but she did not know why it had happened. It might have been something to do with the other part of the larger site acquired in 1965 having allotments on it, but that is mere conjecture. Also it is not entirely allotments on the part of the 1965 land which was moved to the Council's Parks Department. None of that Parks Department land is included in the present application site.

- 9.10. There was no formal appropriation recorded from the previous council's Highways Department to the present Council's Estates Department. The Estates Department nowadays pay the Parks Department to cut the grass on the land. Mrs Parkin did not really know why the land should still be in Estates Committee ownership. The payment to the Parks Department is just to secure that the land is maintained. The Estates Department do not have their own people who cut grass or do anything like that.
- 9.11. The original objection had said that grass cutting commenced in the 1970s. Mrs Parkin had got that information from her instructing officer at that time. She believed she had an email confirming it. That must have been the case as she put it in the objection letter. It could have started around 1974 when land was transferred from the old Council's Highways Department to the new Estates Department. The Council would not have maintained the land if it was not being used, she thought.
- 9.12. She did not know if the grass verges of highways are cut by the Council's Parks Department. She also did not know whether the grass might have been cut in order to provide a reasonably attractive introduction into Mumbles.
- 9.13. She could not see that the Council would have been keeping up maintenance of this land if the public were not using it. However she accepted that it is a visible site as one enters Mumbles. She herself was not party to any decision to cut the grass; she had merely been speculating as to why the Council cut the grass on this site. She has not found any document explaining why the Council decided to cut the grass.
- 9.14. She accepted that there is no evidence that the Council or its predecessor purchased this land under either the *Open Spaces Act* or the *Public Health Act 1875*.
- 9.15. As far as the planning documents which had been produced were concerned, she agreed that when a piece of land is re-designated in a plan, it does not in planning terms require an appropriation. Designation in a planning document is not an appropriation.
- 9.16. In planning terms the site is now covered by Policy EV24, which is for greenspace protection. It is not covered by HC23, which is to do with community recreation areas. Nevertheless she felt that it was justified to say that this land is similar to others of the Council's parks. She accepted that this site is not mentioned in the Council's publicity map for open green spaces in the Mumbles and surrounding area.
- 9.17. She knew that the site had been a candidate site for housing development. However she is not a planning lawyer; her understanding is that the site has been

withdrawn at present, and she does not know any more than that. She does not know why that was the case.

- 9.18. As far as the dog fouling signs were concerned, she accepted that the dog fouling legislation could apply to highway land within speed limit areas where the limit is below 40mph. She also accepted that on the dog fouling sign near the application site it refers to “*this area*”, and says that the area concerned is designated. She did not have any information as to what was meant by the reference to ‘this area’ as designated under the relevant Act.
- 9.19. She thought that there were other parks with signs in them like the one in the corner of this park for the Norton House Hotel. There may, for example, be a sign for the University in Singleton Park in Swansea.
- 9.20. *In re-examination* Mrs Parkin said that the 1938 planning document produced by the Applicant had been a plan showing intended policies. It did not show actual use. The 1965 note from the District Valuer referred to acquisition for highway and other purposes. She thought that the other purpose referred to was to preserve the open space zoning on part of the land being acquired. Her general understanding was that planning policy documents did not themselves change the basis on which local authorities hold or provide land.
- 9.21. **Mr Adrian James** is a Chartered Surveyor employed as Property Manager in the Corporate Property Strategic Estates section of the City and County of Swansea. He has held that position since November 2012.
- 9.22. In his evidence he noted that the application in this case defined a relevant neighbourhood of Norton. That is a sub-division of the electoral ward of West Cross, and coincides with a Census Output Area identified by the Office for National Statistics. He noted that the doctor’s surgery, health centre and dentist referred to in the application are outside the claimed boundary of the neighbourhood.
- 9.23. The Applicant had submitted 115 evidence questionnaires in support of the application. Examination of those showed that 50 of the respondents had not used the site for lawful sports and pastimes for a minimum of 20 years. In addition 4 of the respondents who claim a minimum of 20 years use live outside the neighbourhood.
- 9.24. The Council’s records show that the site was originally acquired by the Council’s predecessor in 1965. It was acquired in connection with the proposed construction of a new highway, known variously as the Mumbles By-pass or the Norton By-pass.

- 9.25. He acknowledged a number of the historic documents which the Applicant had unearthed relating to the acquisition of the land by the Council's predecessor. Those documents referred to the acquisition of the site by the Council for the sum of £16,000 in 1965. The surviving records from 1965 were somewhat confused in a number of detailed respects, but it did appear that the correct general picture had emerged.
- 9.26. The western boundary of the site put forward in the application is in Mr James's view unusual, as it does not coincide with a physical boundary or any physical feature or demarcation on the ground. It does however coincide with the notional division in ownership of the land between the Council's Estates and Leisure Departments. He produced a plan showing that division. However any distinction between the application site and the contiguous land immediately to its west is artificial. A great many of the evidence questionnaires refer to access being gained to the site via a public footpath from Castle Road. That path does not bring one directly to the application site, but to the contiguous piece of land to the west.
- 9.27. The site was used on a number of occasions with the permission of the Council as a medieval camp site in connection with medieval re-enactment events at Oystermouth Castle. Those events took place in July each year from 1999 to 2002 inclusive, and were organised by the Council in conjunction with an events management company. Several of the evidence questionnaires refer to these events. Camping was permitted for one weekend only in association with the events. That use, with the express permission of the Council, is therefore clearly recalled by many people in the locality.
- 9.28. The southernmost part of the application site comprises an area of woodland. That area forms part of a wider area of woodland which is owned by the Council, and has been managed by the Mumbles Development Trust since about 2008, although legal completion of the management agreement did not take place until February 2014. The MDT has been in effective control of the woodland area since approximately 2006, and in accordance with the management agreement the general public have been afforded access to the woodland area. A clause in the 2014 agreement refers to management in the interests of recreation, education and nature conservation. Another clause provides that the MDT will cut back the hedgerows within the woodland in order to maintain public accessibility.
- 9.29. Grant money from the Forestry Commission has been spent in this area by MDT, in consultation with the Council's Parks Department. Works undertaken included the creation of a number of footpaths through the wooded area, including one specifically linking with and providing public access to the grassed area of the site. Mr James produced a photograph showing the path leading to the grassed area. Other informal desire-line paths give direct access from the woodland area to the grassed area.

- 9.30. The Council has made no distinction between the application site and the adjacent land in its ownership, including the wooded area, and has not at any time sought to prevent members of the public from gaining access to the site for the purpose of lawful recreation. The Council has maintained access to the site from the public highway at Norton Road; also from Castle Road; also from Mumbles Road via the woodland area comprised in the management agreement with MDT; and from the grounds of Oystermouth Castle.
- 9.31. Mr James produced photographs in particular of the access to the site from Mumbles Road, showing a sign adjacent to the access which (he said) clearly invites members of the public to access the area. Photographs were also produced of similar signs erected adjacent to the path leading to the site from Oystermouth Castle. There is at least one other such sign on the application site land.
- 9.32. In the early 2000s the Council's Cleansing Department, at the request of local inhabitants, erected close to the access to the site from Castle Acre and Norton Road a notice under the *Dogs (Fouling of Land) Act 1996* (now repealed). The Act only applied if the land in question was open to the air and was land to which the public was entitled or permitted to have access without payment.
- 9.33. In relation to the Town Map from 1955 which had been produced to the Inquiry, it is clear that there was a proposal for an area including the application site to become public open space in the second period of the plan. That Plan was reprinted in 1955. Mr James's researches led him to believe that the second period of the Plan began in 1961.
- 9.34. As to the erection of the dog sign, and why it was put up where it was on the lamppost near the Norton Road entrance, the Cleansing Department of the Council had told Mr James that they had received complaints about dog fouling on Castle Acre Field (the application site) and that the sign was put up in response. However unfortunately there was no written record of that.
- 9.35. As for the hotel sign in the corner of the application site, Mr James acknowledged that there had been one there for Norton House Hotel for some time. The Council had granted a licence to the previous owners of the Hotel. It is certainly true that money changes hands for an annual licence fee for such a sign. There had been another sign there for the Beaufort Arms as well. The licence fee in that case went unpaid and the Council removed the relevant sign.
- 9.36. *In cross-examination* Mr James confirmed that he had been in his present position since 2012. Prior to that he had worked for Welsh Water. Thus he had no personal memory of events before 2012 relevant to this case. Most of the enquiries he had made of colleagues were verbal ones so there was no written record.

- 9.37. He accepted that the application site was part of a considerably larger parcel of land which was acquired as a whole by the Council in 1965. The present application relates to only part of that land, and its boundary is unusual. This is the first town or village green application that he had seen which did not have an obvious physical boundary.
- 9.38. He could not explain the boundary between the land owned by the Council's Leisure Department and the other part owned by the Estates Department. It was a distinction drawn many years ago. The adjacent land owned by the Council is public open space, and paths lead from that onto the application site. However there is nothing on the ground to suggest that permission to use that land extends to the application site land.
- 9.39. There is a footpath from Castle Road to the land at the western corner of the site, but that does not go onto the site itself. However Mr James accepts there is no physical barrier preventing people walking from the end of that footpath to the western end of the application site. There is no boundary line nor any physical feature. He thought that the boundary drawn by the application was somewhat artificial.
- 9.40. He had not been employed by Swansea Council at the time when the medieval pageants took place, so everything he had said about that was from his researches with other officers of the Council. He had been told that the medieval campsite was part of the pageant. In other words that the site was used in connection with the medieval pageant, even if it was not a 'medieval campsite'. It was certainly a campsite though.
- 9.41. The agreement between the Council and the Mumbles Development Trust covered a considerably wider area than just the southern part of the present application site. An agreement existed in draft form back in 2008. Under that the Trust were allowed into occupation of the land, i.e. under the draft agreement. There were then ongoing discussions about the draft, but it was sufficient for the purposes of grants etc. that the Trust had been allowed onto the land. The formal agreement was in 2014. That was largely the same as had been agreed in draft in 2008, and covered the same physical site area, with largely the same obligations. He could not explain why it took 6 years to complete the agreement, in spite of his having read the files. It is not unusual for agreements of that kind to take long periods to be completed. There had been agreement in principle which allowed the Trust to get public money for its work.
- 9.42. None of that money was from Swansea Council. It was from the Forestry Commission, supplemented by the European Regional Fund from the European Union. He understood that there are separate management agreements for each site which the Development Trust manages. There are a number of other such sites.

- 9.43. It is relevant that the management agreement in its discussion of hedgerows includes an obligation to maintain the hedgerows and public accessibility.
- 9.44. The plans which he had produced showed that the land subject to the *Commons Act* application is vested in the Council's Estates Department and not its Parks Department. The Council's Parks Department is the department that leads on recreational and leisure issues. His own department had been involved in the negotiations with the Mumbles Development Trust; an officer in the team which Mr James now leads had been involved in the negotiations. However the Parks Department was the principal department which was interfacing with the Mumbles Development Trust. He himself had not come along in 2014 and said 'we must have an agreement here'. He accepted that no money had gone into the Development Trust scheme from Swansea Council, so it would not be untrue to observe that Swansea Council's involvement had been somewhat passive. Nevertheless he had been aware of the works required by the 2014 agreement.
- 9.45. The Mumbles Development Trust created a number of paths. By that he meant that they laid gravel with wood edgeboards on the land. It might be truer to say that they improved paths which were already there. Indeed he himself had already referred to other informal desire-line paths on the land. However the new steps created in the wood in effect constituted a new path, but outside the present application site.
- 9.46. He accepted that the Council's Leisure Department may have been keen on the creation of the Mumbles Way. The new or improved paths also allow people to come on a gravel path into the western end of the application site.
- 9.47. The claimed green is at one end of the claimed Norton neighbourhood. People coming there from the neighbourhood may not need therefore to come via Oystermouth Castle. However the Council saw the Mumbles Way path as enabling access to the general public, not just to people from the neighbourhood. He could not comment on how the Mumbles Development Trust came to choose which paths to improve.
- 9.48. As to the two distinct bases of ownership of the Council's land in this vicinity, there was no distinction in management or access terms. The distinctions between planning policies EV22 and HC23 are planning distinctions. HC23 refers to recreation areas for specific purposes. So there is a distinction in planning policy terms.
- 9.49. The access to the land from Mumbles Road is maintained by the Mumbles Development Trust, not by Swansea Council, under the management agreement. Nevertheless that access is on a path which previously existed. There is a sign by that access inviting the public to enter. There is another sign in the Oystermouth Castle woods, with a Mumbles Way marker on it, and another sign up near the Castle.

- 9.50. He did not know when these signs were erected, but 2007 would roughly accord with his understanding. He did not know whose idea the signs were. Signs like that often record grant funding. He accepted that there are no signs like this which encourage people to go onto the grassed area. The only signs are at the entrances to the woodland on the Mumbles Way. But they are adjacent to access points which lead to the present application site. There are no signs where one leaves the woods to get onto the grassed area.
- 9.51. As for the dog fouling signs, his understanding was that requests were made by local residents in the early 2000s. He was only recording the recollections of officers which had been given to him. There were no documentary records. He had been informed by an officer of the Cleansing Department that that person had acted on complaints specifically in relation to Castle Acre Field. Mr James did not think that all dogs would enter the field by the entrance near the sign which was erected. He could not comment on why further signs were not put up at other entrances. Perhaps the cost of erecting lots of signs and poles would have been prohibitive. The signs relating to dog fouling pre-date the permissive signs erected in 2012.
- 9.52. *In re-examination* Mr James confirmed that the Council makes no distinction between the different areas in the vicinity of the application site, coloured differently on the plan which he had produced. Only the allotment gardens owned by the Council are treated in any way differently. Leaving aside the allotments, there are no physical features on the ground which distinguish the two different areas of Council ownership, belonging either to the Estates or the Parks Department. The whole of the present application site belongs to the Estates Department; nevertheless a significant part of the boundary between that department's land and the Parks or Leisure Department's land has no physical feature on the ground.
- 9.53. There had been substantial agreement between Swansea Council and the Mumbles Development Trust well before the formal agreement was signed. In effect a licence was granted back in 2007 or so, well before the formal agreement in 2014. The Council did not receive any money under the licence, nor pay any contribution to the scheme. The access points to the area covered by the scheme are maintained and marked by the Mumbles Development Trust. Not all the paths on the site which had been subject to some improvement formed part of or led directly to the Mumbles Way.
- 9.54. As far as the dog fouling sign on the Norton Road lamppost was concerned, he assumed that the reference on the sign to "*this area*" is a reference to the field in front of the sign.
- 9.55. **Mr Nigel Jones** said that he had been employed by the City and County of Swansea and its predecessor Swansea City Council since December 1985. Since

1987 he had been Special Events Manager, whose responsibility among other duties included the management and support of special events that take place within the city's boundaries.

- 9.56. He was able to give evidence both from his own memory of events and from reviewing notes and correspondence on the Council's relevant files. Between 1999 and 2002 inclusive, he had been involved in assisting the Friends of Oystermouth Castle, and in particular working with Dr Roger Parmiter, to provide help and assistance on behalf of the Council to support the medieval re-enactments and campsites that took place at Oystermouth Castle. As part of the overall weekend experience the Council gave formal permission to the re-enactors to stage an authentic medieval campsite, which was located on the application site on each weekend that the event was staged. Mr Jones produced copies of some of the promotional posters in respect of these events.
- 9.57. The Council's Parks section dealt with these bookings. The standard practice at the time would have included various exchanges of documentation such as booking forms, legal indemnities, evidence of appropriate public liability insurance etc., to allow the re-enactors to camp on the site. The number of participants varied from year to year, but Mr Jones recollected somewhere around 50 – 70 people camping there on each occasion, usually over a period from the Friday night to the Monday morning.
- 9.58. Due to pressures on Council storage space, and given that the last of these events took place over 12 years ago, the files would now have been destroyed as per Council protocols for file management. However he had visited each of these events and could confirm that the Council worked with the organisers to allow the events to take place, and monitored the overall control of the campsite, which included items such as damage, litter and waste clearance, and any vehicle access, and noise management.
- 9.59. It was his understanding that no money changed hands for the Friends of Oystermouth Castle to be able to use the application site. The people involved had to fill a form out to do with indemnities, risk assessments etc. There are also terms in relation to noise. The Council staff did not tell the campers where to go.
- 9.60. Some of them camped at Oystermouth Castle itself, and others down below, on the application site. He himself did not deal with where on Castle Acre they camped. He thought they camped mostly by the woods along the south side of the site. They had been higher up in the second year, he recalled. Their number decreased in the third and fourth years of the event.
- 9.61. As for the hotel sign in the corner of the application site, he confirmed that there are other arrangements whereby commercial signs are put up on Council land, such as in Singleton Park in Swansea.

- 9.62. *In cross-examination* Mr Jones said that he deals on behalf of the Council with all sorts of events, some of them with 100,000 or more people attending, right down to small events.
- 9.63. Roger Parmiter and his associates were not particularly experienced with managing events. The Council's officers therefore gave them a little bit of financial advice in the first year. Mr Jones himself visited for a few minutes in the first year. His memory is pretty good, but he has no files over 7 years old. He was sure that there were forms filled out, for example to deal with public liability. One would not keep those forms for 12 years. However there are still two members of staff within the department who were involved with that work.
- 9.64. He accepted that some of the publicity material he had produced referred to 'authentic medieval campsites'. Castle Acre Green was not mentioned in those posters or advertisements. He accepted that the medieval sites were in the Castle grounds.
- 9.65. The people camping on Castle Acre Green were nevertheless among the re-enactors. Those re-enactors came from far and wide. Certainly some slept up at the Castle, and some of those had fully traditional tents. However what were referred to as 'plastic' tents were down in the field at Castle Acre Green, on the right hand side going down; they were on the border of the woodland. People involved would walk up and down to and from the Castle through the woods. Those people camping in the Castle Acre Green field were allowed to go there. The organisers had taken quite a risk in putting this event on.
- 9.66. The medieval campsite was part of the event in a formal sense, but it was not on Castle Acre Green. The medieval campsite was entirely up in the Castle grounds. Outside that, down on Castle Acre Green was what was referred to as the 'plastic' camp with, for example, VW campervans and the like.
- 9.67. Most of his own personal attention had been in relation to the site up at the Castle. But nevertheless the Parks Department had to have agreements covering the whole. But he accepted that Castle Acre Green was peripheral to the operation. His understanding was that there were separate agreements and indemnity provisions etc., for the campers down below from those for the medieval event. Anyone camping overnight had to sign an indemnity in order to protect the Council.
- 9.68. The inside of the Castle and the camps up near the Castle were covered under one agreement. The organisers of that had to do a risk assessment and get public liability insurance. There had been discussions about that with Swansea Council.

10. **The Submissions for the Objector**

- 10.1. In its case summary produced before the Inquiry, the Objector noted that the application had been made under *Section 15(3)* of the *2006 Act*, on the basis that lawful sports and pastimes use had been made of the land for a period of at least 20 years from 1992 until 12th April 2012, when the Council erected notices giving formal permission to use the land for recreation.
- 10.2. The claim in relation to the neighbourhood of Norton was noted. It was also noted that the questionnaires accompanying the application indicated that recreational use of the land had been made by a significant number of people living in and around the locality for many years. While some of them did not give actual evidence of 20 or more years of use, many of them did so, giving evidence of such use from as early as the 1930s.
- 10.3. The land was acquired by the Council's predecessor by a conveyance dated 23rd July 1965, originally in connection with the proposed construction of a new highway known as the Mumbles By-pass or the Norton By-pass. The western boundary of the application site is unusual in that it does not coincide with any physical boundary or physical feature on the ground. Also the southernmost portion of the land comprises an area of woodland which forms part of a wider area of woodland also owned by the Council and managed by the Mumbles Development Trust under a management agreement since 2006, albeit only formalised in 2014.
- 10.4. The proposed highway scheme was never completed, and was ultimately deleted from the Swansea Local Plan. The application land is now designated as an urban green space subject to Policy EV24 of the Swansea Unitary Development Plan. Consequently the land originally required for the highway works, together with further land to the west of the application land, has since the 1970s been left as public open space and maintained as such by the Council's Parks Department. Later on the land was used on a number of occasions with the permission of the Council as a medieval campsite in connection with medieval re-enactment events at Oystermouth Castle.
- 10.5. No distinction has been made by the Council between the application land and the adjacent land in its ownership, including the wooded area. At all times access to the public has been permitted to the application land and the adjacent area for the purposes of lawful recreation. Indeed the Council has maintained access to the land from the public highway at Norton Road, from Castle Road, and from Mumbles Road via the woodland area, and from the grounds of Oystermouth Castle.
- 10.6. No formal paths had been constructed on the part of the land laid to grass, but formal paths had been created through the woodland part, and these lead onto the grassed area. The land is often used by the inhabitants of Norton as a shortcut to gain access to the shops in Mumbles, or to the nearby allotments.

- 10.7. Between 2004 and 2006 the Council erected notices prohibiting fouling of the land by dogs being walked on the land. That was done as a result of complaints received by the Council from members of the public.
- 10.8. Notice of the town or village green application was formally served on the Council as landowner on 4th January 2013, and an objection was duly lodged against it in accordance with the appropriate regulations. It is common ground that any use of the land was by consent from 12th April 2012 onwards, after the Council had erected signs granting permission to use the land for recreation. The issue therefore is whether the land was used by inhabitants of the neighbourhood as of right for a period of 20 years before that date.
- 10.9. The burden of proof is on the Applicant in respect of all the statutory criteria. It is conceded that on the evidence put forward in the application the Applicant can establish that a significant number of them have indulged in lawful sports and pastimes on the land for a period of at least 20 years. It is also conceded that the reference to ‘neighbourhood’ in the **2006 Act** has materially relaxed the previous restrictions relating to ‘locality’, with the result that the Applicant’s chosen neighbourhood of Norton, situated in the locality of the West Cross Electoral Ward, will most probably satisfy the requirement for a neighbourhood.
- 10.10. However while the Council accepts that the site is an area of open space to which the public have had and continue to have access, the Council maintains that such access is enjoyed either by virtue of an implied licence or by virtue of a right to enjoy it under the **Open Spaces Act 1906** or the **Public Health Act 1875**. As such the public have the statutory right to use the land as a public open space, unless and until such a right is determined in accordance with other legislation.
- 10.11. Thus, rather than there being public use of this land as of right, any use here had been by right granted under statute. So the requirements of the **Commons Act** are not satisfied, in that although the inhabitants might have indulged in lawful sports and pastimes, they have not done so as of right for a period of at least 20 years. The Council relies on the decision of the Supreme Court in **R (Barkas) v North Yorkshire CC** [2014] UKSC 31.
- 10.12. In addition, insofar as the land is or has been used for educational purposes by schools in the localities of West Cross and Oystermouth, those schools are controlled by the Council as education authority for the area, and such use of the land has at all times been with the express or implied permission of the Council as landowner.
- 10.13. Furthermore, insofar as part of the land in the wooded area is managed by the Mumbles Development Trust, that too would have been used by members of the public by the express or implied permission of the Trust under its management

agreement with the Council. Also insofar as members of the public have merely used the land as a means of access to other land beyond its boundary, such user would not meet the statutory tests. As a result the requirements of the *Commons Act* are not satisfied.

- 10.14. In further submissions at the commencement of the Inquiry it was noted that the application site land has various access points, and that it had been acquired by the Council's predecessor as a result of a 1965 conveyance. The site was originally acquired for a highway by-pass, but the land as a whole which was acquired at that time included land acquired for open space.
- 10.15. The western boundary of the present application site does not coincide with any physical boundary on the ground. The southernmost part of the application land is in woodland, and includes part of the site covered by a management agreement with the Mumbles Development Trust.
- 10.16. The highway scheme affecting the application land was deleted from the Council's Local Plan in 1998. The site is now designated as an open space in the development plan. However the land has effectively, since the 1960s, been left as open space and maintained by the Council's Parks Department.
- 10.17. The land had been used on a number of occasions in the 1990s and following years as a medieval campsite with permission from the Council. More generally the Council has maintained open access to the land. There are no formal paths on the grass, but there are in the woodland part, and the land is used as a shortcut.
- 10.18. The main question in this case is whether the land was used as of right for the 20 years up to April 2012. While the Council accepts that this has been an area of open land which has been used by local people, that has either been by implied licence or under the *Public Health Act* or *Open Spaces Act*. These arguments are put in the alternative. It is also the case that the notices erected to do with dog fouling implicitly permitted use to be made of this land. The upshot of it all is that *Section 15(3)* is not satisfied in this case.
- 10.19. Although the witnesses called for the Council do not include the Head of the local school, nevertheless use of this land by the school has been with the express or implied permission of the Council as landowner. In the case of the medieval campsite use, that had been with express permission from the Council.
- 10.20. As had been mentioned earlier, part of the land consisted of the wooded area managed by the Mumbles Development Trust under agreement with the Council. Against all this background the requirements of the *Commons Act* could not be satisfied.

- 10.21. In closing submissions on behalf of the Objector I was referred to the case of *Mann v Somerset County Council* (2012) EWHC on the question of implied permission. That case suggested that an owner must do something on his land to show that he is exercising his rights over his land and that the public's use by his leave relies on there having been a positive act by the owner vis a vis the public, although notice is not necessary provided that the circumstances relied on allow the inference to be drawn that there has been implied consent. Although the facts in that case were a little more extreme, in this present case there are facts which give rise to the implication of permission being granted to the public to use the land. As far as a significant part of the land is concerned, there was a grant of a licence over the land to the Mumbles Development Trust. The purpose of it is apparent from the eventually formalised licence which Mr James had produced as a document. Clearly however there was an unwritten licence before the 2014 formalised version. It was part of the purpose of that agreement, for example in the hedgerow clause, that things should be done on the land that facilitated public use. It was accepted however that the grassy part of the present application site is not within the MDT agreement. Nevertheless that agreement operated in effect from about 2006. And it is common ground that notices were erected by the Mumbles Development Trust, or in association with them, from about 2007 which encouraged access to the land. The notice by the Mumbles Road entrance made it clear that permission was being granted to use the land.
- 10.22. A second act of implied permission was the granting of licences to the battle re-enactors. That was done by written agreements. It matters not what was the nature of the tents that were erected on the application site. Those events were regular occurrences between 1999 and 2002 inclusive.
- 10.23. The third act of implied giving of permission was the granting of licences for signs to the hotel and a pub for payment. All of this showed that the Council were exercising control over the land.
- 10.24. The fourth instance making clear that implied permission was being granted was the erection of a dog fouling notice. It was obvious to anyone approaching the principal entrance to this land that this notice was there for them to see. The mere fact that the sign is on a lamppost just off the land is neither here nor there. Similarly the nearby dog poo bin being off the application land is neither here nor there. These things showed that access to the land was by permission. And then finally in April 2012 notices were erected giving formal permission to the public to use the land.
- 10.25. Reference was made to the unreported case of *Oxy-Electric v Zainuddin* (1990). In that case it had been held that where a local authority passes a resolution to do something that would only be valid if there were a statutory appropriation of the land to a new purpose, such an appropriation can be inferred from the resolution.
- 10.26. I was also referred to a number of other reports by inspectors who had held inquiries into applications under the *Commons Act* in circumstances analogous to

the current ones. Among the points referred to was the power, at present to be found in *Section 120(2)* of the *Local Government Act 1972* for local authorities who have acquired land for one of their purposes to use such land, until required for the purpose of the acquisition, for the purpose of any of the functions of the local authority. It is clear that a provision to that effect was also in force under earlier local government legislation, including *Section 158* of the *Local Government Act 1933*. Those reports included extensive discussion of the circumstances in which there could take place either implicit appropriation of land to purposes such as open space, or the implied grant of permission to local people to use such land. I do not set out the details of those other inspectors' reports in this Report.

- 10.27. As far as the planning situation is concerned, it is clear that at least all of the land to the south of the then proposed road was envisaged by the 1955 Town Plan as being developed as public open space. Later on in the 1989 Local Plan policies of an open space nature were extended northwards beyond the line of the intended road. The land was subject either to a policy relating to allotments, or a policy (R6) in relation to informal open space.
- 10.28. Then in the 1999 revision to the Local Plan there were two relevant policies, one of which envisaged use of a large part of the site as a car park, and the other as a landscape protection area.
- 10.29. In any event, whether for planning or financial reasons, the designation of part of the application site for car parking has now gone. The current UDP policy for the site covers the entirety of the site. Thus, at the latest by 2008, there must have been an implied appropriation to open space purposes. By virtue of the adoption of the UDP in 2008 there was an implied appropriation, so that the *1906 Act* would have applied to the site. There therefore could have been no use by local people "*as of right*".
- 10.30. The *Barkas* case and its decision by the Supreme Court entirely support the Council's arguments in the present case. It would be ridiculous to see the public using this land as being trespassers. The Council never took any steps to discourage public use of this land, but in fact to encourage it. Extensive elements of the *Barkas* judgments, both by Lord Neuberger and Lord Carnwath need to be read, and entirely support the Council's case. If the question is whether people on the land between 1992 and 2012 were trespassers, the answer is clearly "*No*".
- 10.31. It is accepted that open land belonging to local authorities is not automatically exempt from registration. But it is going to be rare for such land to be registrable. This present case is almost a paradigm case of an implied trust under the *1906 Act*. Whatever the boundary line is between cases where local authority land is capable of being registered under the *Commons Act*, and cases where, following the *Barkas* principles, such land is not registrable, we are nowhere near that boundary line in the present case. It is not for the Objector to have to establish where that

boundary line is. It could depend on the nature of the land, such as in the *Oxford City Council v Oxfordshire County Council (Trap Grounds)* case. Or it could arise where land had been expressly acquired for a different purpose, for example for highways, and nothing else at all resolved in relation to the land. However it is not for the Objector to have to distinguish *Barkas*. This case falls fair and square within the *Barkas* principles, and the land should not be registered under the *Commons Act*.

- 10.32. Reference was also made to extensive quotations from the judgment of the High Court in the case of *Naylor v Essex County Council* [2014] EWHC 2560 (Admin). It was suggested that this judgment also supports the case of the Objector in the present dispute.

11. DISCUSSION AND RECOMMENDATION

- 11.1. The application in this case was made under *Subsection (3)* 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 ceased to do so before the time of the application but after the commencement of this section; and*
- (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b). "*

The application was dated 28th March 2011, and stamped as received by the Council as Registration Authority on the following day, 29th March 2011. The latter date therefore is the 'time of the application'. The application states that use of the claimed land 'as of right' ceased on 21st April 2009, which was less than two years before the time of the application. 21st April 2009 is therefore the date from which the relevant 20 year period needs to be measured (backwards).

The Facts

- 11.2. In this case there was significant dispute in relation to some of the underlying factual background as to the history and extent of the use of this site over the relevant years. The Objectors correctly took the point that the law in this field puts the onus on an applicant to prove and therefore justify his case that the various aspects of the statutory criteria set out in *Section 15(3)* have in reality been met on the piece of land concerned.

- 11.3. To the extent that any of the facts were in dispute in this case, 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 those 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 briefly 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 (particularly ‘pro forma’ statements), questionnaires and the like, which have not been subjected to any such opportunity of 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(3)** 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.

“Locality” or “Neighbourhood within a Locality”

- 11.6. In the event, by the time of the Inquiry which I held, there was no real dispute between the parties in relation to this aspect of the statutory criteria. The application had originally been framed with reference to the *“neighbourhood of Norton”*, in the *“locality of the West Cross Electoral Ward”*. The suggested boundaries of the neighbourhood of Norton were shown on a plan accompanying the application.
- 11.7. At the Inquiry the Applicant maintained the view that the application was in respect of the use of the land by the inhabitants of Norton, but produced a plan showing a slightly enlarged (on its north-west corner) boundary for that neighbourhood. The Objector in the event took no issue with this enlargement, or with the identification of Norton as the appropriate neighbourhood.
- 11.8. In my judgment this revised stance on the part of the Objector was both eminently sensible, and correct. Norton is clearly a part of the overall Mumbles area of the City and County which has its own distinct identity, and of course its name. People regard themselves as living ‘in Norton’, and it quite clearly has a cohesive character as a particular neighbourhood, even if (as is commonly the case) its

precise boundaries at its outer edges could be the subject of debate or minor disagreement.

- 11.9. It seemed to me that the revised boundaries for the neighbourhood of Norton put forward by the Applicant in his documents produced for the Inquiry were entirely reasonable and understandable ones, and related to the evidence provided in terms of users of the claimed green.
- 11.10. Once it is clear that there is a valid 'neighbourhood' for the purposes of an application, it seems to me that very much less significance then attaches to the rigorous identification of the 'locality' in which the 'neighbourhood' sits. This is especially so, given that there is judicial authority at the very highest level to the effect that a 'neighbourhood' can straddle the boundaries of more than one 'locality'.
- 11.11. In this case the Applicant identified the relevant 'locality' as the West Cross Electoral Ward. That certainly is an area or division of the country which is known to the law, but I have some professional reservations about regarding inherently ephemeral and changeable areas (albeit legally recognised ones) such as the electoral wards for unitary authorities, as 'localities' for the purposes of a piece of legislation (the *Commons Act*) which turns on consistent patterns of activity over a period of 20 years or more.
- 11.12. Although no issue was taken about this between the parties at the Inquiry, I note from various of the larger scale maps and plans provided for the inquiry that there clearly exists a legally defined Community of Mumbles, within whose area the suggested neighbourhood of Norton appears entirely to be contained.
- 11.13. It was also obvious from documents, and observations at the time of the Inquiry, that there exists a Mumbles Community Council to serve that area. On the face of it, the legally defined area of that Community would appear to me to be a much more appropriate 'locality' than a relatively ephemeral 'unitary level' electoral ward.
- 11.14. In any event, I note from evidence which I was given that the whole area of Norton clearly sits within the (legally defined) area of the City and County of Swansea, and that even before local government reorganisation in 1974 it had sat for many decades within the (legally defined) area of the old County Borough of Swansea. There is thus, in my view, no doubt that the identified 'neighbourhood' of Norton sits, and for all material purposes has sat, within a legally significant 'locality' which accords with the interpretation which the courts have chosen to give to that term.

“A Significant Number of the Inhabitants” [of the neighbourhood]

- 11.15. Once again, although it originally appeared that this was a matter of contention, by the time of the Inquiry the Objector had conceded that the Applicant was able to show that a significant number of local inhabitants from the neighbourhood had used the land over the requisite period.

“Lawful sports and pastimes”

- 11.16. Similarly, before the Inquiry itself, the Objector had conceded that those local inhabitants had indulged in ‘lawful sports and pastimes’ on this piece of open land.

“For a period of at least 20 years”

- 11.17. It was a matter of agreement between the parties, this being an application brought under *Subsection (3) of Section 15* of the *2006 Act*, that the 20 year period to be considered was the one ending when ‘permissive’ signs were erected on the land on 12th April 2012. It was further conceded by the Objector, in its Case Summary for the purposes of the Inquiry, that the Applicant’s evidence could be seen as substantiating the claim that a significant number of the inhabitants of the claimed neighbourhood had indeed indulged in lawful sports and pastimes on the application site for at least the requisite period of 20 years.

“On the land”

- 11.18. It appeared to me, both from the evidence which was presented, and from examination of the site on my site inspection, that the boundaries of the application site had been set in a perfectly reasonable and acceptable way. Some of the Objector’s witnesses criticised the drawing of the extreme western (very short) boundary of the application site at a point short of where the narrow open grassed area logically stopped, a little further to the west up the hill. It is true that nothing on the ground really marks the application site’s western boundary, but as a matter of fact (and the evidence) it does appear to coincide with the boundary between the land technically ‘administered’ by the Objector Council’s Estates Department, and that administered by the Leisure (or Parks) Department. It seems to me therefore that the drawing of the application site’s western boundary was reasonable, and understandable. Also in the event no submissions were put forward at the Inquiry on behalf of the Objector suggesting that the drawing of the site’s western boundary caused legal difficulties in terms of the registrability of the application site, if all the other statutory criteria were met.
- 11.19. This last point is also true in respect of the application site’s southern boundary, in spite of its having been the subject of some apparent critical comment in the proofs of evidence lodged on behalf of the Objector. The long southern boundary is wholly within the woodland at the southern edge of the site, and for almost its entire length the application site land abuts to its south other woodland, also in the

ownership of the City and County of Swansea, which stretches up (and southwards) towards Oystermouth Castle.

- 11.20. On the other hand it was convincingly explained in evidence for the Applicant that the boundary chosen for the application site was an historic one, traces of which can still be seen on the ground, and that did in fact appear to be the case when I conducted my detailed site inspection, in the company of representatives from both sides. Given these facts, and that no substantive point was taken in relation to this aspect in the Objector's submissions to the Inquiry, I see no difficulty in accepting that the application site's southern boundary is a reasonable and acceptable one.
- 11.21. The other issue which arose in relation to the application site's boundaries is of an entirely different nature. It was completely clear, from the plan forming part of the application, that the application site included, at the north western corner of its northern part, a 'hook-shaped' piece of land, which in fact includes one of the main entrances to the land, close to the junction of Norton Road and the street called Castle Acre.
- 11.22. Yet for reasons which remained unclear to me the plan circulated with the Evidence Questionnaires – which were eventually completed by some 115 local inhabitants – entirely *excluded* that hook-shaped part of the land. It could thus be said, quite fairly, that none of the evidence contained in those completed questionnaires went in any way towards establishing evidence of long-standing 'lawful sports and pastimes;' use by local people on the hook-shaped area. That must be correct.
- 11.23. However it became apparent at the Inquiry that the omission of the 'hook-shaped' area from the Evidence Questionnaires plan was in effect a mistake, for which there was no real logical justification or explanation. It was also quite clear, from all of the oral evidence to the Inquiry, that there was no distinction between the way the small 'hook-shaped' area had been used by local people, and the use they made of all of the rest of the grassed area. Indeed it was clear that the 'hook-shaped' area, albeit small, is a significant and important part of the whole site, in terms of its use.
- 11.24. No point was taken on behalf of the Objector at the Inquiry in relation to this aspect of the case. Given that, and the fact that the site plan forming part of the application clearly shows the site as *including* the hook-shaped area, the view which I have formed is that the application should be considered in relation to the whole area covered by the application site plan. In other words, it should be understood as correctly *including* the hook-shaped area which I have referred to.

“As of right”

- 11.25. In the event, the only substantive issue remaining between the parties by the time of the Inquiry turned upon the legal significance of these three words in the statutory criteria, in the context of the evidence in this case. This is not especially surprising, as the concept of use of land ‘as of right’, particularly in circumstances where the land concerned belongs to a local or other public authority, has been the subject, at least in part, of a significant proportion of all the reported litigation in the field of ‘town or village green’ law.
- 11.26. In essence the eventual position reached here is that the Objector, the Council as landowner, concedes that local people from Norton have indeed been using the application site for lawful sports and pastimes, for more than 20 years up to April 2012, but says that they have been doing so either by implied permission, or possibly ‘by right’ as the exercise of statutory powers by the Council would have given the public the right to be on the land. Hence, the Objector argues, local people were not using the land ‘as of right’, which requires people to have been on the land, using it *as if* they had the right to be there, when in fact they did not.
- 11.27. Far and away the current leading case on this topic is the judgment of the Supreme Court in the case of *R (Barkas) v North Yorkshire County Council* [2014] UKSC 31, and I was referred to a large number of the paragraphs in that judgment by both sides in this present case, particularly by Counsel for the Objector.
- 11.28. The facts in *Barkas* were somewhat different from those at Castle Acre Green, in that the land concerned had been deliberately laid out as a recreation ground, within what had originally been a council housing estate of the traditional kind, pursuant to statutory powers to do just such a thing, in that case under the *Housing Act 1936*. However the two substantive judgments of the Supreme Court, given by Lord Neuberger and Lord Carnwath, range considerably more widely than just in relation to *Housing Act* recreation grounds, and include a specific, unanimous finding of the court that the previous, often cited decision of the House of Lords in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 was, in substance, wrong.
- 11.29. I was also invited to give consideration to a considerable number of passages from the more recent judgment of the High Court in the case of *Naylor v Essex County Council* [2014] EWHC 2560 (Admin) – a case with which I am familiar, having (as it happens) been the Inspector whose reasoning and recommendation were in the event upheld by the judgment of the Court.
- 11.30. I have read, and re-read, and carefully considered the whole of the judgments of the Supreme Court in *Barkas*. I do not propose to set out in this Report lengthy quotations from those judgments. A short summary of the main point decided by the Court might be that where a local or public authority, having statutory powers to do so, has deliberately provided a piece of land for public recreational purposes,

it can be taken to have ‘appropriated’ the land to such purposes, even if it has not gone through a formal process of appropriation under *Section 122* of the *Local Government Act 1972*. The (local) public using such land recreationally are not there as trespassers, or “*as of right*”; they are using the land ‘with permission’ or ‘by right’, in the way the owning authority envisaged that they would.

- 11.31. Although I have considered it carefully, it does not seem to me that the judgment in *Naylor v Essex* adds anything significant for the purposes of the present case beyond what can be gleaned from *Barkas* – not least because the Essex case turned on a somewhat unusual factual situation, where the evidence led to the conclusion that the land concerned (which was in private ownership) had been managed or controlled by the District Council for the area concerned, under specific powers to do just that, under *Section 9* of the *Open Spaces Act 1906*, or some analogous provision. The Council concerned had erected, and replaced, ‘dog poo bins’ on the land involved, as well as generally maintaining it, picking litter from it etc.
- 11.32. An important factor to be borne in mind in relation to *Barkas* is that the Supreme Court very specifically did *not* say that its judgment meant that no open land belonging to local or public authorities can ever be registered as ‘town or village green’, if the statutory criteria are otherwise met. I have in mind in particular paragraph 66 of Lord Carnwath’s judgment, but it is in my view completely clear that Lord Neuberger, in the other substantive judgment, was in agreement on that point. It was also specifically accepted at my Inquiry on behalf of the Objector that open land belonging to a local authority is not automatically exempt from registration.
- 11.33. With that in mind it seemed to me important to seek to establish what, in the light of *Barkas*, might be the criteria or considerations which would go to determine whether a particular piece of local-authority-owned open land was or was not effectively ‘exempt’ from registration; and I asked the parties, in particular counsel for the Objector, to assist me with submissions as to what those criteria or considerations should be, to enable a logical boundary to be drawn between the two types of situation, leading to registrability, or non-registrability, as the case may be.
- 11.34. The relevant submission in the event made on behalf of the Objector was, in effect, that wherever that boundary line might be, this case is nowhere near it; it was not for the Objector to have to establish exactly where the boundary line is. It was said that the considerations could relate to the nature of the land, or to the land having been expressly acquired for a different purpose, e.g. highways, and nothing else ever having been resolved about its use. It was argued that there was no need for the Objector in any way to have to distinguish the *Barkas* case.
- 11.35. I have to say that I did not find this approach to the matter quite as helpful as I might have wished. The implicit acknowledgement that a piece of land acquired (say) for highway purposes, but then just left, with no further resolution as to its

use, might (if the statutory criteria are met) be registrable, does however appear to me to be significant, and accords with my own judgment as to the principles to be derived from *Barkas*.

- 11.36. The view which I have formed, after giving the matter much careful consideration, is that the key relevant points to be derived from the *Barkas* judgment are as follows. Where a local authority can be seen to have ‘lawfully allocated’ a piece of land for public recreation, then (local) public use of the land is ‘by right’ (which equates to ‘with permission’), rather than ‘as of right’. It is possible to infer from the circumstances that a local authority has lawfully allocated the land; it does not depend on having identified a formal appropriation to recreation use under *Section 122* of the *Local Government Act 1972*, for example. But on the other hand, where local authority land has not been laid out or identified for public recreational use, it might still be registrable (if the statutory criteria of the *Commons Act* are otherwise met).
- 11.37. I set the above paragraph out more as an aide memoire to key points, rather than as an exhaustive list of everything relevant that was said by their Lordships in *Barkas*. I also take note of the point, which did not loom large in *Barkas*, and which was only briefly mentioned at my Inquiry, that *Section 120(2)* of the *Local Government Act 1972* authorises a local authority which has acquired land for one purpose, for which it is not immediately required, to use the land for the purpose of any other of the council’s functions.
- 11.38. How then do all these considerations relate to the factual circumstances at Castle Acre Green? Thanks in large part to the diligent researches into the history of this land carried out by the Applicant, a considerable amount of information was unearthed for the benefit of the Inquiry as to the way in which this land had been seen by the Council and its predecessors over the years. It seems that as long ago as 1938, well before what is often referred to as the ‘modern era’ of planning control, the then Swansea Corporation had a Swansea ‘Local Planning Scheme No.1’ which envisaged the future use of the present application site partly for residential development, partly for the construction of a new road, and with a small part near the southern boundary envisaged as being within a proposed public open space, most of which was to be on other land further south.
- 11.39. Within the ‘modern era’ of planning, the County Borough of Swansea’s Town Map of 1955 still envisaged a new road crossing the site, with residential development to the north of it, and public open space to the south of it, but it is clear that those were planning aspirations for a ‘second period’ of that piece of planning policy, and did not in any way represent the situation ‘on the ground’ at the time.
- 11.40. The Council’s predecessor did not acquire the land until 1965, and then only as a lesser part of a substantially larger parcel of land, the remainder of which was further south. A number of reports, minutes etc., were produced, relating to the period leading up to that acquisition. The thinking behind them is not entirely

clear; none of them cites the statutory power under which the acquisition (which was by ordinary conveyance) was to take place. It is clear that the creation of a 'new traffic route' from Mumbles Road to Newton Road was a key motivation, but also that the preservation of an area of open space southwards, towards Oystermouth Castle, was seen as a significant consideration.

- 11.41. The 1965 conveyance makes no mention of the underlying statutory power either. However it is noteworthy that the Committee of the old Swansea Council which resolved to authorise the Borough Estate Agent to negotiate for the land was the Highways Committee. The District Valuer in 1965 certified that the acquisition of the land was for 'Highways and other purposes'. And I was informed by Mrs Parkin for the Objector that records show that it was indeed the Highways Committee and Department which held the land of the application site prior to local government reorganisation in 1974.
- 11.42. However, on that reorganisation the land was not transferred to the then newly created West Glamorgan County Council, which became the highway authority for the area for about the following two decades or so. Ownership was retained by the (new, district level) Borough of Swansea. The '1965 land', including the application site, was in 1974 put into the nominal 'ownership' of the new Swansea Council's Estates Department. No surviving records were available to show why this had happened.
- 11.43. Mrs Parkin also gave evidence that at a subsequent, unknown date (and again for unknown reasons) the southern portion of the '1965 land' was transferred in the Council's records to the notional ownership of the Council's Parks and Leisure Committee, whereas the northern portion, most of which is the present application site, was 'retained' by the Estates Committee.
- 11.44. There was some uncertainty in the evidence as to whether it began in the 1970s or the 1980s, but I heard from both sides that for a good many decades the Council's Estates Department has 'paid' the Council's Parks and Leisure Department to cut the grass on the application site several times a year. No records were available showing why that arrangement was entered into, but I was told that the Estates Department does not itself employ staff who cut grass.
- 11.45. In planning terms there was a considerable chronological 'gap' through the 1960s, the 1970s and much of 1980s, in respect of which I was given no evidence as to what the Council's (or its predecessor's) aspirations were for the land including the application site. However the Proposals Maps of the Swansea Local Plan of 1989 still envisaged the site being crossed by a new road, but with the rest of it shown, indisputably, as part of a much larger area (extending southwards), nas being subject to policy aspirations for intended 'informal incidental open space' (Policy R6), and a policy relating to Allotments/Leisure Gardens (Policy A1).

- 11.46. I shall not here repeat the detail of what happened, but it seems that in the context of the preparation of what became the Swansea Local Plan Review No.1, adopted in 1999, the proposal for a new road across the application site was formally dropped, on the recommendation of an Inspector appointed to consider the Review. Instead the Review Plan as adopted allocated the majority of the grassy (northern) part of the application site to a proposal to provide public parking (Policy M7), with the southern, generally more wooded part included in an area defined as a 'Landscape Protection Area' (Policy NE2).
- 11.47. Finally, in the Council's current Unitary Development Plan, adopted in November 2008, the application site is shown within an area allocated as part of the 'Greenspace system', subject to Policy EV24 of the Plan. My attention was drawn to explanatory text (paragraph 1.7.13) indicating that areas covered by this policy had been defined on the basis of one or more values, including landscape significance, nature conservation value, amenity benefit, etc., but also 'informal recreational potential'.
- 11.48. I was also asked (by the Applicant) specifically to note that the application site land was *not* included or allocated under another policy in the Unitary Development Plan (Policy HC23) which identifies and aims to protect 'Community Recreation Land', whereas other nearby land, such as that around Oystermouth Castle, was made subject to that notation. The Applicant was also keen that I should note that, in a 'document' (in fact a map) available on the Council's website, showing 'Open Green Spaces in the Mumbles and Surrounding Area', the application site was not identified, even though numerous other sites were shown, including some which are smaller than the application site.
- 11.49. In relation to the history of planning policy which I have just recounted, I should first note that I was in fact given even more detail of the preparatory stages of some of the more recent policies. I have had regard to that evidence, but have only thought it necessary here to summarise the main points of the planning policy history.
- 11.50. Secondly, and more importantly, I should say that I have considerable reservations, in the context of a *Commons Act* determination, over giving too much importance to the planning policy 'status' of a piece of land at various times. Planning policy is for the most part inherently aspirational, and does not necessarily reflect at all the actual purpose(s) for which a piece of land was being used, or (where relevant) 'made available', during a defined period of its past history.
- 11.51. So I have set out at some length a summary of the 'planning policy history' here, partly in deference to the importance which both parties here appeared to attach to it, and partly because I can see that, in the rather particular factual circumstances of this case, the Council's planning 'stance' in relation to this land over the years might assist, in combination with all the other evidence, in coming to a proper

understanding of the basis and circumstances on or in which the application site land has come to be used over the relevant years.

- 11.52. One conclusion which I came to in the end, having regard to all the evidence I received, and the Supreme Court judgments in *Barkas*, is that the view expressed by Counsel for the Objector, that this case is nowhere near whatever ‘boundary line’ now exists between ‘registrable’ and ‘non-registrable’ local authority open land, is not correct.
- 11.53. There are points arising from the evidence here which, quite plainly in my view, pull in different directions. The Council’s Estates Department has, over several decades, had the grass mowed regularly, and the site’s appearance thus kept as a presentable, indeed pleasant one. There plainly was a long term aspiration that at least some of the overall area of land acquired in 1965 should go to a ‘public open space’ type use.
- 11.54. Yet the ‘1965 land’ was in fact acquired by the old Swansea Corporation’s Highways Committee and Department, in circumstances where the only specifically identified purpose of the acquisition was ‘Highways’. The ‘new’ (post 1974) Swansea Council then made at some point the conscious decision to transfer the southern part of the ‘1965 land’ to its Parks and Leisure Committee, while retaining the more northerly part, most of which is the application site, in the hands of the Estates Committee, whose normal functions do not seem to include the provision of (and still less the maintenance of) parks, public open spaces and the like.
- 11.55. The fact that the Estates Department ‘paid’ the Parks and Leisure Department to cut the grass is not insignificant, but I agree with the Applicant that a perfectly plausible understanding of that arrangement, given the location of this land, is that it was done to maintain a pleasant appearance on a noticeable open site next to the main approach road to the seaside resort of The Mumbles. And the long term aspiration to provide an open space area north of Oystermouth Castle can sensibly be seen as having been given effect to by ‘hiving off’ the more southerly land (but not the application site) to the Council’s Parks and Leisure Department.
- 11.56. The judgment which I have come to therefore on this aspect of the matter is that, taking a balanced view of all the considerations involved, the land of the application site here is more akin to a piece of open local authority land, acquired for a different purpose and not laid out or identified for public recreational use, but which just happens, through circumstances, to have been available (in a practical sense) for use by local people for ‘lawful sports and pastimes’. That view, in my judgment, more accurately reflects the circumstances of this particular land than seeing it as land which the Council and its predecessors had somehow ‘allocated’ for public recreational purposes, even by some less formal process of appropriation or allocation.

- 11.57. This judgment leads me to conclude that, if the other statutory criteria are properly met, the application site, even though Council-owned, *is* properly capable of being registered under the *Commons Act*.
- 11.58. However, before reaching a final conclusion on the matter, I must consider three other more specific aspects of the history of the land here which, the Objector argued, showed that use of this land by local people was in reality permissive, rather than ‘as of right’. These three matters were the ‘Medieval Tournament camping’, the issue of the Dog Fouling Sign (and bin), and the signs associated with the Mumbles Development Trust, and the Mumbles Way.

‘Medieval Tournament’ camping

- 11.59. It was quite clear from the evidence that at no point was any part of the application site used for the ‘tournament’ or battle re-enactments themselves, for attendance at which payment was taken from the public within an enclosed area up at Oystermouth Castle. All that appears from the evidence to have occurred on the application site is that in some or all of the years concerned, from 1999 to 2002, some overflow camping was allowed on part of the site. It seems likely, rather than definite, that some form of insurance-related ‘disclaimer’ agreement might have been signed between the overflow campers and the Council.
- 11.60. The evidence therefore suggests that the overflow campers were there, ‘with permission’ from the Council, over the four days of the weekends concerned. However the evidence seems equally clear that these campers did not interfere with local people’s general use of the application site. Although the campers’ arrival caused some surprise, especially when it first happened, the campers were not cordoned off, and it was perfectly possible for local people still to wander among such tents or ‘caravanettes’ as might have been there.
- 11.61. In my judgment, this was not the same sort of situation as the learned judge was dealing with in *R (Mann) v Somerset County Council* [2011] (transcript provided), which was briefly referred to at the Inquiry. The situation during the re-enactment weekends was more akin to the sort of reasonable ‘give and take’ addressed by the Supreme Court in *R (Lewis) v Redcar & Cleveland Borough Council* [2010] UKSC 11. I therefore conclude that the evidence, such as it was, about the tournament campers does not undermine the Applicant’s case under the *Commons Act*.

The dog-fouling sign

- 11.62. This sign, warning of possible fines for dog owners allowing their dogs to foul in “*this area*”, was attached to a street lamppost very close to the entrance to the site from Norton Road. The Applicant convincingly established that these signs, almost invariably accompanied by nearby ‘dog poo bins’, had been set up on

pavement and walkway areas quite widely over the Mumbles area, including notably the sea-front promenade. In this particular case, the associated dog poo bin was attached to another post, further west, on the pavement of Norton Road, and not as close to the application site entrance as the sign.

- 11.63. No evidence was produced by the Objector to establish exactly what was the area “designated under” the *Dogs (Fouling of Land) Act 1990*, as referred to on the sign. It was quite clear that the legislation concerned could be applied to street pavements etc., within an urban area subject to speed limits. In my judgment, having regard to all the evidence, it seems much more probable that the sign in Norton Road was part of a general ‘campaign’ by Swansea Council against dog fouling on the pavements and walkways of Mumbles, than that it had anything to do with the application site specifically. This is especially so given the absence of such signs at or near any other entrances to the land, or on it. I therefore conclude on balance that the anti-dog-fouling sign on Norton Road has no bearing on this application, and in particular did not in any way purport to give the public ‘permission’ to go onto the application site.

The Mumbles Development Trust (MDT) signs

- 11.64. It appeared to be agreed between the parties that a small number of wooden signs had been erected in the woodland, both within and to the south of the application site, at some time around 2007/8. The most notable one on the site itself is the one near the entrance from Mumbles Road. All of these signs are associated with sections of the footpath(s) through the woods where improvements had been carried out to the surface (of pre-existing paths), and in particular on the footpath route known as the Mumbles Way. Some of the signs include footpath way-markers. The surface improvements were (as I understood the evidence) carried out by the Mumbles Development Trust, apparently with funding from a number of public (including European) bodies, but not including Swansea Council. The wooden signboards bear (though not always clearly) the insignia of these funding bodies, presumably as a record and for promotional reasons.
- 11.65. All this happened despite there being no formal agreement between Swansea Council (the landowner) and Mumbles Development Trust until 2014, well outside the relevant 20 year period, although I accept the Objector’s evidence that there must have been some informal agreement or arrangement before that.
- 11.66. Most of the signs mention ‘Oystermouth Castle Wood’, although one says ‘Oystermouth Castle Community Orchard’ [there was no suggestion that this last one had any connection with the application site].
- 11.67. The wooden signs also all bear the legend “*Respect – Access – Enjoy*”, in English and Welsh. I am inclined on balance to accept the Applicant’s view of these signs, that they are there in effect to ‘advertise’ the footpath improvements, and the Mumbles Way path that the MDT were promoting, rather than to imply that the MDT (or anyone else) were purporting to give permission to the public to enter

into the woodland (which in any event the MDT had no formal power to do until 2014), or still less to any other part of the site.

- 11.68. There were (as noted) no signs other than associated with the path improvements; there were (and are) no signs on entering into the woodland from the grassy part of the application site, which I agree is the way inhabitants of the Norton neighbourhood would logically come on most occasions to enter the wooded part of the site. And there are no signs at all for people entering onto the main grassy part of the site from the built-up parts of the neighbourhood.
- 11.69. In the light of all these considerations, I conclude that the wooden signs I have been discussing do not undermine the Applicant's case. They did not in reality purport to 'give permission' to local inhabitants to use the site generally, or the wooded part of it. Even if some (non-local people) had felt they were invited or encouraged to use the Mumbles Way as a result of seeing those signs, that would not in my judgment undermine the convincing evidence from the Applicant's side as to 'as of right' use of the site generally.
- 11.70. Finally on the question of signs, the fact that there was (and remains) a sign at the north-east corner of the site, advertising one hotel, and there was (apparently) previously another one for a local pub, does not in my view have any material effect one way or another on the considerations relevant to the Council as Registration Authority.

Final conclusion and recommendation

- 11.71. In the light of all the matters which I have discussed and considered above, my conclusion is that the Applicant succeeded in making out the case that there was 'as of right' use for lawful sports and pastimes of the whole of the application site by a significant number of the inhabitants of the neighbourhood of Norton (as identified by the Applicant in his documents produced for the Inquiry) for at least the relevant period of 20 years.
- 11.72. Accordingly my recommendation to the Council as Registration Authority is that the land of the application site ***should*** be added to the Register of Town or Village Greens, under ***Section 15*** of the ***Commons Act 2006***.

ALUN ALESBURY
4th March 2015

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

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT – Dr Robert William Leek (on behalf of the Friends of Castle Acre Green)

The Applicant, Dr Robert Leek –

He gave evidence himself, and called:

Ms Julie Vallack, of Myrtle Cottage, 23 Norton Road

Mrs Mandy Thomas, of 100 Castle Acre, Norton

Mr Haydn Lewis, of Callander, Glen Road, Norton

Mr Brian Jenkins, of Elm Cottage, Norton Road

Mr Nigel Phillips, of 36 Glen Road, Norton

Professor David Boucher, of Bath Cottage, 4 Norton Road

FOR THE OBJECTOR – The Council of the City & County of Swansea, as Landowner

Mr Rhodri Williams – Queen’s Counsel

- Instructed by Mrs Wendy Parkin, Senior Lawyer

He called:

Mrs Wendy Parkin – Senior Lawyer, Property Team, City & County of Swansea

Mr Adrian James – Chartered Surveyor - Property Manager, Corporate Property Strategic Estates Section, City & County of Swansea

Mr Nigel Jones – Special Events Manager, City & County of Swansea

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

N.B. This (intentionally fairly 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, and the Applicant's 'Response' (paginated) bundle, all of which were provided to the Registration Authority (and me) as complete bundles.

It also excludes any correspondence which may have taken place after the Directions, but before the Inquiry itself, in relation to procedural matters.

FOR THE APPLICANT

Enlargement of Proposals Map, Swansea Local Plan (1989)

Policy HC23 and Amplification, from Swansea Unitary Development Plan

FOR THE OBJECTOR

Minutes of Cabinet Meeting, 28th August 2008

Enlargement, County Borough of Swansea Development Plan Town Map 1955

Swansea Local Plan (1989) – Policy Extracts and enlarged Proposals Map

Swansea Local Plan Review No.1 (1999) – Policy Extracts and enlarged Inset Plan and key

City & County of Swansea Unitary Development Plan (2008) – Policy Extract (with supporting text), and enlarged Proposals Map extract.

IN THE MATTER OF LAND AT CASTLE ACRE, NORTON
AND IN THE MATTER OF A VILLAGE GREEN APPLICATION No. 2741(S) UNDER
SECTION 15(3) OF THE COMMONS ACT 2006

FURTHER ADVICE

1. I am asked to advise Swansea City Council (“the Council”) further on the merits of “challenging” the recommendations made by the Inspector appointed to hear the public inquiry into the application (app. no. 2731(S)) made on 7th January 2013 for registration of land at Castle Acre, Norton, West Cross, Swansea (“the Land”) as a town or village green pursuant to section 15(3) of the Commons Act 2006 (“the 2006 Act”). The matter was listed for a three day public inquiry which started on 2nd December 2014 and the Inspector finally produced his report on 4th March 2015.
2. This Further Advice is given pursuant to the instructions received by email on 5th March 2015 and my telephone conversation with my Instructing Solicitor on 6th March 2015. I have previously advised in writing in relation to the merits of maintaining the Council’s objection to the application by an Advice dated 27th February 2013 and by Further Advices on 2nd June 2014 and 16th October 2014.

Background

3. The full background to this matter is set out in my previous Advices dated 27th February 2013, 2nd June 2014 and 16th October 2014 and I do not reiterate the same here. Since the public inquiry held on 2nd – 4th December 2014, the Council has now received the Inspector's Report dated 4th March 2015.
4. The Inspector's Report, having dealt with the preliminaries, confirms that the only substantive objector to the application was the Council, as owner of the area of land covered by the application. Having set out the evidence called and submissions made on behalf of both the applicant and the Council, the Inspector's Report then deals with what he refers to as "Discussion and Recommendations" at paragraphs 11.1 – 11.72.
5. It is worth noting that paragraph 11.1 which sets out the provisions of section 15(3) of the Commons Act 2006, includes a paragraph which relates to some other application and appears to have been included in the Report by mistake. The Council should point this out to the Commons Registration Officer when submitting its suggested corrections.
6. Given the concessions made by the Council in respect of various parts of the test under section 15(3) Commons Act 20006 (the locality or neighbourhood, a significant number of inhabitants, lawful sports and pastimes, for a period of at least twenty years, on the land) the most, if not only, significant part of the report is that dealing with the issue of use "as of right" (paragraphs 11.25 – 11.70).

7. The key finding the Inspector makes is at paragraph 11.56 where he holds:

“The judgment which I have come to therefore on this aspect of the matter is that, taking a balanced view of all the considerations involved, the land of the application site here is more akin to a piece of open local authority land, acquired for a different purpose and not laid out or identified for public recreational use, but which, just happens, through circumstances, to have been available (in a practical sense) for use by local people for “lawful sports and pastimes”. That view, in my judgment, more accurately reflects the circumstances of this particular land than seeing it as land which the Council and its predecessors had somehow “allocated” for public recreational purposes, even by some less formal process of appropriation or allocation.”

8. As a result of this, the Inspector therefore concludes (at paragraphs 11.71 – 11.72:

“In the light of all the matters which I have discussed and considered above, my conclusion is that the Applicant succeeded in making out the case that there was ‘as of right’ use for lawful sports and pastimes of the whole of the application site by a significant number of the inhabitants of the neighbourhood of Norton (as identified by the Applicant in his documents produced for the Inquiry) for at least the relevant period of 20 years.

*Accordingly my recommendation to the Council as Registration Authority is that the land of the application site **should** be added to the Register of Town or Village Greens, under **Section 15** of the **Commons Act 2006**.”*

Analysis

9. The first issue to point out is that, as confirmed by the Inspector at paragraph 13 of his Directions to Parties dated 11th September 2014 (and reiterated orally at the start of the public inquiry), he was appointed to conduct a non-statutory inquiry into the application for registration and to produce for the Commons Registration Authority a Report on the evidence and submissions which he heard and received, with conclusions and recommendations as to the resolution of the application in this case. The final, formal decision on the applicants' application, therefore, is not one that is made by the Inspector, but rather by the Registration Authority, in the light of the Inspector's Report. At the inquiry, the Inspector added that usually, though not always, the Registration Authority would agree with his conclusions and follow his recommendations. It should be added here that that would indeed normally be the case, unless, of course, there were good reasons not to do so.

10. There is therefore no decision which the Council could usefully challenge at this stage, since the decision is yet formally to be taken by the Registration Authority, either by virtue of its Commons Registration Committee under delegated authority, or by the Cabinet or Full Council itself, in accordance with the Council's constitutional rules for making such decisions. It would, in theory, be perfectly possible for the relevant Committee (or the Cabinet or full Council) to decide to reject the Inspector's conclusions and not to follow his recommendations, with the result that it might decide not to allow the application to register the site as a Town or Village Green, provided, as stated above, that it has good reason to do so.

11. In the instant case, whilst it is difficult to take issue with the Inspector's findings of fact (there was in fact little really in dispute at the inquiry and instead much turned on the interpretation of uncontroversial facts) or the weight he attaches to matters such as the issue of the "medieval tournament camping", the dog fouling sign or the Mumbles Development Trust (and other) signs, I do consider that there is a good argument that the Inspector has misinterpreted the law and the way the Council put its case based on the law on the basis of the correct interpretation of the law. If the Council agrees with this conclusion, this would be a justifiable reason for not following the Inspector's recommendation and for not allowing the application and registering the land as a Town or Village Green. It must be recognised, however, that should the Council take this course of action, there may well be a risk that the applicants might seek to challenge the decision by way of judicial review.

12. In my previous advices, I referred to the decision of the Supreme Court which handed down judgment on 21st May 2014 in *R (on the application of Barkas)-v-North Yorkshire County Council [2014] UKSC 31; [2014] 2 WLR 1360* where, by its judgment, the Supreme Court defined the phrase "*as of right*" in the Commons Act 2006 s.15(2)(a) and held that people enjoying recreational activities on land held by a local authority pursuant to section 12(1) of the Housing Act 1985 did so under a licence, rather than "*as of right*". Consequently, the land could not be registered as a town or village green because the 20-year period in section 15(2)(a) would only start to run if the land was removed from the ambit of s.12(1).

13. I referred, in particular, to paragraph 24 of the judgment of Lord Neuberger in *Barkas*, where he held that:

“where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land “as of right”, simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights.”

14. I stated that I was conscious of the fact that the Inspector appointed by registration officer in this case, had previously held in a case¹ in which the Council had objected, that in absence of evidence of formal appropriation by the Council under section 9 of the Open Spaces Act 1906 or section 164 of the Public Health Act 1875, the principle under what was then the Court of Appeal decision in *R (oao Barkas)-v-North Yorkshire County Council [2012] EWCA Civ 1273* did not apply. However, in the light of the decision of the Supreme Court in *Barkas*, and in particular the judgments of Lord Neuberger² and Lord Carnwath³, I considered, and still consider, that informal “appropriation” in the sense of allocation or designation as recreational or open space, by virtue of acquisition and maintenance as recreation grounds or of open space, is in fact

¹ In the matter of Site 9, Maritime Quarter, Swansea (2013) (unreported) of 23rd July 2103

² At paragraphs 24, 42 and 45 – 46 of his judgment

³ At paragraphs 57, 64 – 65, 74 and 79 – 86

sufficient and that therefore the previous decision of the Inspector on this issue should, on balance, now be regarded as incorrect.

15. In the instant case, by its Case Summary and its opening to the inquiry, the case on behalf of the Council was put by me in the alternative, namely that there was no use of the land as of right, either because of the existence of a statutory trust (and thus permitted user) under sections 9 – 10 of the Open Spaces Act 1906, or under section 164 of the Public Health Act 1875, or as a result of a licence which was to be implied from all the circumstances. By the time of formal submissions at the closing of the inquiry, and in the light of the planning evidence which had come out during the inquiry, the submissions in respect of the statutory trust were put solely on the basis of the provisions of the Open Spaces Act 1906⁴.

16. It was submitted on behalf of the Council that the documentation evidencing the purchase of the land in 1965 indicated a dual purpose (which was moreover conceded by the applicants), namely for highways purposes and for the purposes of open space land, that by 1998 the highways purpose had fallen away and that even if sections 9 and 10 of the Open Spaces Act 1906 had not been immediately applicable in 1965, they must have been engaged by 1998. This would mean that a statutory trust had arisen, at the latest by that stage, giving rise to a statutory right for the public to use the land.

17. Various submissions were made as to what was required by way of an implied appropriation for land use purposes and reference was made to the extensive planning policy background as evidenced by the various policies between 1955 and 1999 and leading up to the extent UDP adopted in 2008. It was expressly submitted that by virtue of the formal adoption by the Cabinet by resolution in

⁴ There was still an alternative submission that there was a licence to be implied from the circumstances, including the grant of the express licence to the MDT in 2006, the grant of the licence to the battle re-enactors for camping in 1996ff, the grant of the licence to the hoteliers for advertising, the restrictions imposed by the erection of the dog fouling notices after 2000 and by the erection of the permissive notices in 2012

- August 2008 and by the full Council in November 2008 of the UDP in general, and of policy EV24 (Urban Greenspace) for the application land in particular, there was an implied appropriation of the land to open space purposes by that date at the latest.
18. In those circumstances, it was submitted, referring to the judgments in *Barkas* of Lord Neuberger at paragraphs 24 – 30, 37 – 38 & 42 – 49 and of Lord Carnwath at paragraphs 57, 64 – 65, 74 – 75 & 79 – 86, that the use of the land by the applicants was not “*as of right*”. Rather it was *by right*. It was, for instance, submitted that, if the question, as postulated by their Lordships in *Barkas*, had been posed, as to whether one would consider that the members of the public who used the land in the period between 1992 and 2012 did so as trespassers, then the answer would clearly have been that they had not, as had been vehemently stated by one of the applicants’ witnesses (Mrs. Thomas).
19. In the light of this, it was submitted that whilst land belonging to a local authority was not automatically be exempt from an application under section 15 of the Commons Act 2006, it would only be in exceptional circumstances that it would be potentially capable of registration and that those exceptional circumstances certainly did not exist on the facts of the present case, which fell clearly within the *Barkas* principles.
20. In his Report, whilst conceding (at paragraph 11.28) that the substantive judgments of Lords Neuberger and Carnwath range consider more widely than just in relation to recreation grounds under the Housing Act 1985, the Inspector’s summary of the judgment merely sets out (at paragraph 11.30) that “*where a local or public authority, having statutory powers to do so, has deliberately provided a piece of land for public recreational purposes, it can be taken to have “appropriated” the land to such purposes, even if it has not gone through a formal process of appropriation under section 122 of the Local Government Act 1972*” and (at paragraph 11.36) that “*where land has not been laid out or identified for public recreational use, it might still be registrable..*” (emphasis added).

21. It was never part of the Council's principal case that the land had ever been laid out or identified for public recreational use. Rather it was the Council's case that the land had been originally acquired for two purposes, for highways purposes and for open space purposes, and that the former purpose had, by 1998, been abandoned and that from 2008 at the latest, the land was therefore held solely for open space (urban green space) purposes. This was evidenced not simply by reference to the various applicable planning policies, though the policies and other documentary evidence available were certainly consistent with this interpretation, but also by the documentation surrounding the original purchase in 1965 and various memoranda in respect of the issue of development of the land by the construction of a new by pass road.
22. The Inspector in his Report simply does not deal with this aspect of the Council's case, nor its significance in the light of the judgment of *Barkas* as referred to above. Nor does he deal with the fact (as recognised by him at paragraph 11.43) that part of the application land formed part of the southern portion transferred to the notional ownership of the Council's Parks and Leisure Committee after 1965, nor with the consequences of his finding (at paragraph 11.45) that the larger area of land extending southwards was subject to policy aspirations for intended "informal incidental open space" after 1989, nor that the southern generally more wooded part was included in an area identified as a landscape protection area after 1999 (paragraph 11.46) nor, finally, that the entirety of the site was made subject to the urban greenspace system from 2008 (paragraph 11.47).
23. Despite the Inspector's expressed misgiving at giving too much importance to the planning policy status (paragraph 11.50), he wholly failed to deal with the Council's express submission that this evidence was wholly consistent with its

- case that the land was held for open space purposes for a significant period of time within the requisite twenty year period and, notably, after 2008. That the planning policy context was relevant was also contended for by the applicants, albeit that they drew difference inferences from the documents available.
24. Finally, whilst the Inspector acknowledges that the points arising from the evidence pull in different directions (paragraph 11.53) and that there was plainly a long term aspiration that at least some of the overall area of land acquired in 1965 should “go to a ‘public open space’ type use”, nowhere does he deal with the issue of the dual purpose for which the land was held becoming a sole “public open space” purpose, once the plan to develop the highway was dropped in 1998 and his conclusion in paragraph 11.56 only deals with the “land acquired for a different purpose and not laid out or identified for public recreational use” argument, which, as I have said was far from being the Council’s principal case on its objection.
25. In the light of the above, I consider that there are good reasons to conclude that the Inspector has not properly applied the law as established in *Barkas* either to the facts of this case, or to the case as submitted on behalf of the Council as objector. This is without prejudice to the Council’s argument that there was also an implied licence granted by the Council to use the land, which the Inspector deals with in paragraphs 11.58 – 11.70. The conclusion on the interpretation of *Barkas* would, in my view, justify the Commons Registration Authority, be it the relevant committee or the Cabinet or the full Council, were the matter to be called in for a decision by it, deciding not to accept the Inspector’s conclusions or follow his recommendation, but, instead, to decide not to register the land in question as a town or village green under section 15(3) of the Commons Act 2006.
26. There has been only one decision of real relevance since the public inquiry was heard in December 2014 and this is the further judgment of the Supreme Court in *R (oao Newhaven Port and Properties Ltd)-v-East Sussex County Council*

[2015] UKSC 7, but I do not consider that this alters the above interpretation of the decision in *Barkas*, which was expressly applied.

27. Rather the Supreme Court in *Newhaven* expressly approved⁵ of paragraph 23 of the judgment of Lord Neuberger where he held:

“Where land is held [by a local authority] for [the statutory] purpose of [recreation], and members of the public then use the land for that purpose, the obvious and natural conclusion is that they enjoy a public right, or a publicly based licence, to do so. If that were not so, members of the public using for recreation land held by the local authority for the statutory purpose of recreation would be trespassing on the land, which cannot be correct.”

28. I consider that “recreation” can include use of land which comprises open space and that members of the public may equally use land which simply comprises of open space (as opposed to land consciously laid out for recreation, such as by the creation of football pitches or tennis courts) for the purposes of recreation such a walking with or without dogs, with exactly the same legal consequences. Moreover, the Supreme Court in *Newhaven* also expressly approved⁶ paragraph 65 of Lord Carnwath where he had held:

“It follows that, in cases of possible ambiguity, the conduct must bring home to the owner, not merely that “a right” is being asserted, but that it is a village green right. Where the owner is a public authority, no adverse inference can sensibly be drawn from its failure to “warn off” the users as trespassers, if it has validly and visibly committed the land for public recreation, under powers that have nothing to do with the acquisition of village green rights.”

⁵ See paragraph 70 of the judgment of Lord Neuberger and Lord Hodge

⁶ Ibid

29. In the light of what Lord Neuberger went on to say at paragraphs 37 – 38 and 42 – 49 of his judgment in *Barkas*, I consider that it is relatively uncontroversial, therefore, that land which is allocated or designated as public recreational or open space, even land which is subsequently merely maintained as such by regular mowing rather than being formally laid out for recreational purposes, will not be able to be used by members of the public “as of right” for the purposes of section 15 of the Commons Act 2006. In failing to recognise this, the Inspector, in my view, fell into error in reaching his conclusions in his Report and in making his recommendation.

Conclusion and Next steps

30. In conclusion, I consider that the Inspector misinterpreted the law applicable to the application under section 15(3) of the Commons Act 2006 and thus misapplied the law in respect of the Council’s objection to the application made on behalf of the applicant. Clearly, however the Council views this issue, it will first need to consider how the Report of the Inspector should be considered by it and which body will formally be exercising the Council’s role as Commons Registration Authority under the Commons Act 2006 in order to make a final decision on the application.

31. If, on the basis of all the evidence available to it, including this Further Advice, the Council, or whatever body is delegated authority to make the decision, comes to the conclusion that the statutory test under section 15(3) Commons Act 2006 is not fulfilled, then it would be perfectly justified in not accepting the Inspector’s conclusions or in following his recommendation and in deciding

not to accede to the application and register the land in question as a town or village green. On the other hand, should it consider that the Inspector has correctly applied the law and that his conclusions are therefore sound, the Council should logically accept his recommendation and determine that the application to register the land as a town or village green should be allowed.

32. The Council should bear in mind that if it comes to the former conclusion and thus determines not to register the land as a town or village green, it is possible, subject to the issue of available resources, that the applicants may seek to bring a claim in the High Court against the Council by way of judicial review. The High Court will review the issues of law and the correct interpretation of the judgment of the Supreme Court in *Barkas* anew. However, apart from the question of the correct interpretation of the applicable law, in relation to the decision not to accept the conclusions and recommendation of the Inspector, the applicants would only succeed in getting this quashed, if they could show that the decision taken was *Wednesday* unreasonable.

33. I should be happy to discuss this Further Advice with my Instructing Solicitor before it is put before the relevant decision making body, if that is considered necessary.

Rhodri Williams QC

9.iii.15

Thirty Park Place Chambers
Cardiff

**IN THE MATTER OF LAND AT CASTLE
ACRE, NORTON
AND IN THE MATTER OF A VILLAGE GREEN
APPLICATION No. 2741(S) UNDER SECTION 15(3)
OF THE COMMONS ACT 2006**

FURTHER ADVICE

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Summary Response of The Friends of Castle Acre to Mr Williams' Advice

- 1) At the public enquiry in December 2014, Swansea argued against the registration of Castle Acre Green as a Village Green. The inspector, Mr Alesbury, **disagreed**. His report recommending registration was received on 9 Mar 2015. Inexplicably, the landowner took 10 weeks to respond (**See #1 & 2**).
- 2) The reluctance of the landowner (Swansea) to accept the conclusions of a rigorous public enquiry convened by Swansea, the registration authority, is extraordinary. At the inquiry, Swansea's counsel freely acknowledged the inspector to be expert in this specialised field. Indeed, Swansea routinely uses Mr Alesbury as inspector on village green applications. To question the judgement of such an expert is quite extraordinary (**See # 5, 6 & 7**)
- 3) The landowner's counsel accepted as fact, **that use of the land** had clearly met the criteria for registration as a Village Green (VG) (**See # 9**); understandably, given the level of use and support: 115 completed VG questionnaires by Norton residents and massive wider support.
- 4) The issue at dispute relates to whether the land had been used "by right" or "as of right". Our claim of use "as of right", with supporting evidence, was upheld by Mr Alesbury in his recommendations. **Therefore, he concluded all the criteria for registration as a VG had been met.**
- 5) In his challenge, counsel for the landowner makes errors of fact and logic.
- 6) Land is referred to as "recreational", "open space" or "greenspace" implying these terms are synonymous and interchangeable in a VG sense. **They are not. (See # 11). The key issues relate to the statutory powers under which the land is held and its designated use.**
- 7) **Mr Williams confuses** the accepted difference in intended use between the VG application land and the bigger parcel of land acquired by Swansea in 1965. (**See # 12**). **Mr Williams' assertion is wrong.**
- 8) **He disregards the fact** that, in planning terms, Swansea clearly distinguishes our VG application land (EV24) from the HC23 land adjacent to the castle, which is "land held for community recreation" (**See # 13**)
- 9) **Mr Williams is clearly wrong** when he claims that the VG land is "owned" by Parks and Leisure (**See # 14**): **it is "owned" by the Estates Dept.**
- 10) **He is wrong** in implying that Barkas does not allow publicly owned land to be registered as a village green. As the later Newhaven judgement states, publicly owned land **can** be registered if the VG criteria are met (**#15**). **Castle Acre Green meets those criteria.**
- 11) Lastly, Mr Williams' reference to Wednesbury is apposite though unworthy in its apparent sentiments (**See # 17**). Natural justice and due process requires the Registration Authority to follow the recommendation of the inspector and register the land as a Village Green.

NOTE: # references relate to paragraphs in our response to Mr Williams' advice (attached).

Response to Mr Rhodri Williams' further advice (9March 2015) in respect of Mr Alesbury's report on the application to register Castle Acre Green as a TVG

(A) INTRODUCTORY COMMENTS

- 1) We note that the further advice provided by Mr Williams was sent to the Legal Dept in Swansea, as landowner, on 9 March 2015, yet only released to us via the Registration Authority on 15 May 2015. We can only speculate as to the reasons for the delay.
- 2) We further note the refusal of Swansea, the landowner, to release earlier advices made by Mr Williams and to which he refers in his paragraphs 2 and 3 of his March 9 advice, which we are advised is highly irregular because they provide context for the 9 March advice. It is long established in law that if privilege is waived in respect of one document in a series then it is waived in respect of the remainder. This rule is necessary to prevent a party from unfairly indulging in selective disclosure or "cherry picking" among the privileged material.
- 3) We also note the irregularity by Swansea as Registration Authority, in allowing the Council as landowner to put before the committee an opinion from the landowner's legal counsel, Mr Rhodri Williams, that **re-visits the arguments already considered and dismissed by the inquiry inspector. The Council, as landowner, has already argued its case at the public enquiry and lost. The Planning Committee is not a Court of Appeal. This opinion has prompted our further response contained within this note.**
- 4) **We would remind the Planning Committee that Mr Alesbury's report is a demonstrably independent assessment of the facts presented at the inquiry whereas Mr Williams' response is partial in that it simply re-visits the case already presented on behalf of the landowner that was considered and rejected by the independent inspector. It should be given little weight for that reason.** Far be it from us to challenge Mr Alesbury's legal judgement of the case for registering Castle Acre Green as a Town or Village Green, nor revisit in detail the arguments in favour of registration, that we presented and which were accepted, at the Hearing. Mr Alesbury's reasoning on the "as of right" issue is clearly set out after taking into account the Barkas judgement in paras 11.25 and those following. We accept the validity of Mr Alesbury's judgement, in that he is both a highly

respected, experienced barrister and an expert inquiry inspector in this specialist field (**see biographical notes attached in Appendix**).

- 5) At the public inquiry, we noted that **Mr Alesbury's specialist expertise was openly acknowledged by Swansea's counsel, Mr Rhodri Williams**, to the extent that he invited, for example, Mr Alesbury to consider a recent (**post Barkas**) judgement of a Village Green application **made by Mr Alesbury as inspector** (Naylor vs. Essex CC (2014)) in which **his (Mr Alesbury's) reasoning was subsequently upheld by the judgement of the High Court** (See paragraphs 11.29 and 11.31 in Mr Alesbury's report). We also note that, while such challenges of inspectors' recommendations are extremely rare, there was the same outcome **again favouring Mr Alesbury's judgement, when an opposing QC challenged Mr Alesbury's decision in the Court of Appeal in the landmark Yeadon Banks Case (Leeds Group plc v Leeds City Council 2010 and 2011)**. Clearly, **Mr Alesbury's recommendations tend to be upheld as sound in law even on the exceptionally rare occasion they are challenged in higher courts**.
- 6) **Furthermore, we note that Mr Alesbury has enjoyed the full confidence of the Registration Authority of the City and County of Swansea for some years: he has acted, and continues to act, as a non-statutory inspector on its behalf on several occasions**. Recent local examples of his determinations include the "Slipway", Llanmorlais, and Winch Wen Village Green applications, while one relating to land at Llangefelach, was dismissed by Mr Alesbury without the need for an inquiry. Other VG applications made to the Swansea Registration Authority await Mr Alesbury's determination at inquiry.
- 7) Finally, we note that Mr Alesbury's conclusions and recommendations have been accepted by the Registration Authority of Swansea (like other local authorities), rightly, without question in the past.

(B) ISSUES OF FACT AND LAW

- 8) We wish to comment on, and dispute, some issues presented as "fact" in Mr Williams' further advice in respect of Mr Alesbury's judgement.
- 9) We note that **at no point** does Mr Williams challenge the facts presented by the Friends of Castle Acre Green relating to the **use of the land**: he conceded at the outset that the use criteria appropriate for the registration of the land as a village green had been met. We had clearly demonstrated use

of the land by a significant number of the residents of the neighbourhood (acknowledged to be Norton) for a period of at least 20 years for lawful sports and pastimes (see paragraph 11 in Mr Williams' further advice). In fact, there were 115 completed witness forms from which 15 witnesses were ready to personally attest at the inquiry to their use of the land for lawful sports and pastimes. **So it's not surprising that the landowner conceded these points at the start of the Hearing. Furthermore, referring to other elements of our evidence, Mr Williams concedes (also in paragraph 11), that "it is difficult to take issue with the inspector's finding of fact ...or the weight he attaches to matters such as the medieval tournament camping "etc.**

- 10) Mr Williams points out the clerical error in that the dates in Paragraph 11.1 of Mr Alesbury's report are incorrect. The actual dates are: Application was dated: September 2012; received by the Council: 20 September 2012; use of the land "as of right" ceased on 12 April 2012. This clerical error, does not materially affect the reasoning or the conclusions because the details of our application and the Hearing are correct in all other respects. We might also refer to a similar clerical error in Mr Williams' advice at his paragraph 32 in which he refers to "Wednesday" unreasonableness.
- 11) In paragraph 14 and elsewhere, Mr Williams refers to land as "recreational", "open space" or "greenspace" as though these terms are synonymous and interchangeable in a VG sense. **They are not.** Mr Williams is incorrect. **The statutory powers under which the land was held**, and its clearly committed use for recreation in the Barkas case (which he frequently cites) **is in stark contrast** to Swansea Council's inability to demonstrate the same for Castle Acre Green (see for example para 11.28, 11.32 and 11.56). By unjustifiably conflating these terms, Mr Williams attempts to establish that designating a piece of land "greenspace" implies its use is dedicated to recreation. **This is clearly not generally true. It is certainly not proven in the case of Castle Acre.(see paragraph 13 below)** There are many examples of greenspace that are not specifically designated for recreational use.
- 12) In paragraph 16 of Mr Williams' further advice, the claim that the subject land was acquired for a dual purpose and that we had conceded that point at the inquiry, **is incorrect on two counts. The subject land was not acquired for a dual purpose and we never conceded that point at the inquiry.** Yet again Mr Williams is confusing the purchase of the larger portion of land (the 10.323 acres that Mr Alesbury refers to as the "1965 land") with the subject

land (Castle Acre Green). The latter represented only a small portion (2.94 acres or 28%) of the total purchased by the Council in 1965. (See for example paras 11.40 and 11.41). While part of the “1965” land **lying outside the application land may** have been acquired for an open space, it is clear from drawings and documents presented as part of our evidence, and accepted by the objector, that the land to which we refer as “Castle Acre Green” (the subject of our application) **was designated for highway construction.** Moreover, while, as claimed by Mr Williams, the highways purpose may have “fallen away by 1998”, it is clear from our evidence that even in 2005 (see pages 71 and 72 to 74 of my evidence and Mr Alesbury’s para 11.46) **that a substantial part of the land was under active consideration for car parking. So Mr Williams’ claim that the Open Spaces Act 1906 “must have been engaged by 1998” is clearly wrong.** In fact, we would dispute that the Open Spaces Act was **ever** engaged for the application land. **It does not follow that any land**, which may or may not have been zoned as greenspace must have been held specifically under the Open Spaces Act of 1906. **There is no evidence** that this was ever the case for our land. **Therefore, use of the land could not have been under a statutory trust.** Mr Alesbury acknowledged this in his judgement.

- 13) In paragraph 17 of Mr Williams’ advice, he refers to the zoning of the land under the generic heading of EV24 in the 2008 UDP (just like numerous other sites so zoned in the UDP at that time). This particular land was not highlighted as worthy of any special mention in the UDP. This was much discussed at the Hearing and was clearly addressed by Mr Alesbury in his conclusions set out in paras 11.46-11.48. Inter alia, such a designation does not in itself preclude registration of the land as a Village Green. **We note that the City and County of Swansea voluntarily registered land zoned as EV24 in the UDP as a village green on two separate occasions within the UDP time frame (App Nos 2711(s) and 2727(s)) at West Cross in 2011/2012 (Minutes of Rights of Way Sub-Committee 5 Dec 2012 and 26 Oct 2011). So this label clearly does not in itself preclude Village Green registration, otherwise they might have reasonably blocked the registration of the prime sites in front of the West Cross housing estate.** At the Hearing, we clearly distinguished between Swansea’s **choice** to zone the application land as EV24 rather than HC23; **significantly, they deliberately chose NOT to explicitly zone it as HC23 land (para 11.48). In contrast to EV24 land , HC23 land is clearly and expressly designated in its Greenspace Policy**

as “community recreation land” i.e. for the purpose of public recreation.

Neither did the Council invite the public to use the land as witness the fact that they have chosen to omit it from their published and on-line literature on open green spaces in Mumbles (see 7.101 and 11.48) .As shown at the Hearing in documents supplied by the objector and acknowledged by Mr Alesbury, the EV24 generic designation has wide applicability and interpretation and is quite different from HC 23 land. Paragraphs 11.47 and 11.48 are relevant. Clearly, in contrast to HC23, designation as EV24 does NOT imply an appropriation to recreational purposes. Paragraph 11.56 in Mr Alesbury’s report is relevant.

- 14) In paragraph 22 Mr Williams claims that “part of the application land formed part of the southern portion transferred to the notional ownership of the Council’s Parks and Leisure Committee after 1965”. **This statement is clearly incorrect.** We would respectfully refer to Swansea Council’s evidence given by Mr James and specifically the map labelled AAJ2 which clearly shows that none of the application land was ever under the notional ownership of Parks and Leisure: quite the reverse, Swansea chose NOT to allot notional ownership of the land to Parks and Leisure. Instead, they deliberately chose to allot notional ownership of the application land to the Estates Dept along with an area beyond its boundaries, thereby further distinguishing the land from that specifically zoned for public recreation. So these comments should be disregarded because they are factually incorrect. Paragraph 11.43 that refers to Ms Parkin’s evidence is relevant in this respect and Mr Alesbury’s conclusion in 11.54 and 11.55
- 15) At paragraphs 26 to 29, Mr Williams refers to the decision of the Supreme Court in the Newhaven case published in February 2015. That case was concerned with a beach owned by a company operating the port in Newhaven **under statutory powers**. The village green application failed, partly because of the doctrine of statutory incompatibility, that is that **the statutory purpose** for which the land was held, (the operation of the port of Newhaven), **was incompatible with its registration** as a village green. **However the Court made it clear that it did not follow that village green applications would fail for all publicly owned land.** Specifically they said, in paragraph 101 “*The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility.*” That point re-enforces the reasoning of Mr Alesbury in his paragraphs 11.56 and 11.57. **Note that this**

judgement was given by Lord Neuberger, who gave the lead judgement in the Barkas case. So he re-iterates in the Newhaven judgement that publicly - owned land can be registered as a village green, notwithstanding the Barkas judgement. This supports Mr Alesbury's analysis in, for example, paragraph 11.32 in his report.

- 16) Furthermore, in paragraph 28 Mr Williams expresses the view: "I consider that "recreation" **can** (*my emphasis*) include the use of land which comprises open space..... for the purposes of recreation.... with exactly the same legal consequences". This logic is strained: just because something "**can**" be true **does not make it necessarily nor universally true. In the case of the Castle Acre it is not true.** In fact, the Inquiry clearly established in paragraph 11.56 of the report, that the Council **had not** "validly and visibly **committed** the land for public recreation" (borrowing Mr Williams' quote from Lord Carnwath). **See also our comments in paragraph 13 above.**
- 17) Finally, in para 32 (and previously in para 11), Mr Williams states in his last sentence "the applicants would only succeed in getting this quashed if they could show that the decision taken was **Wednesday (sic)** unreasonable". While we cannot claim to be as expert in the detail of all aspects of the law, we *are* familiar with **Wednesbury** unreasonableness, no matter which day of the week it applies. It applies to unreasonable decisions made by public bodies. I can confirm that should Mr Alesbury reconfirm his original judgement, as we expect he will, the residents of Norton will expect the City and County of Swansea to endorse his recommendation by registering the land as a Village Green. Here, Mr Williams is right: failure to do so would signal an act of bad faith on the part of the committee and be regarded as **Wednesbury** unreasonableness. It would indeed be subject to further challenge by our legal counsel by way of Judicial Review. Mr Williams appears implicitly to invite the Council to reject the recommendation out of hand, on the assumption that the applicants may lack the resources to pursue natural justice through Judicial Revue. This emphatically is not the case.
- 18) We expect Mr Alesbury's recommendation, whatever it may be, to be upheld by the Planning Committee. Otherwise, it negates the purpose of a public enquiry led by an experienced and highly qualified expert in this specialised field. Furthermore, rejection of an expert's recommendations by elected members devalues the inquiry process in the eyes of the electorate.

Dr Robert Leek on behalf of The Friends of Castle Acre Green

APPENDIX: Alun Alesbury MA Cornerstone Barristers (pen profile)

Education: Fitzwilliam College, Cambridge. University of Seville

Career: called to the Bar Inner Temple 1974.

He specialises in all areas of Planning, Local Government and Administrative law, both advocacy and advisory work.

The majority of his work covers:

- **Town and Village Greens'** – a very major part of his practice (SEE BELOW)
- **Common Land issues** which do not relate to 'Town or village green' claims.
- **Public or Private Rights of Way**
- **Highways** - rights of way, promotion of road schemes.
- **Restrictive Covenants** and their discharge or modification through the Lands Tribunal procedure.
- **Rating** – Alun has very extensive experience in Rating law and practice, including numerous appearances in the courts (from the Magistrates to the House of Lords) and the relevant tribunals (Local Valuation Tribunal and Lands Tribunal).
- **Open Spaces, parks and pleasure grounds and allotments**
- **Compulsory Purchase and Compensation** E.g. Promoting CPOs for Swansea and the Vale of Glam.

Commons, Town and Village Greens

Alun Alesbury has very extensive experience in this field, in a variety of different roles. He has on numerous occasions been appointed by Commons Registration Authorities (County or Unitary Councils) to hold (as Inspector) Inquiries or hearings on their behalf into town or village green claims. He has also frequently been instructed to act for local authorities (and others) as landowners in such cases.

Cases where Mr Alesbury has been instructed by Registration Authorities,

Examples include:

Essex C.C. Mill Lane, Walton-on-the-Naze (Naylor v Essex C.C. 28.07.14)

Swansea C & C. Winch Wen, Bonymaen, Swansea

Swansea C & C. Llangyfelach, Swansea

Swansea C & C. Slipway Maritime Quarter, Swansea

Caerphilly C.B.C. Hawtin Park

Essex C.C. Everest Way, Heybridge

Essex C.C. Brighton Road, Holland on Sea.

Essex C.C. Wethersfield Way, Wickford

Calderdale M.B.C. Oakville Rd, Charlestown

Widmer End, nr. High Wycombe – Buckinghamshire

Winnersh, Berks. (surplus education land) – Wokingham

Wargrave Old Chalk Pit, Berks. – Wokingham

Land at Newbold Hill – Rochdale

Yeadon Banks – Leeds [decision successfully defended in High Court and Court of Appeal – [2010] EWCA Civ 1438]

Highbury Mission Land – Leeds

Linnet Close, Tilehurst – West Berkshire

Bull Lane Playing Field – Enfield

Pincent's Hill, Tilehurst - West Berkshire

Dyffryn Cellwen - Neath-Port Talbot

Groby Road, Ratby – Leicestershire CC

Oakville Road, Charlestown, Hebden Bridge – Calderdale MBC

He has also been instructed by local authority landowners to represent them at village green inquiries/hearings. Examples include:

Knowle, Sidmouth for Devon County Council (10.04.14)

Pakefield Old Golf Course, Lowestoft – for Suffolk C.C.

Oak Victoria site, Oldham – for Oldham M.B.C.

Ffordd yr Eglwys, North Cornelly – for Bridgend C.B.C.

Runnymede Paddocks, Thundersley – for Castle Point B.C.

Gooshays – for London Borough of Havering

Lee Chapel North, Kent View Road, and Pound Lane (three inquiries) – all for Basildon B.C.

He has also frequently advised private sector and local authority landowners in relation to actual or potential village green 'problems', including advising on (lawful) schemes aimed at minimising or overcoming such problems. Notable examples have arisen in Berkshire, East Sussex, Greater London, Monmouthshire and other parts of South Wales, North-West England, and in other locations. Notably, a scheme devised by Alun Alesbury for the developers Barratts was successfully defended in the High Court in *BDW Trading Ltd (t/a Barratt Homes) v Spooner* [2011] EWHC 290 (QB)

He has also spoken on village green law at numerous conferences, seminars, etc.

Judicial Reviews

He has very frequently been involved in Judicial Review proceedings relating to public law decisions, whether these have the formal status of "Judicial Review" under the Civil Procedure Rules, or are the analogous provisions for the quashing of decisions for error of law under the various relevant statutory codes, e.g. the Town and Country Planning Acts, or the Highways and Compulsory Purchase legislation.

Planning

He has a varied and active practice, at inquiry, in court, and with advisory work. In the area of pure planning, as well as extensive residential/retail work, he has worked on projects involving airports, nuclear plants etc etc.

Publications

Halsbury's Laws

He was responsible for the section "Property in and Rights on Highways" in the Highways volume of Halsbury's Laws (4th edition, original version)

Associations

He was a founder member of the Planning & Environment Bar Association (PEBA).

Member of the Compulsory Purchase Association

Member of the Administrative Law Bar Association (ALBA)

Member of the Parliamentary Bar Mess

Member of the Ecclesiastical Law Society

Member of the British-Spanish Law Association

Other relevant information

Career: called to the Bar Inner Temple 1974, legal corr The Architect 1976-80, Memb Panel of Jr Treasy Counsel (Lands Tbnl) 1978-, memb Supplementary Panel Common Law (Planning) 1991-2000; Memb: Parly Bar Mess, British-Spanish Law Assoc, Admin Law Bar Assoc, Ecclesiastical Law Soc; founder memb Planning and Environment Bar Assoc 1986 (hon sec 1986-88); appointed to hold inquiry into: Palmeira Avenue fire Hove 1992, Lake Windermere speed limit inquiry 1994-95, Canbury Gardens Kingston 1998-99, Chardon LL (GM seed licensing) 2000-02, numerous village green registration inquiries; memb: South Downs Jt Ctee (formerly Sussex Downs Conservation Bd) 2001-11, South Downs Nat Park Authy 2010

COMMONS ACT 2006, Section 15

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

**RE: LAND KNOWN AS CASTLE ACRE GREEN,
NORTON,
SWANSEA**

**ADDENDUM TO THE 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

ADDENDUM REPORT

1. Following the issue of my Report into this matter, dated 4th March 2015, I was made aware that Counsel for the Objector at the Inquiry which I had held – the City and County of Swansea in its capacity as landowner – had produced an Opinion or Advice questioning the correctness in law of some of the conclusions I had reached in that Report, and that this Opinion or Advice was being put forward to the Council, in its *quasi-judicial* capacity as Registration Authority under the **Commons Act 2006**, by way of argument that the Registration Authority should not follow the principal recommendation in my Report.
2. I personally saw the ‘Further Advice’ to the Council (as landowner) of Mr Rhodri Williams QC (itself dated 9th March 2015) on 15th May 2015. On that same day the Council as Registration Authority very correctly also provided a copy of it to Dr Robert Leek, who (on behalf of ‘the Friends of Castle Acre Green’) had been the Applicant in this matter, and had acted as the principal ‘advocate’ for the Applicant’s side at the inquiry. The accompanying letter from the Registration Authority gave Dr Leek the opportunity to make any further comments or representations he wished to, in response to the Further Advice of Mr Williams QC.
3. I understand that for personal reasons Dr Leek was given an extended period in which to do this, and in the event I received Dr Leek’s Response document, incorporating also a ‘Summary Response’ in late July of this year (2015); the documents are not themselves dated. I have given very careful consideration both to Mr Williams’s Advice, and to Dr Leek’s Response documentation, in reaching the views which I now express in this Addendum Report.
4. The first, comparatively minor, point I ought to make is that Mr Williams in his Further Advice at paragraph 5 has correctly noted that some wrong and mistaken wording had somehow crept in (through a typing/production error) to the last part of paragraph 11.1 of my original Report of 4th March 2015. The dates quoted for the making of the application etc were entirely the wrong ones for this present case. The correct relevant dates had in fact been quoted properly earlier in the Report at paragraph 2.1, and in order to be accurate the wording of the *last sub-paragraph of paragraph 11.1* of my Report (after the statutory quotation) *needs to be corrected to read:*

“The application was dated 19th September 2012, and stamped as received by the Council as Registration Authority on the following day, 20th September 2012. The latter date therefore is the ‘time of the application’. The application suggests that use of the claimed land ‘as of right’ ceased on 12th April 2012, which was less than two years before the time of the application. 12th April 2012 is therefore the date from which the relevant 20 year period needs to be measured (backwards)”.

5. This relatively minor (but necessary) correction however has no bearing on the substance of the main points made in the ‘Further Advice’ of Mr Williams QC, which are the subject of the remainder of this Addendum Report. I shall first make some general observations on the situation which arises as a result of Mr Williams’s Advice being submitted to the Registration Authority, before dealing in more detail with the points Mr Williams has raised (and, where appropriate, Dr Leek’s responses to them).
6. I noted above that Mr Williams’s ‘Further Advice’ is dated 9th March 2015, only a few days after the issue of my Report dated 3rd March. It is not perhaps entirely unusual for an advocate who has just been told that he/she was unsuccessful in some adjudication or hearing to continue to express the view that he/she was in the right, and that the conclusions or decision of the adjudicator were therefore in error. I make this point not in order to trivialise what Mr Williams had to say, but as part of stressing to the Council, in its Registration Authority role, the great legal importance of ‘standing back’ entirely from whatever the Council’s other interests might be (in this case as landowner), in cases of this kind where the law requires the Council itself to act as ‘adjudicator’ or determining authority, in a situation where the self-same Council, ‘wearing another hat’ (as the saying is) is also one of the active parties to the dispute.
7. Plainly it is possible in principle that where a council has, in a case of this kind, appointed an independent person (in this case myself as Inspector) to assist it in carrying out its *quasi-judicial* role, that person might produce a report or recommendation containing or based on some identifiable or obvious error. If that were to happen, it must in principle be open to those representing the same council as an interested party to point out the apparent error, in the hope that an unsound decision can be avoided. That is preferable to a council getting into a situation where one of its ‘arms’ might wish that it could launch Judicial Review proceedings against the other ‘arm’ of itself acting in its quasi-judicial role.
8. However this is a set of circumstances where I would advise the Council as Registration Authority that very great care is required; indeed I would

advise as a matter of principle that an authority in its quasi-judicial role should not readily go against the conclusions of its independent legal adviser on such a matter (except in a case where all are agreed that there has been an error which plainly requires correcting), unless there are clearly evident, convincing reasons to do so. Certainly an authority should not readily do this (I would advise) solely or simply on the basis of arguments put forward by one of the ‘partisan’ advocates at a previous contested hearing or inquiry, albeit that the advocate had represented the same authority itself in another capacity. I therefore have given very careful consideration, from my own neutral and non-partisan standpoint, to the further points raised by Mr Williams QC, balanced against the case made on behalf of the Applicant, both at the original Inquiry, and in Dr Leek’s more recent Response.

The substantive issues raised

9. The points of substance raised in Mr Williams’s Further Advice relate entirely to the consideration given in my Report to what is known as the ‘as of right’ test; that term refers to the aspect of the statutory criteria for designating town or village greens which requires evidence that local people have used the land ‘as of right’ for the requisite period. There is much case law relating to the proper understanding of these three words, but in brief they are generally understood to mean that local people have to have been using the land *as if* they had the right to be there doing so, when in reality they did *not* have such a right.
10. Issues around the meaning of this term arise particularly commonly in cases of land owned by a local authority, because one of the prime circumstances where land is often held *not* to have been used ‘as of right’ by local people is when the evidence supports the view that those people actually had a *right* to be there, or were there by virtue of a permission which had been expressly or impliedly given to them. The law is quite clear, for example, that public parks and pleasure grounds maintained by a local authority, or public open spaces, are places where the public has a *right* to be (subject only to obeying any byelaws there may happen to be). The same applies to most recreation grounds, and the like. Such places

can *not* be registered as town or village greens; they are used by the public ‘by right’, not ‘as of right’.

11. More difficult cases however (in terms of the application of the ‘as of right’ test in the *Commons Act*) arise in circumstances where there is open land belonging to a local authority which has not been deliberately provided or allocated in any obvious way for public use, but where evidence shows that local people have in fact used it for informal recreation. The difficulty arises partly from the fact that the courts of the UK, up to the highest level (the Supreme Court), have made it completely clear that there is *not* any general exemption for local-authority-owned open land from the town or village green provisions of the *Commons Act* – a point which was specifically accepted by Mr Williams QC at the Inquiry [see Report paras. 10.31 and 11.32].
12. Far and away the leading case on this area of the law is the Supreme Court’s relatively recent decision in the case of *R(Barkas) v North Yorkshire County Council* [2014]UKSC 31, which I refer to at some length in the relevant paragraphs of my Report (paras. 11.25 to 11.58) dealing with the ‘as of right’ question. I must say I am rather surprised therefore that Mr Williams in his Further Advice seemed to imply that I in my Report had failed to appreciate the significance of the *Barkas* judgment (in limiting the circumstances where local authority open land can be registered). In fact that is a point which I had considered with the greatest care, and indeed which I had (as noted in the Report) asked the advocates on both sides specifically to deal with in their arguments. [In that regard I also note, for example, at Report para. 8.47 that Dr Leek in his submissions had accepted (quite correctly) that “*Barkas has raised the barrier for village green applicants in the case of local authority land*”].
13. The application of the newly stated, and more exacting, tests (from the Supreme Court *Barkas* decision) to the facts of the present case at Castle Acre Green is precisely what I was considering and addressing in the relevant part of the ‘Discussion and Recommendation’ chapter of my Report. I would be repeating myself to set out all those considerations again here. Nothing in what Mr Williams says in his Further Advice contains, in my judgment, any new or persuasive points which suggest that I applied the legal tests wrongly to the facts and evidence here, in coming to the conclusion that in this particular instance the Applicant’s side had had the better of the argument.

14. The reality is that what Mr Williams sets out in his Further Advice is effectively a repeat in writing of the arguments he had already put orally at the Inquiry, and which I as a matter of judgment on the evidence had concluded were not as persuasive as the case which had been presented for the Applicant. However Mr Williams does specifically suggest that my Report failed to consider or deal with some of his points, so I need to address in a little more detail these aspects of what he says.
15. Mr Williams seeks at several points to suggest that the Report had failed to deal with an argument of his about the larger area of land acquired by the old Swansea Corporation in 1965 having been bought for two purposes – for a highway scheme, and for some kind of open space use, and that the highway purpose had later fallen away, leaving ‘open space’ as the purpose for which the Council had been holding the land. In fact this was an argument that I considered with some care, notably (but not only) at paras. 11.53 to 11.56. The more accurate view is that on this point I concluded in the Report that the arguments put forward from the Applicant’s side were the more convincing ones. The working out of any dual purpose to the original acquisition was more convincingly understood, I found, by reference to the fact that a large part of the ‘1965 land’ was in the 1970s/early 1980s transferred to the Council’s Parks & Leisure Department, whereas the more northerly land was retained by the Estates Department (Report at 11.55/6).
16. Mr Williams at his para. 22 wrongly says that part of the current application land was in the southern portion transferred to ‘Parks & Leisure’, and that I in the Report had failed to deal with this. The evidence was to the opposite effect. Both of the Council’s (as landowner) main witnesses, Ms Wendy Parkin and Mr Adrian James, had expressly confirmed in their evidence that none of the Parks & Leisure Department’s land is included within the present application site (as noted at Report 9.9 and 9.52).
17. Mr Williams goes on to suggest that the Report had failed to deal with the various planning aspirations which had been stated over the years for land including the application site, and the consequences of those aspirations. In fact this was an area of the debate which I considered at some length (e.g. Report paras. 11.45 – 11.51), while expressing the judgment, which I believe to be correct, that planning aspirations about future use of pieces of land are not necessarily of key significance to an area of law (under the *Commons Act*) which turns much more on the actual facts of what happened, during the relevant period of past history.

18. Mr Williams appears to attach great significance to what he sees as a failure to recognise the importance of a planning designation of this land under Policy EV24 of the Council's Unitary Development Plan of 2008, as part of a 'Greenspace system'. In fact this was a point specifically mentioned in the Report (e.g. at para. 11.47), and indeed was one which had been very effectively refuted by the Applicant, who had correctly pointed out that an area's designation under this policy did not necessarily imply anything about the land being provided for public recreational use. The Applicant had gone on to point out (again correctly) that the application land had *not* been designated under UDP Policy HC23 as 'Community Recreation Land', whereas significant areas of other nearby Council-owned open land, such as that around Oystermouth Castle, had been.
19. In summary then, the points made by Mr Williams in his Further Advice really are, as I see them, a re-run of the arguments he had put unsuccessfully to the Inquiry – unsuccessful because in this particular case the evidence and arguments put forward for the Applicant's side were in my judgment the better and more convincing ones.
20. The purpose of the Council's procedure (as Registration Authority) for the holding of local inquiries into *Commons Act* applications, under an independent legal advisor, is to secure a proper and just hearing of disputed cases, even when the Council itself (as landowner) is one of the parties. Against that background my advice to the Council as Registration Authority, having considered the 'new' representations from both sides (i.e. Mr Williams's 'Further Advice', and Dr Leek's Response), is that the conclusions and recommendations I came to in my Report of 4th March 2015 remain the correct ones, on the basis of the evidence and arguments which have been put forward from all sides. In particular nothing which Mr Williams has put forward causes me to need to change any aspect of the conclusions I set out in my previous Report, except for minor change to paragraph 11.1 of the Report, set out at paragraph 4 above (which does not go to the substance of the matter).

Overall conclusion and recommendation

21. My final conclusion and recommendation to the Council as Registration Authority remains that, for the reasons given in my Report of 4th March

2015, as supplemented and clarified by this Addendum Report, the land of the application site in this case *should* properly be added to the Register of Town or Village Greens, under *Section 15* of the *Commons Act 2006*.

ALUN ALESBURY
4th September 2015

Cornerstone Barristers,
One Caspian Point, Cardiff Bay, CF10 4DQ
and
2-3 Gray's Inn Square, London WC1R 5JH

Report of the Head of Legal, Democratic Services and Procurement

Planning Committee – 13 October 2015

APPLICATION TO REGISTER LAND KNOWN AS THE RECREATION GROUND, OYSTERMOUTH ROAD, SWANSEA AS A TOWN OR VILLAGE GREEN APPLICATION NO. 2733(S)

Purpose:	To inform the Sub-Committee of the proposal to hold a non-statutory inquiry.
Policy Framework:	None
Statutory Tests:	Section 15 Commons Act 2006
Report Author:	Sandie Richards
Finance Officer:	Aimee Dyer
Legal Officer:	Sandie Richards
Access to Services Officer:	Phil Couch

FOR INFORMATION

1.0 Introduction

- 1.1 The Council has received an application made by Ms Kathryn Ann Dodd on behalf of a residents group named “We Love The Rec” in respect of land known as The Recreation Ground or The Rec, Oystermouth Road, Swansea.. The application seeks to register the 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 in question is in the ownership of this Council. The Council has made an objection to the application in its capacity as landowner.
- 2.2 The Head of Legal, Democratic Services and Procurement has used the delegated authority granted by this Committee on 15th February 2012 to instruct Counsel to advise on the application and the appropriate procedure to be adopted in determining the application.
- 2.3 Counsel has advised that there are issues of fact and law in dispute and that it would be appropriate to hold a non-statutory inquiry. The holding of such an inquiry will ensure that evidence from both the

Applicant and the Objectors can be heard and tested and the issues examined and argued over.

- 2.4 Once the inquiry has taken place Counsel will issue a report with recommendations for this Committee to consider and make a decision upon.

3.0 Equality and Engagement Implications

- 3.1 There are no Equality and Engagement implications to this report.

4.0 Legal Implications

- 4.1 The Council in its role as Commons Registration Authority has a statutory duty pursuant to Section 15 of the Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 to determine applications for land to be registered as a town or village green.
- 4.2 The effect of registration of land as a town or village green is that it is protected from development for ever and preserved for use by local people.
- 4.3 The land is owned and maintained by the City & County of Swansea and a conflict arises as the Council is both the Commons Registration Authority and the principal objector. These roles have to remain separate as far as possible so as to minimise challenge by way of judicial review. The application must be considered purely on the merits of the case by applying the relevant law and in accordance with the principles of natural justice. The usual way of overcoming the conflict caused by the dual role is by the holding of a non-statutory inquiry.

4. Financial Applications

- 4.1 There is no specific budget identified for the expenditure incurred for the determination of applications. Expenditure will be incurred from existing budget provisions.
- 4.2 If the land is designated as a Town or Village Green it will not be available for development in the future.

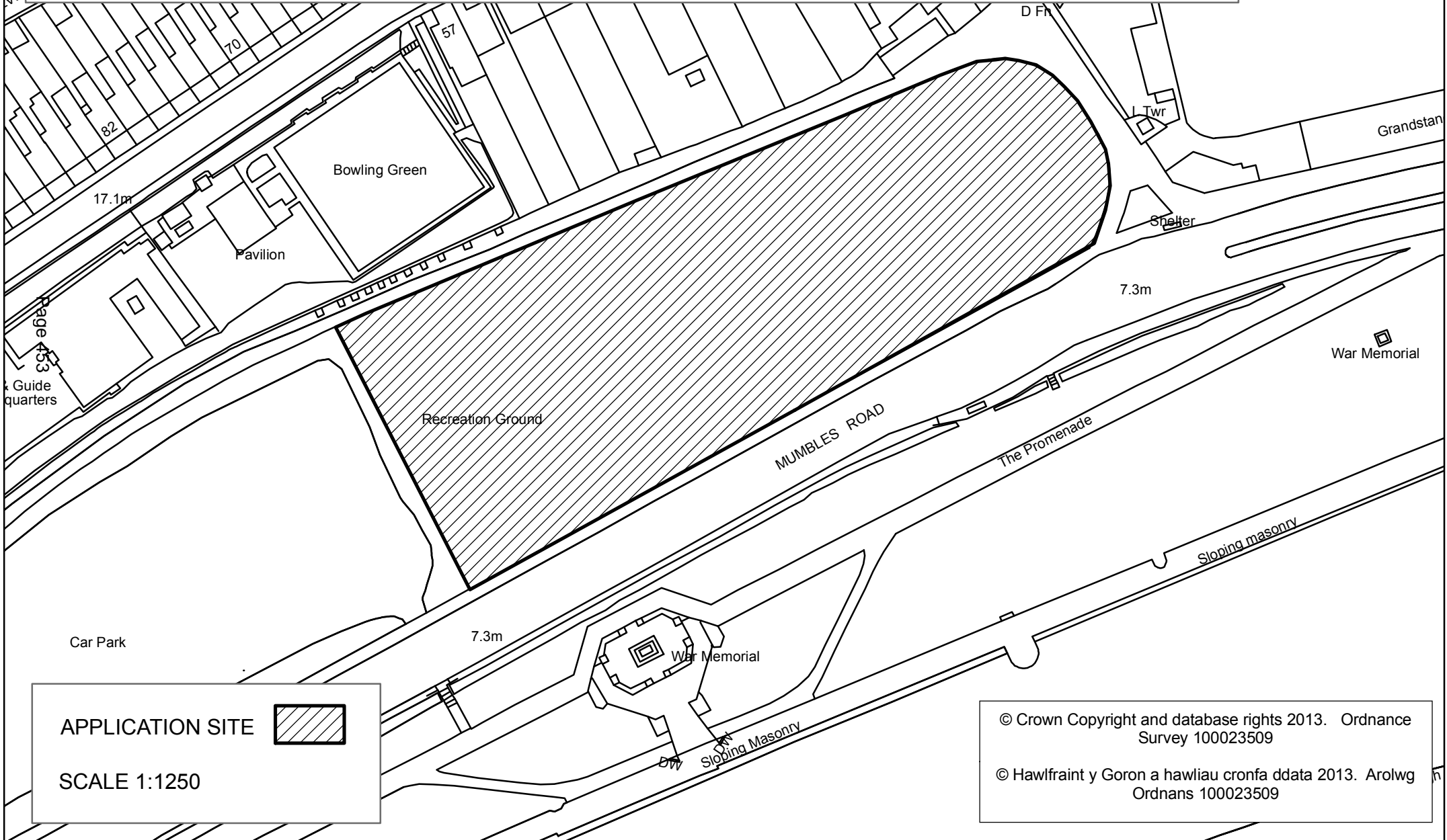
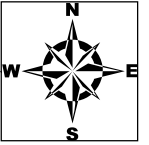
Background papers: Application file.

Appendices: Appendix 1: Plan of the application site

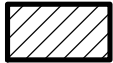
APPENDIX 1

SECTION 15 COMMONS ACT 2006 - APPLICATION FOR TOWN OR VILLAGE GREEN

APPLICATION NO. 2733(S) - LAND KNOWN AS THE RECREATION GROUND OR "THE REC", OYSTERMOUTH ROAD, SWANSEA



APPLICATION SITE



SCALE 1:1250

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