

## DINAS A SIR ABERTAWA

### HYSBYSIAD O GYFARFOD

Fe'ch gwahoddir i gyfarfod

### PWYLLGOR CYNLLUNIO

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

**Dyddiad:** Dydd Mawrth, 10 Mai 2016

**Amser:** 2.00 pm

**Cadeirydd:** Cyngorydd Paul Lloyd

#### **Aelodaeth:**

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

Mae croeso i chi ddefnyddio'r Gymraeg. Os dymunwch ddefnyddio'r Gymraeg, rhowch wybod i ni erbyn canol dydd ar y diwrnod gwaith cyn y cyfarfod.

### AGENDA

Rhif y Dudalen.

- 1 Ymddiheuriadau am absenoldeb.
- 2 Datgeliadau o fuddiannau personol a rhagfarnol.  
[www.swansea.gov.uk/disclosuresofinterests](http://www.swansea.gov.uk/disclosuresofinterests)
- 3 **Cofnodion.** 1 - 3  
Cymeradwyo a llofnodi cofnodion y cyfarfod(ydd) blaenorol fel cofnod cywir
- 4 Eitemau i'w gohirio / tynnu'n ôl.
- 5 **Hawliau Tramwy Cyhoeddus - Anghysondeb yn y Map Diffiniol o ran Llwybr Troed 35 - Cymunedau Penrhys ac Ilston.** 4 - 71
- 6 **Cais i gofrestru tir a adnabyddir fel Parc y Werin, Gorseinon, Abertawe fel maes tref neu bentref - Cais rhif 2734(S).** 72 - 95
- 7 **Heol Travistock a Heol Parc Wern, Sgeti, Abertawe - Gorchymyn Cadw Coed P 17.7.4 599.** 96 - 98
- 8 **Penderfynu ar geisiadau cynllunio o dan Ddeddf Cynllunio Gwlad a Thref 1990.** 99 - 211
- 9 **Protocol Drafft y Pwyllgor Cynllunio.** 212 - 237

**Cyfarfod Nesaf:** Dydd Mawrth, 7 Mehefin 2016 ar 2.00 pm



**Patrick Arran**

**Pennaeth Gwasanaethau Cyfreithiol a Democrataidd**

**Dydd Iau, 5 Mai 2016**

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**Cyswllt: Gwasanaethau Democrataidd - 636923**

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE PLANNING COMMITTEE

HELD AT COUNCIL CHAMBER, GUILDHALL, SWANSEA ON TUESDAY,  
12 APRIL 2016 AT 2.00 PM

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

**Councillor(s)**

A C S Colburn

M H Jones

P B Smith

T M White

**Councillor(s)**

D W Cole

E T Kirchner

M Thomas

**Councillor(s)**

A M Cook

I M Richard

D W W Thomas

**Apologies for Absence**

Councillor(s): C L Philpott

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

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

Councillor A C S Colburn – Minute No.99 - Application to Register Land known as Picket Mead, Newton, Swansea as a Town or Village Green. - Personal and Prejudicial as I took part in the Public Inquiry and left prior to discussion.

Councillor A M Cook – Minute No.98 - Planning Application 2008/0512 – (Agenda Item 7) - Personal as Ward Member.

Councillor M H Jones – Minute No.100 - Planning Application 2015/2527 (Item 1) - Personal and Prejudicial as some of the objectors are close personal friends - made statement under paragraph 14(2) of the Code and left prior to discussion.

Councillor M Thomas – Minute No.100 - Planning Application 2015/0055 (Item 2) - Personal as I know the applicant.

97 **MINUTES.**

**RESOLVED** that the Minutes of the Planning Committee meeting held on 8 March 2016 be approved as a correct record.

98 **ITEMS FOR DEFERRAL / WITHDRAWAL.**

The following item was deferred by Officers for the reason indicated below:

Agenda Item 7 - Planning Application 2008/0512 - Land off Brithwen Road, Waunarlwydd, Swansea - Residential Development (outline).

To allow the applicant to submit further viability information for consideration.

99 **APPLICATION TO REGISTER LAND KNOWN AS PICKET MEAD, NEWTON, SWANSEA AS A TOWN OR VILLAGE GREEN.**

The Head of Legal & Democratic Services presented a report which outlined the findings and recommendations of the Inspector.

The background history to the application, the legal tests undertaken, the consultation, the representations of both support and opposition received, the inquiry held, the legal advice received and the remit, findings and conclusion of the Inspector were all outlined and detailed to the Committee.

Mr Victor Collier addressed Committee and spoke in support of the application.

**RESOLVED** that

1) the application for the above registration be Refused.

2) that No Part the land of the application site be added to the Register of Town or Village Greens under Section 15 of the Commons Act 2006.

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

The Head of Economic Regeneration and Planning presented 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) Planning Application. 2015/2527 - 438 Gower Road Killay Swansea.**

Report Updated as follows:

Amend Conditions 3 and 4 to add the following sentence to each condition:

All equipment installed as part of the agreed scheme shall thereafter be operated and maintained in accordance with the agreed details for as long as the use hereby continues.

A visual presentation was provided.

Simon Peake(agent) addressed the Committee.

Councillor J W Jones (Local Member) addressed the Committee and spoke against the application.

**#(Item 2) Planning Application. 2016/0055 - Land West of Victoria Road, Victoria Road, Gowerton, Swansea.**

Application approved subject to condition 12 being deleted.

101 **TAVISTOCK ROAD AND PARC WERN ROAD, SKETTY, SWANSEA - TREE PRESERVATION ORDER P 17.7.4 599.**

The Head of Economic Regeneration and Planning presented a report which sought consideration of the confirmation, as a full order, of the provisional Tree Preservation Order 599 – Tavistock Road and Parc Wern Road, Sketty, Swansea.

The background history, appraisal of the site, objections and representations received were all outlined in the report.

Sarah Andrews (objector) addressed the Committee in regard to 10 Queens Road, Sketty.

**RESOLVED** that the matter be deferred pending a Site Visit to 10 Queens Road, Sketty.

The meeting ended at 3.20 pm

**CHAIR**

# Agenda Item 5

## Report of the Head of Legal and Democratic Services

Planning Committee - 10 May 2016

### PUBLIC RIGHTS OF WAY – DEFINITIVE MAP ANOMALY IN RELATION TO FOOTPATH 35

#### COMMUNITIES OF PENRICE & ILSTON

##### Summary

<b>Purpose:</b>	To determine whether to make a Public Path Diversion Order to divert the current definitive line of footpath no. 35
<b>Policy Framework:</b>	Countryside Access Plan 2007-2017
<b>Statutory Test:</b>	Section 119 Highways Act 1980
<b>Reason for Decision:</b>	Planning Committee previously determined that there was insufficient evidence to make an evidential modification order to correct the anomaly in the alignment of footpath no. 35. Therefore, there is a requirement to consider making a public path order to correct the anomaly and comply with the Council's legal duty to do so.
<b>Consultations:</b>	Councillor Richard Lewis; Penrice Community Council; Ilston Community Council; The Byways & Bridleways Trust; The Ramblers; The British Horse Society; The Open Spaces Society; Natural Resources Wales; The local representative of the Ramblers; the County Access & Bridleways Officer of the British Horse Society; The Penrice Estate; Local Landowners; Residents of Perriswood.
<b>Recommendation:</b>	It is recommended that: -  A public path diversion order be made to divert the current definitive line of footpath no. 35 as set out in this report.
<b>Report Author:</b>	Kieran O'Carroll
<b>Finance Officer:</b>	Aimee Dyer
<b>Legal Officer:</b>	Sandie Richards
<b>Access to Services Officer:</b>	Phil Couch

#### 1 Introduction

- 1.1 The Council previously discovered evidence which suggested that an error existed on the Council's current definitive map of public rights of way in relation to the alignment of footpath 35.
- 1.2 The current definitive line of footpath 35 is shown via A-B-C-D-E on the Plan attached to this report as Appendix 1.
- 1.3 When consulting on the anomaly, it was claimed by some of the local residents that no public footpath existed and that it should never have been recorded as a public right of way.
- 1.4 A report was submitted to the Rights of Way and Commons Sub Committee on the 10<sup>th</sup> October 2012 ("the 2012 report") in order to determine:
  - (a) whether the evidence submitted by the local residents was sufficient to show that no public footpath existed and whether it should therefore be deleted from the Definitive Map; and
  - (b) if the evidence was not sufficient to show that the path should be deleted, whether the current alignment of the path was incorrect and whether there was sufficient evidence to realign the path.
- 1.5 The evidence considered in relation to these issues is set out fully in the 2012 report at Appendix 2 of this report and can be viewed as background information given that these issues are not the subject of this report.
- 1.6 At the Committee of the 10<sup>th</sup> October 2012, it was decided that the evidence of local residents was not sufficient to show that the path did not exist; therefore the path was to remain on the Definitive Map.
- 1.7 Whilst Members decided that the current alignment was an error, it was considered that the evidence available was not sufficient to determine

the correct alignment. Hence no modification order could be made for realignment at that time.

1.8 Despite the fact that the anomaly could not be rectified based on the available evidence, the Council has a legal duty under the Highways Act 1980 to assert and protect public paths and to ensure they are free from obstructions.

1.9 There are a limited number of alternative methods by which the Council could seek to resolve the issue, namely by the making of public path orders or agreements using its powers under the Highways Act 1980.

## **2 Public Path Creation Agreement**

2.1 The entering of public path creation agreements under section 25 of the Highways Act 1980 would have been the preferred method of dealing with this issue.

2.2 Any landowner can enter into such an agreement with the Council to record a public path across their land.

2.3 Such agreements would not have been open to public objection and would allow the landowners in question to choose the least intrusive route across their land.

2.4 Once the agreements were in place and a new line for the footpath created, an extinguishment order would have been made under Section 118 of the Highways Act 1980 on the basis that the new route provides an alternative and therefore the former route is no longer needed for public use.

2.5 However, despite extensive negotiations with and between the landowners, a mutually acceptable route could not be agreed. As a result, it does not appear that this method will provide the solution required.



### **3 Public Path Diversion Order**

- 3.1 Under Section 119 of the Highways Act 1980, where it appears to the Council that a public path should be diverted in the interests of the owner, lessee or occupier of the land crossed by the path or in the interests of the public, it is expedient that the path should be diverted, the Council may make a public path diversion order.
- 3.2 The result of such an order would be to create a new public footpath along an alternative alignment and to extinguish the public's right of way over the current alignment.
- 3.3 It is proposed that a public path diversion order be made to realign the footpath along the route shown via A-F-G-H-I-J-K-E on the Plan attached to this report as Appendix 1.
- 3.4 Such an order need not divert the path onto the correct historic alignment and in any event, the evidence is not sufficient to determine that alignment.
- 3.5 However, the route A-F-G-H-I-J-K-E does have a historical basis and therefore it is considered that this will provide an element of fairness to the landowners affected.
- 3.6 A detailed account of the historic ordnance survey map evidence is provided at paragraphs 8.1 to 8.6 of the 2012 report. Whilst these may not provide evidence of public rights of way, they do indicate the location of footpaths surveyed by the Ordnance Survey at the time. Evidence has also been found from the 1970's which supports the view that this route was the route considered to be a legal route of the footpath. A copy of a letter from the County Surveyors dated 29<sup>th</sup> July 1977 is attached as Appendix 3. The current owners of the property known as The Piggeries have also agreed that this was the route.

3.7 From the various historic ordnance survey maps available, it seems clear that a footpath existed in the location A-F-G-H-I-J-K-E when the area was surveyed in 1913.

3.8 It is considered that this route would provide the most convenient route for the public whilst offering a less inconvenient route to the landowners affected than the current definitive line.

#### **4 Considerations for Diversion**

4.1 As stated in Paragraph 3.1, in considering whether to make a public path diversion order, the Council must be satisfied that:

(a) it is expedient to make the order in the interests of the owner, lessee or occupier of the land crossed by the path or in the interests of the public; and

(b) the new path will not be substantially less convenient to the public.

4.2 It is considered expedient to make the order in the interests of the owners of those properties through which the current definitive line passes. The current line passes into the dwellings at Plum Tree Cottage and Woodside. The proposed route represents a far less intrusive route in relation to those properties. In addition, it is in the interests of the public given that the footpath has been obstructed for a number of years and the diversion will provide a useable unobstructed route for walkers.

4.3 The new path will not be less convenient to the public. Not only does evidence suggest that the current route is a result of a drafting error when the current definitive map was compiled, but the new route is more direct and is more convenient in its location where it passes through the gardens of properties. The current definitive line passes close to the dwellings and in some instances actually passes through the walls of those dwellings.

## **5 Informal Consultations**

- 5.1 Consultations with landowners and interested parties were conducted on the 22<sup>nd</sup> May 2015 and representations or objections were invited by the 15<sup>th</sup> June 2015, and a draft copy of this report was sent to the interested parties on 5<sup>th</sup> February 2016.
- 5.2 All the four landowners affected have responded, three of whom have provided confirmation of their approval of the proposal. The owners of Plum Tree Cottage do not object to a diversion of the path, but are concerned about the proposed route of the new path between points J and K on the map in appendix 1. (see appendix 4)
- 5.4 The issues regarding the definitive map have already been discussed in detail in the report to Committee in 2012. The route of the footpath is shown in slightly different alignments in each edition of the map, some to the south of the boundary and some to the north. However, there is a strong belief that the people who drafted the maps one hundred years ago were attempting to follow the route shown on the 1913 O.S. map, and due to the small scale of the maps, and perhaps a lack of drafting skills, this was not achieved. None of the people involved in drafting any of the maps were professional surveyors or draftsmen. The drafting of the parish map in particular is imprecise, given the larger scale of this map. A number of the footpaths drawn on it do not precisely follow the clearly marked routes shown on the O.S. base map, one of which – footpath 23 (see appendix 5) – was and is a substantial farm track. The minor amendment suggested may not result in the outcome desired, as the line shown on the present O.S. map is not the actual line of the present fence between the garden and the field. A survey of this boundary undertaken in 2015 (see appendix 5) shows that the present fence is up to three metres further south than the line shown on the O.S. map. A footpath next to, and to the north of, this fence would therefore be on land owned by the Penrice Estate.

- 5.5 If the status quo is to prevail then the Council would be required to open the current definitive line as far as is practicably possible and the public would be able to take the shortest detour around any remaining obstruction. It is considered that this would be far more intrusive than the proposed diversion. The current route passes through the dwelling whereas the proposed diversion would locate the path within the garden.
- 5.6 One local resident has expressed her concern with regard to the proposal. It is her view that it was never proven that the public footpath exists and she considers it was likely only ever used as a private access for workers of the Estate. (see appendix 4)
- 5.7 Ilston Community Council have also expressed that they are unhappy with a diversion through Plum Tree Cottage as in their view there is no concrete evidence that a path ever existed.
- 5.8 The fact that the path appears on the Council's Definitive Map is itself definitive evidence of its existence. Evidence would need to be provided that the path did not exist at the relevant date of the first definitive map, 14<sup>th</sup> September 1954, in order for the path to be deleted by modification order. Whilst evidence was previously submitted to support the claim that no path ever existed, this evidence was considered in the 2012 report. Committee resolved that this evidence was insufficient to show that the path did not exist. It must therefore be presumed that the definitive map is correct in showing a public path.
- 5.9 It is of course open to any person to make a further application to delete the path from the Definitive Map provided that fresh evidence is submitted for consideration.
- 5.10 It is also open for any person to object to the making of the diversion order during the statutory consultation period following its making.

- 5.11 In addition, it will be open to any landowner who may become dissatisfied with the alignment of the footpath in the future to make an application to the Council for a further diversion order for an alternative route across their land.
- 5.12 The local resident referred to in paragraph 5.5 has also expressed her concern that the Council is causing distress to landowners, a reduction in property values, is destroying the community and is wasting time and money in dealing with this issue.
- 5.13 Members are reminded that the Council has a legal duty under Section 53 of the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under review and to resolve any anomalies where discovered. In addition the Council has a legal duty to assert and protect public paths and to ensure they are free from obstruction under the Highways Act 1980.
- 5.14 Members are also reminded that there is already a public right of way through the affected properties as shown by the current definitive line A-B-C-D-E on the plan attached to this report. It is considered that the proposal to divert this route along A-F-G-H-I-J-K-E represents an improvement to the current position.
- 5.15 Penrice Community Council, the Gower Society and the Ramblers have indicated that they have no objection to the diversion order proposal.

## **6 Other possible methods**

- 6.1 It is open to the Council to make a sole extinguishment order under Section 118 of the Highways Act 1980 where it considers a path is no longer needed for public use.
- 6.2 Any such order would be open to public objection. It is already known that such an order would be opposed. Given the evidence of a demand to use the footpath, it would be difficult for the Council to show

that the path is not needed for public use. It is therefore highly unlikely that such an opposed order would be confirmed by an Inspector.

- 6.3 In addition, a council initiated public path extinguishment order is always considered a last resort given that the Council has a duty under the Highways Act 1980 to assert and protect public paths.
- 6.4 It is also open to the Council to make concurrent creation and extinguishment orders under Section 26 and Section 118 of the Highways Act respectively. However, this would result in the same outcome as a single diversion order.
- 6.5 Where concurrent creation and extinguishment orders are opposed, there is a risk of one order being confirmed but not the other.
- 6.6 For the reasons given, it was decided that the proposed single public path diversion order would be the most appropriate method of dealing with the anomaly.

## **7 Compensation**

- 7.1 Any public path creation, extinguishment or diversion order made will be subject to the provisions regarding compensation set out under Section 28 of the Highways Act 1980. If the proposal to make a public path diversion order is to proceed, the Council must have regard to these provisions.
- 7.2 Where any such claim shows that the value of an interest of a person in land is depreciated, or that a person has suffered damage, by being disturbed in his enjoyment of land, as a result of the coming into operation of an order, the Council shall pay to that person compensation equal to the amount of the depreciation or damage.

- 7.3 A claim for compensation would only be considered if a fully quantified claim with evidence of the depreciation is submitted within six months of the date upon which the order comes into effect.
- 7.4 The current view is that a public footpath already exists over the land and the diversion will result in a more convenient route. It is arguable that Plum Tree Cottage and Woodside could experience an increase in property value given that if the order is confirmed, the path will no longer be routed through the existing dwellings.
- 7.5 A full consideration of any such claim would be conducted by the Council's Valuers at the relevant time. Whilst it is uncertain as to whether any such claim would eventually succeed, it is anticipated that any such claim would be defended.

## **8 Conclusion**

- 8.1 On the 10<sup>th</sup> October 2012, the former Rights of Way and Commons Sub Committee determined that whilst the evidence suggested that the alignment of the footpath on the current definitive map was an error, there was insufficient evidence to move the footpath onto any other alignment.
- 8.2 Given the Council's legal duty to review its Definitive Map and resolve any errors discovered and to assert and protect public paths, it is necessary to consider the correction of the error by way of public path orders.
- 8.3 It is considered that it would be in the interests of the landowners and the public that the path be diverted along the route shown A-F-G-H-I-J-K-E on the Plan attached to this report and that the new route would be far more convenient than the current line. Therefore, it is considered that Section 119 of the Highways Act 1980 could be satisfied and a public path diversion order made.
- 8.4 It should be noted that even if a diversion order is confirmed, point E on the Plan will not link to another recorded public highway. However, it

will be open to the Council to consider its options in relation to creating a further link in the future.

## **9 Financial Considerations**

- 9.1 There is a potential for compensation claims to be made under the provisions of Section 28 of the Highways Act 1980. The cost of any compensation would be charged to the rights of way budget, should this situation arise. However whilst there is no specific budget to cover this, any overspend would have to be contained within the service area.

## **10 Legal Implications**

- 10.1 The legal implications are as set out in the body of the report.

## **11 Equality and Engagement Implications**

- 11.1 There are no such implications to this report


### **Background Papers: ROW-000224/KAO**


#### **Appendices:**


- APPENDIX 1 – Plan showing the current definitive line of footpath 35 and the proposed diversion
- APPENDIX 2 – Report of the Rights of Way and Commons Sub Committee dated 10<sup>th</sup> October 2012
- APPENDIX 3 - Letter from the County Surveyors dated 29<sup>th</sup> July 1977
- APPENDIX 4 - Letters of Representation
- APPENDIX 5 - Survey Plan and Extract of Parish Map



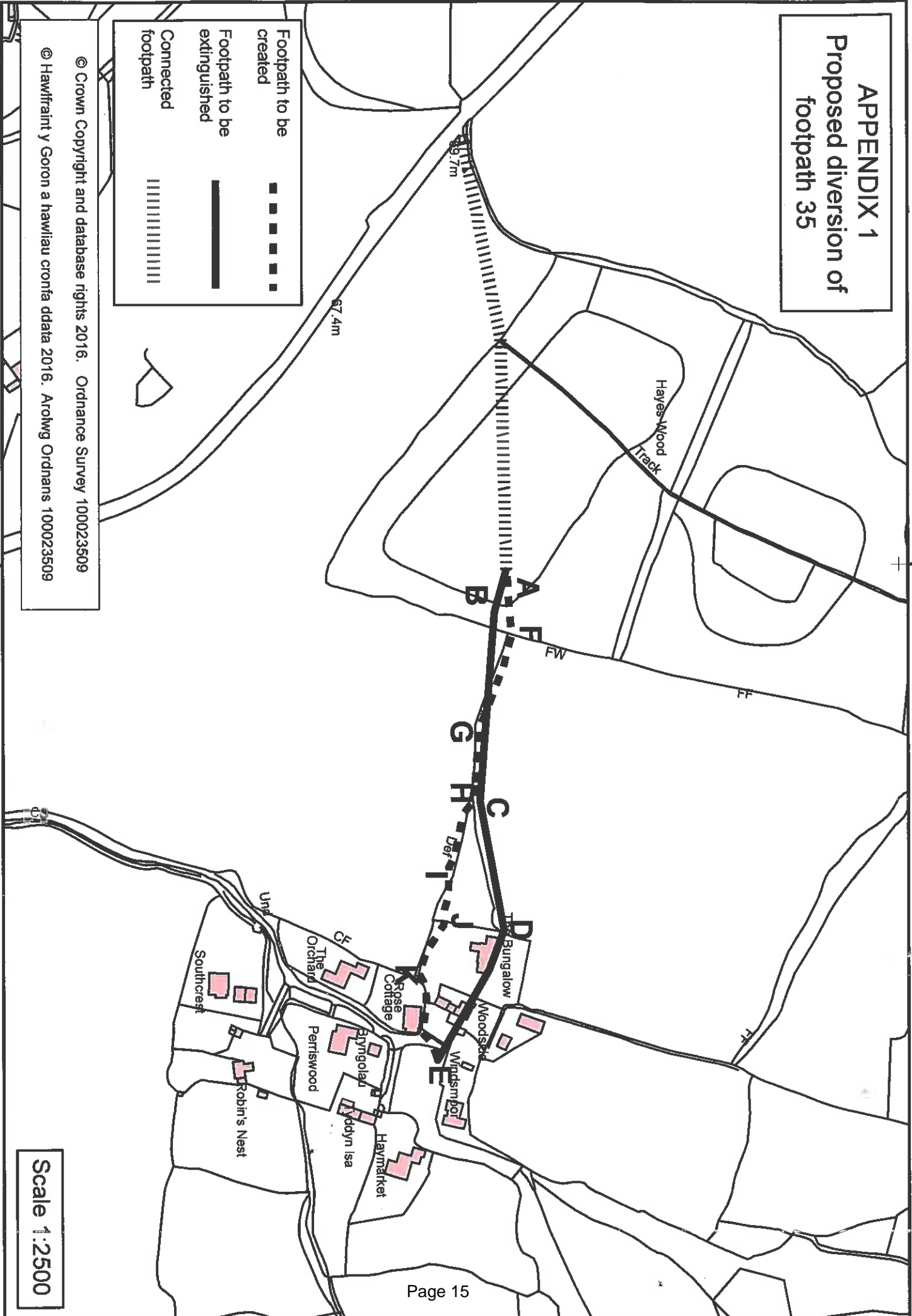
# APPENDIX 1 Proposed diversion of footpath 35

Footpath to be created 

Footpath to be extinguished 

Connected footpath 

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 © Hawfraint y Goron a hawiau cronfa ddata 2016. Arolwg Ordnamans 100023509



2500

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Scale 1:2500

**Report of the Head of Legal, Democratic Services & Procurement**

**Rights of Way & Commons Sub Committee – 10 October 2012**

**PUBLIC RIGHTS OF WAY – DEFINITIVE MAP ANOMALY IN RELATION  
TO FOOTPATH 35**

**COMMUNITIES OF PENRICE & ILSTON**

<b>Purpose:</b>	<p>(a) To determine whether evidence submitted is sufficient to show that there is no public right of way in existence. If such evidence is available whether a modification order should be made to remove footpath 35 from the definitive map.</p> <p>(b) Should (a) above fail, to consider evidence to determine whether there has been an error in the footpath's alignment and if there is sufficient evidence to make a modification order to correct that error.</p>
<b>Policy Framework:</b>	Countryside Access Policy No. 4
<b>Reason for Decision:</b>	<p>(a) The evidence submitted is not sufficient to outweigh the initial presumption that a path shown on the definitive map exists.</p> <p>(b) Despite it being likely that the route shown on the current definitive map is incorrect, the evidence is not considered sufficient to show a right of way subsists along any other particular route and so it is not considered that a modification order can be made to realign the path at the present time.</p>
<b>Consultations:</b>	<p>Councillor Richard Lewis; Penrice Community Council; Ilston Community Council; The Byways &amp; Bridleways Trust; The Ramblers; The British Horse Society; The Open Spaces Society; The Countryside Council for Wales; The Green Openspaces &amp; Heritage Alliance; Mr G Bligh (the former County Access &amp; Bridleways Officer and interested party); Mrs L Lock (the local representative of the Ramblers); Ms J Nellist (the present County Access &amp; Bridleways Officer of the British Horse Society); The Penrice Estate; Local landowners; Residents of Perriswood.</p>

Minutes of the Meeting of the Rights of Way and Commons Sub-Committee  
(15.08.2012) Cont'd

15. **PUBLIC RIGHTS OF WAY - ALLEGED PUBLIC FOOTPATH FROM BOLGOED ROAD TO GOPPA ROAD AND FROM GOPPA ROAD TO BRYN BACH ROAD - COMMUNITIES OF MAWR AND PONTARDDULAIS**

S Richards, Lawyer, reported that additional new information had been received and requested that the item be deferred in order to allow officers the opportunity to consider the details.

**RESOLVED** that the item be deferred to the next scheduled meeting of the Committee in order to allow officers to consider new information received.

16. **PUBLIC RIGHTS OF WAY - DEFINITIVE MAP ANOMALY IN RELATION TO FOOTPATH NO. 35 - COMMUNITIES OF PENRICE AND ILSTON**

The Head of Legal, Democratic Services and Procurement submitted a report to determine whether evidence provided was sufficient to show that there was no public right of way in existence and if such evidence was available, whether a modification order should be made to remove footpath 35 from the Definitive Map.

It was proposed that a site visit be scheduled in order for the Committee to view footpath 35.

**RESOLVED** that a site visit to footpath 35 be organised and that Members be informed of the time and date in due course.

17. **ALLEGED PUBLIC FOOTPATH FROM TREWEN ROAD TO GLANBRAN ROAD**

The Head of Legal, Democratic Services and Procurement submitted a for information report informing the Committee that the Modification Order made in respect of the alleged footpath from Trewen Road to Glan Bran Road in the Community of Birchgrove would be subject of a public inquiry in 2013.

18. **DATE OF NEXT MEETING**

**RESOLVED** that the next meeting be held at 2.00 p.m. on Wednesday, 10 October 2012.

The meeting ended at 2.14 p.m.

**CHAIR**

- 1.8 A site visit was conducted by Committee members on the 28<sup>th</sup> September 2012. The report is now re-submitted to Committee for a decision to be made.

### **History of the depiction of footpath 35**

- 2.1 The current definitive map is the product of four reviews since 1951.
- 2.2 A full account of the history of the compilation of the Council's definitive map can be found in Appendix 1.
- 2.3 The history of the depiction of footpath 35 over this time is set out in Appendix 2.
- 2.4 Whilst not agreeing on one particular route of the path between Hayes Wood and Perriswood, these maps provide good evidence of the existence of a public footpath between the A4118, Hayes Wood and Perriswood.
- 2.5 It should be noted that throughout the reviews and following the publication of each draft map and edition, the existence of the footpath was never questioned, nor was its alignment ever challenged.

### **3 First issue - whether public footpath 35 subsists**

- 3.1 During the Council's investigation into the alignment of footpath 35, in June 2011, six local residents of Perriswood jointly submitted a letter to the Council asserting that the path's depiction as a public right of way is an error and that the public right of way does not exist along any alignment.
- 3.2 Under the provisions of the Wildlife and Countryside Act 1981 (Appendix 3), the Council would be obliged to make a modification order to remove a path from the definitive map where there is sufficient evidence to show that no public right of way subsists.
- 3.3 In order to show that the footpath was mistakenly registered and thus should be removed from the definitive map and statement, the claimants would need to show that there was no public right of way over the land in 1954, being the relevant date of the first definitive map.
- 3.4 It should be noted that the definitive map and statement is conclusive evidence as to the existence of a public right of way, unless and until it is modified under the provisions of the Act.
- 3.5 The evidence needed to remove a public right of way from such an authoritative record must be new in the sense that an order cannot be made simply on the re-examination of evidence known at the time it was compiled. The evidence must be cogent and must be of sufficient

substance to displace the presumption that the definitive map is correct.

- 3.6 In the case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] (*Trevelyan*) it was held that it must be presumed that the definitive map and statement is correct and that if there were no evidence which made it reasonably arguable that the right existed, it should have not been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus such evidence existed. The standard of proof required to justify that no right of way exists is no more than the balance of probabilities but evidence of some substance must be put into the balance, if it is to outweigh the initial presumption that the right of way exists.
- 3.7 It is for those who contend that a right of way should be removed to prove that the Definitive Map and Statement requires amendment due to the discovery of evidence, which when considered with all other relevant evidence shows that no right of way subsists.
- 3.8 The arguments put forward for the deletion of the path by the residents are set out in Appendix 4.

#### **4 Informal consultations**

- 4.1 The Council carried out consultations with respect to the claim in August 2008 in accordance with the advice given in Welsh Office Circular 5/93.
- 4.2 The evidence received in support of the residents' claim is set out in Appendix 5.
- 4.3 Evidence was also submitted in opposition to the residents' claim. This evidence is set out in Appendix 6.
- 4.4 The Ilston Community Council submitted further information following the Committee meeting of the 20<sup>th</sup> June 2012. This can be found in Appendix 8.

#### **5 Possible Non-Intention to Dedicate by landowner**

- 5.1 The Penrice Estate has produced a report which was prepared in the early 1930s in the wake of the Rights of Way Act 1932 by their agent at the time.
- 5.2 The report described a path as follows: -

"There is a private path from the main road below the Home Farm, not far from B.M.222.9 across a portion of the "Twelve Acres" field, across the end of Hayes Wood (14 OS) and field (13 OS) to Perriswood. This

is not a public right of way but is used by the employees attending at the Estate Yard”

The field references quoted relate to entries which appear on the ordnance survey map edition of 1915. Plans 2, 3 and 4 attached to this report use this base map and the field numbers are shown.

- 5.3 The Penrice Estate believe this to be strong proof that no public right of way ever existed and ask that a modification order be made to remove the path from the definitive map and statement.
- 5.4 The Rights of Way Act 1932 allowed landowners to make a statement under section 4 of the Act indicating the rights of way they admit to have been dedicated to the public. It was a requirement of the Act that the landowner deposited a plan showing those admitted dedications on a scale of not less than 6” to 1 mile.
- 5.5 When such a statement had been deposited with the Council, the landowner was able to make statutory declarations at 6 yearly intervals specifying that no further rights of way had been dedicated.
- 5.6 There was no plan attached to the Penrice Estate report. Therefore, it is questionable whether it complied with the requirements under the Rights of Way Act 1932.
- 5.7 However, a plan was discovered in the West Glamorgan Archives filed separately to the report. It is possible that this was the plan which the Penrice Estate had submitted. Despite not being kept together, a handwritten note on the plan states

“Rights of Way Act 1932 – Duplicate of plan deposited with the Gower Rural District Council – 20<sup>th</sup> December 1933”

The report itself is undated and did not refer to the paths coloured blue on the plan. However, it is likely that this was the plan submitted with the report.

- 5.8 In any event, no evidence has been submitted or discovered to show that the Penrice Estate submitted any declarations at subsequent 6 yearly intervals. Even if the report was considered to have provided a valid statement of non-intention to dedicate, this statement would have lapsed by 1938 as there is no evidence that any statutory declarations were provided as set out in 5.5 above.
- 5.9 Whilst this provides some evidence that the Penrice Estate did not consider the path referred to in their report to be a public right of way in the early 1930s the alignment described does not match that of the Parish Map or that on the Parish Card (which would put the path in a completely different field). It is therefore questionable whether they are even describing the same path.

5.10 If the intention of the Penrice Estate was to describe the only path in use there is no evidence that any non-intention to dedicate was ever communicated to the public. It is also curious why the Estate failed to take issue when the path was shown on the various reviews toward the compilation of the definitive map. They raised no objections or representations at any time when the path appeared on the subsequent editions of the map and statement.

## **6 Conclusion as to whether footpath 35 subsists**

6.1 The Parish Council included the path on their survey carried out in 1951 showing that they believed that a right of way existed at the time.

6.2 The inclusion in the definitive map is conclusive evidence that a public path existed and case law shows that it must be presumed that the definitive map is correct in showing a right of way and that the proper procedures were carried out in its compilation unless there is sufficient evidence to outweigh this initial presumption.

6.3 The majority of those who have submitted evidence for the deletion of the footpath have indicated that they have never seen anyone walking the path and believe it was only used by tenants of the Penrice Estate. However, a lack of public use after 1954 is not relevant. The matter to be considered is whether or not it was correctly included on the Definitive Map of 1954.

6.4 Some advise that they remember the area in the early 1950s and say that they never saw any member of the public using the path, that the path was created for the workers of the Estate and upon cessation of their use by the early 1950s the path had fallen into disuse.

6.5 Even if the path was created initially for the employees of the Estate, this does not prevent the path being dedicated to the public. Those who remember the area in the 1940s and early 1950s say they do not remember any public use of the path but this does not mean that the path had not acquired public status. Similarly, if it fell into disuse in the early 1950s, this does not mean that the path was not already a public one.

6.7 These accounts from those who remember the area in these earlier periods are not considered sufficient to outweigh the presumption that a path does exist. Evidence of greater substance would be required.

6.8 Some residents have contended that the Council does not have much evidence of the path's existence. However, the Council is not required to prove the existence of a public path as the onus falls upon those who contend that no right of way exists.

6.9 No objections to the path's depiction on subsequent reviews were made which provides evidence that it was accepted that a public right

of way existed between Perriswood and Home Farm. There is no reference in the Minutes of the Parish Council Meetings during the 1950s to the path which suggests nobody raised any issue with its status.

- 6.10 On consideration of the evidence submitted, it is not considered sufficient to outweigh the presumption that the definitive map and statement is correct in asserting that a right of way subsists.
- 6.11 It follows that it is not considered that a modification order can be made to delete the path from the definitive map and statement.

## **7 Second issue - whether there is evidence to realign the position of footpath 35**

- 7.1 On the basis that the claimants have not been able to show on the balance of probabilities that no right of way subsists; the Council must consider the evidence in relation to the alleged anomaly in the alignment of the footpath on the current definitive map.
- 7.2 Where the Council discovers evidence of an error in its definitive map and statement, it has a duty to correct that error by making a modification order. However, before an order can be made it is necessary to determine whether that evidence is sufficient to satisfy the requisite legal tests.
- 7.3 The legal tests involved in this process are set out in Appendix 7.
- 7.4 Footpath 35 is currently shown passing through two properties. All the earlier versions of the definitive map, the draft maps and the ordnance survey maps, whilst in conflict with each other tend to show a route further south passing near Rose Cottage.

## **8 Documentary Evidence of alignment**

- 8.1 The location of the apparent anomaly on this path can be found between Hayes Wood and Perriswood.

### **(a) Ordnance Survey Maps**

- 8.2 The first, second and third edition 25" to 1 mile ordnance survey maps dated 1878, 1898 and 1915 show a path via F-G-H-I-J on Plan 2. The same line of the path is depicted on the first, third and fourth edition 6" to 1 mile County Series Maps dated 1884, 1921 and 1948 respectively.

However, it must be noted that whilst the publication dates of the editions vary significantly spanning over 50 years, the 1878 and 1898 editions at 25" to one mile and the 1884 editions at 6" to one mile are all based on the same survey carried out in 1877 and all show a path as it appeared at that time. The 1915 edition at 25" to one mile and the



1921 and 1948 editions at 6" to one mile are all based on the survey carried out in 1913 and all show a path as it would have existed at that time.

- 8.3 A National Grid Ordnance Survey Map published in 1964 showed the path in the same position. However, this map was based on a pre-1930 survey. Upon inspection it would appear that the survey is also based on that of 1913. Another National Grid Ordnance Survey Map of 1975 was based on a survey carried out in 1970-72 and no path is shown at all.
- 8.4 As a result, the Ordnance Survey Maps only show that there was a path along the alignment shown F-G-H-I-J on Plan 2 up to 1913.
- 8.5 The path was surveyed in 1877 and 1913 exiting Hayes Wood at point G on plan 2. This seems reasonable as there is a gap in the ancient woodland boundary at this location. The path is then shown to enter the field labelled with OS parcel no. 13 on plan 2; that is to the north of the field boundary between fields 12 and 13. The path clearly passed close to the field boundary running between Hayes Wood and the Perriswood Hamlet but was shown to cross the field boundary at certain points as shown on the plan. It appears that the path passed to the north of Rose Cottage in 1913.
- 8.6 Though the historic Ordnance Survey maps do not provide evidence of the position of public rights of way, they do provide evidence of where a path was located up to 1913. However, it is noted that the Parish Council did not carry out their survey until 1951.

#### **(b) Parish Map and Card**

- 8.7 The Parish Council depicted the path passing via F-C-H-K-L as shown on plan 2. For their survey they marked the routes of the path they believed to have public status on an Ordnance Survey Map based on the survey carried out in 1913. Therefore, the fact that the Ordnance Survey line of the path is also shown does not mean this path existed along that alignment by 1951.
- 8.8 The Parish Map line differs slightly to that shown on the historic Ordnance Survey maps and raises several issues. Firstly, it is questionable why the route of the Parish map exits Hayes Wood at a point to the South of that shown on the historic Ordnance Survey maps, that is field no. 12 (point C on plan 2), where there is no physical evidence today of any opening in the woodland boundary wall.
- 8.9 It seems clear that the public footpath was intended to pass close to the field boundary but the parish map appears to show footpath 35 crossing the field boundary at different points to the Ordnance Survey maps. It is therefore uncertain whether the parish council had intended to depict the route shown by the historic editions of the Ordnance

Survey as existing at least until 1913. Alternatively perhaps the Council were recording a different path.

- 8.10 The description on the Parish Card suggests that the path passes south of the field boundary into field no. 12 (plan 2). The full description can be found in paragraph 2.6 of Appendix 2. The path is then described as terminating at the Parish Boundary (point K on plan 2). However, the path on the Parish Map is shown to cross the boundary before meeting the western wall of Rose Cottage. The Parish Map of Nicholaston shows no continuation of footpath 35. Presumably the path would not have terminated at a Parish Boundary. However, such features are common where one Parish Council would show a path to their boundary but the neighbouring Parish Council would not show a path continuing into their own area. It is also highly unlikely that the path would have terminated at the wall of Rose cottage.
- 8.11 The route described by the Parish Card would appear to conflict with that shown on the Parish Map. The Card describes the path as passing through the same field before entering and upon leaving Hayes Wood before reaching Perriswood. However, the Map suggests it crosses the boundary at several points. The Card also only mentions 2 field gates and 1 stile along the entire length of footpath 35 which would also seem to suggest that the path did not follow the line shown on the Map between Hayes Wood and Perriswood. The Parish Map suggests that along this part of the route alone at least five gates or stiles would be needed.
- 8.12 The route described on the Parish Card also does not correspond to that route depicted on the historic Ordnance Survey maps. Therefore if the Parish Map intended to show that route where the Ordnance Survey had marked a path in 1913, the question arises as to why the Card contained different information. However, given the fact the Ordnance Survey maps only provide evidence of the existence of a path along the alignment shown up to 1913, it is also questionable whether that path still existed by 1951 and therefore whether the Parish Council were recording an alternative path.

#### **(c) Draft Map and Statement**

- 8.13 The draft definitive map showed the path passing along largely the same route as the Parish Map (as shown on Plan 2). There is one slight difference to the route shown on the parish map in that it is shown to terminate at a point to the south west of Rose Cottage. It is likely that the intention was to transfer the Parish Map route onto the draft definitive map. However, it is questionable whether the Parish Map route is correct.
- 8.14 The statement which accompanied the draft definitive map as set out in paragraph 2.7 of Appendix 1 does not clarify whether the Parish Card

was correct in describing the path passing along the southern side of the field boundary. However, it suggests that the path passes Rose Cottage to reach the County Road at Perriswood. It seems that Glamorgan County Council recognised the fact that the path did not terminate at the Parish Boundary and extended the path to the public highway. However, the draft map itself was not amended to include this extension and this was likely to be an oversight when the map was being drawn. As a result it is not clear at what point the path met with the County Highway. The extent of the highway is shown by point X on the plans attached to this report. However, it is entirely possible that the intention was to record the path to the un-adopted lane north of point X which was mistakenly believed to be a part of the highway.

- 8.15 The evidence provided by the draft map does not indicate whether the path should pass north or south of Rose Cottage to the County Highway. If the path was intended to show the Ordnance Survey map route surveyed in 1913 then it is arguable that the path should have passed to the north. However, it is questionable whether they are one and the same route.

#### **(d) Provisional Map and Statement**

- 8.16 The provisional map was published in 1964 and the path was depicted once again passing along a similar but not identical route to that shown on the parish map and the draft definitive map. This is shown approximately by C-M-Q-R on Plan 3. The path is shown to exit Hayes Wood in the southern field (number 12) before crossing the boundary between the fields only once. There is no evidence that the line of the Draft Map had been subject to a hearing and there is no other explanation for why this route differs to that of the Parish Map and Draft Map. Furthermore, the Provisional line drawn was shown passing straight through Rose Cottage before terminating at a point marginally short of the County Highway.
- 8.17 The accompanying statement was unchanged from that which accompanied the Draft Map. It was described as meeting the County Highway at Perriswood. It is possible that the person drafting the map had believed the county highway to extend to the point which he had marked the termination of the path. However, this does not explain why the path passed through Rose Cottage itself.

#### **(e) First Definitive Map and Statement**

- 8.18 The first edition of the definitive map published in 1970 depicted the line of the path along a similar line to the Provisional Map as shown C-M-N-P on Plan 3. However, the path was now shown to pass north of Rose Cottage to meet the County Highway at Perriswood.

- 8.19 The accompanying statement was unchanged. It is possible that the person drafting the map had extended the line of the path on the map to correspond with its description.

**(f) The Draft Special Review**

- 8.20 The draft special review map published in 1974 depicted a similar route to that shown on the first definitive map as shown C-M-N-S on Plan 4 but the line was now shown to terminate on the western side of Rose Cottage. However, the statement was unchanged. Therefore, this was likely to be a further error.

**(g) The Current Definitive Map**

- 8.21 The current definitive map of 1988 (Plan 1 – note this is plotted against the modern day Ordnance Survey map) shows the definitive line of footpath 35 to be at considerable variance to all the previous maps and editions which tend to be at least somewhat more consistent. There is no evidence from any reviews or otherwise that the path was deliberately realigned along this route especially considering the fact it enters two separate properties before reaching the centre of Perriswood. It seems very likely this was a substantial drafting error. It is noted that the definitive statement was once again unchanged

**9 Conclusion on alignment**

- 9.1 The fact that the path appears on the definitive map and statement is conclusive evidence of its existence but its present alignment conflicts with its previous descriptions in the previous reviews. The question is whether the evidence can be said to support any one particular route over the other so that it can be concluded that a right of way subsists over that route.
- 9.2 However, in a case concerning *Leicestershire County Council v Secretary of State for the Environment and Rural Affairs* [2003], it was concluded that where an alternative is being sought it is first necessary to find the existing to be incorrect. To delete a path, the test must be based on the balance of probabilities. If that is so, then it is also necessary to apply the same test to the existence of the alternative. The judgment did not however rule out the possibility that the lower test could be applied to the existence of the correct alternative.
- 9.3 The other relevant case concerns *R v Secretary of State for the Environment ex parte Kent County Council* [1994] which concluded that a Council can not delete the whole of the path where part of it is in dispute.
- 9.4 There is no evidence to support the fact that the depiction of footpath 35 between Hayes Wood and Perriswood on the current definitive map as shown on plan 1 is correct. The previous draft maps and editions,

whilst slightly conflicting in themselves, are more consistent. Therefore, one should conclude that on the balance of probabilities no public right of way exists along part of the route of the definitive line. Furthermore, the property named Woodside was already built when the Parish Council conducted their survey. They did not record a path running through this property.

- 9.5 It is possible that the Parish Council had intended to include the route shown on the historic Ordnance Survey maps in their survey and that following this survey various errors have been made in its depiction over time. However, doubt is cast upon this as the Parish Card describes the path following a route further south than both the Ordnance Survey maps and the Parish Map and there is evidence of only one entry into and out of the field no. 13 due to the gap in the boundary wall.
- 9.6 The description on the Card alone is not considered sufficient evidence to warrant making a modification order to align the path along that route described. In a recent case involving this Council, the Planning Inspectorate refused to confirm a modification order concerning footpath no. 26 in Rhossili where the Parish Survey Map and Card described the route consistently with that shown on all editions of the Ordnance Survey Plans. The Inspector was not prepared to place sufficient weight on the Parish Survey to confirm the order.
- 9.7 The Penrice Estate stated that a route existed in the early 1930s between Perriswood and Home Farm which placed the path in the field to the north of the boundary (field no.13). If this was intended to describe the same path then this casts further doubt on the true alignment.
- 9.8 The draft definitive map of 1955 depicted a route largely similar to that shown on the Parish Map and so it is questionable whether that was the intention or whether this was a repeated error. All the later editions are questionable and are likely to have been affected by drafting errors.
- 9.9 When the draft definitive statement was produced describing the path to extend to the county highway at Perriswood, it is likely that the intention was to show the path passing to the north of Rose Cottage. The statement remained unchanged throughout all the later drafts and editions. Of note is that the First Definitive Map of 1970 shows the path passing to the north of Rose Cottage to reach the County Highway. Whilst this may have been an attempt to rectify the omission, the path's exact alignment was still questionable.
- 9.10 Of note is a letter which was sent from the West Glamorgan County Council to the owner of the piggery in 1977 (OS parcel 6 on plan 2 and 3) which was intended to show to that owner where the public right of way was located in relation to his property. The Council Officer had traced on a plan the line shown on the 1915 edition (surveyed in 1913)

Ordnance Survey Map. It is curious at that time why he did not mark the path shown on the First Definitive Map of 1970 or even the Draft Special Review published in 1974. This seems to suggest that the officer did not even believe himself that the Definitive Map showed the path on its correct alignment.

- 9.11 It is arguable that the route surveyed by the Parish Council would be the most accurate depiction of the public's right of way being drawn by local people on a reasonable scale of 1:10000 and being drawn as a direct result of a ground survey. However, the Parish Map route does not match that described on the Parish Card.
- 9.12 It is not considered that there is sufficient evidence to identify which alignment reflects the right of way on the balance of probabilities. It seems clear that a public right of way does extend from Hayes Wood to Perriswood and that it likely passes to the north of Rose Cottage. However, it is not considered that a modification order can be made to place the path along any specific alignment nor can it be said to be reasonable to allege that any one route subsists, given the conflict between not only the reviews but between the Ordnance Survey, the Parish Map, Parish Card and even the Penrice Estate.
- 9.13 The case concerning Kent County Council has established that because part of the alignment of the public right of way is disputed, this does not permit the entire length of the path to be deleted.
- 9.14 The alternative solution of resolving the issue by making public path orders was explored early in the investigations although the residents and landowners could not agree on a mutually acceptable solution. It is noted that should the report recommendations be followed, no solution to the anomaly will be achieved. The Council will then need to further investigate the available options and will report back to Committee at a later date.

## **10 Financial Implications**

- 10 There are no financial implications attached to this report.

### **Background Papers: ROW-224/KAO**

**Appendices:** Appendix 1 – History of the compilation of the Definitive Map and Statement

Appendix 2 – History of the depiction of footpath 35

Appendix 3 – Section 53 Wildlife and Countryside Act 1981

Appendix 4 – Arguments put forward for the deletion of footpath 35

Appendix 5 – Evidence in support of the Residents' claim

Appendix 6 – Evidence opposing the Residents' claim

Appendix 7 – Legal tests for making a modification order

Appendix 8 – Comments from Ilston Community Council following the meeting of the 20<sup>th</sup> June 2012.

## **APPENDIX 1**

### **HISTORY OF THE COMPILATION OF THE DEFINITIVE MAP AND STATEMENT**

- 1.1 The National Parks and Access to the Countryside Act of 1949 placed an obligation on all Councils to produce a Definitive Map and Statement. Parish Councils were given the task of surveying all routes they considered may have legal status and this was undertaken in the early 1950s by the production of what has come to be known as the Parish Map (at the scale of 6" to one mile) and the all too often rather brief description of the path contained on small cards also known as the Parish Card. Some of the descriptions on these cards were more comprehensive than others but in combination with the paths' depiction in the "Parish Map" provide a useful record of what routes were considered to have public path status by 1954.
- 1.2 The information was passed to the former Glamorgan County Council who collated the information and produced the first Draft Definitive Map which in their opinion reflected routes considered to be public rights of way on 14<sup>th</sup> September 1954. This became the relevant date of the first Definitive Map which was published in 1970.
- 1.3 The legislation required that the information gathered should be the subject of a series of reviews which would allow the public and landowners to make representations or objections to the inclusion or absence of routes in the various editions of these earlier Draft and Definitive Maps and Statements as and when they were published. The result was the production of the initial Draft Map and Statement published in 1955, a Provisional Map and Statement published in 1964, the first Definitive Map and Statement published in 1970, the Draft Special Review of 1971 and the current Definitive Map and Statement published in 1988.

## **APPENDIX 2**

### **HISTORY OF THE DEPICTION OF FOOTPATH 35**

- 2.1 In 1951, the Parish Council surveyed the area and produced a plan which depicted all those paths they considered were public rights of way at that time.
- 2.2 Using the information contained within the Parish Map, the draft definitive map was published in 1955, the provisional definitive map followed in 1964 and the first definitive map was published in 1970 which showed all paths considered to have been public by 1954, which is the relevant date for that map. A special review of the first definitive map was commenced in 1971 which led to the publication of the draft special review map in 1974 before the current definitive map was eventually published in 1988, having a relevant date of 1971.
- 2.3 The National Parks and Access to the Countryside Act 1949 required that the information gathered should be the subject of a series of reviews which would allow the public and landowners to make representations or objections to the inclusion or absence of routes in the various editions of these earlier draft and definitive maps and statements as and when they were published. The first of these reviews took place in the late 1950s following publication of the draft definitive map.
- 2.4 The Council's current definitive map depicts footpath 35 passing via A-B-C-D-E as shown on plan 1 attached to this report. However, this line is at considerable variance to that shown on the previous draft maps and editions and to the path shown on historic ordnance survey maps.
- 2.5 The first, second and third edition 25" to 1 mile ordnance survey maps dated 1878, 1898 and 1915 respectively, despite not providing legal evidence of the existence of a public right of way, show that a path was a surveyable feature in the position F-G-H-I-J as shown on plan 2. The same line of the path is depicted on the first, 3<sup>rd</sup> and 4<sup>th</sup> edition 6" to 1 mile County Series Maps dated 1884, 1921 and 1948 respectively. However, whilst the dates of these editions vary considerably over a period of over 50 years, all were based on one of only two surveys which were carried out. Therefore, they show the line of a path which existed in 1877 and 1913. It is not clear whether a path along the same alignment existed when the Parish Council surveyed the path in question some 40 years later.
- 2.6 In 1951, the Parish Council depicted the path passing via F-C-H-K-L as shown on plan 2. They marked the paths they believed to be public on the 1921 edition Ordnance Survey Map which actually showed the area as surveyed in 1913. The accompanying Parish Card provided a written description of the path which accompanied the map. This



described the route in a slightly difference position to that on the Parish Map, the entry for footpath 35 being;

“Leaves Main Road 250 yards east of Home Farm enters arable field crosses the corner of Hayes Wood then through the same field to Perriswood at the Parish Boundary”

- 2.7 The draft definitive map of 1955 showed the path passing along an almost identical route to the parish map but terminated slightly further south. The accompanying statement provided a written description of the path as follows;

“Commences on the main Swansea Road, 250 yards South East of Home Farm and proceeds eastwards across field through southern corner of Hayes Wood thence alongside hedge of field to the County Road at Perriswood”

- 2.8 The provisional map was published in 1964 and the path was depicted along a slightly different route to that of the parish map and draft definitive map as shown C-M-Q-R on Plan 3 (this being an approximation due to the difficulty in interpreting the 1:25,000 scale of the Provisional Map). The path was shown passing through Rose Cottage itself. The statement did not change.

- 2.9 The first edition definitive map was published in 1970. The definitive statement was not changed. However, the line of the path was now depicted via C-M-N-P as shown on plan 3 (this also being an approximation due to the scale of the original map).

- 2.10 The draft special review map published in 1974 depicted a similar route to the first edition definitive map shown approximately by C-M-N-S on plan 4. However, it was shown to terminate at Rose Cottage. The statement was once again unchanged.

## **APPENDIX 3**

### **SECTION 53, WILDLIFE AND COUNTRYSIDE ACT 1981**

3.1 Section 53(2): As regards every definitive map and statement, the surveying authority shall

(a) as soon as reasonably practicable after the commencement date of the Act, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in sub-section (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events [specified in sub-section (3) below] by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

3.2 Section 53(3): The events referred to in sub section (2) are as follows:-

(b) the expiration, in relation to anyway in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;

(c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows:

(i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A a byway open to all traffic;

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

## **APPENDIX 4**

### **ARGUMENTS PUT FORWARD FOR DELETION OF FOOTPATH 35**

- 4.1 The residents believe that the footpath was used by the workers of the Penrice Estate and their families going to and from Penrice Home Farm as it was the most direct route from Perriswood. They state that the houses of Perriswood in the 1950s when the Parish Survey was carried out were all Penrice Estate houses occupied by workers and tenants of the estate. They state that upon the sale of the estate houses in 1950 and 1951 the path fell into disuse as use of the path ceased. They mention that the Parish Card describes the path as being in poor condition in 1951.
- 4.2 They do not doubt that a path did run between Perriswood and Home Farm as it is shown on successive editions of the Ordnance Survey map for many years. However, they state that the criteria for putting a path forward for inclusion appear to have been loosely applied in some cases and if a path existed on the ground it may well have been put forward regardless of status. They also mention that during the registration process it was not unknown for minor paths to get through the process by default due to the disproportionate amount of attention given to major routes.
- 4.3 They state that the path has not been used within the memory of those who have lived in the locality. They also state that the path does not feature in footpath guides and has never been way marked.
- 4.4 They mention that there are other, more aesthetically pleasing routes.
- 4.5 They state that the only evidence that a public footpath existed by 1954 is that of the unnamed child who remembers walking a path in the late 1940s with her mother.
- 4.6 Finally they state that as there were no significant responses from members of the public when the consultations were carried out, there is no demand for the footpath.
- 4.7 Case law has established that even if the path originated as a private means of access; this does not eliminate the possibility of a public right being acquired through long user.
- 4.8 It is probable that those workers and tenants would have made use of the path. However, it is also possible that the public were also making use of the path prior to 1954. Evidence has been received by some who claim to remember the path in the early 1950s and they do not recall public use. However, only very few people have submitted such evidence and even if they did not remember people using the path in the early 1950s this does not mean that the path had not established its public status at an earlier date.

- 4.9 Even though the path was overgrown by 1951 and described as such in the Parish Card, the Parish Council still believed enough in its existence to record the path in their survey. It must therefore be assumed that they possessed some evidence that suggested it was a public path. This presumption must also apply irrespective of the suggestions that the path fell into disrepair following the sale of the estate houses in Perriswood. Whether the path was overgrown by 1954 does not mean that it was not already a public right of way.
- 4.10 The residents have provided their views in relation to the possible loose application of the criteria for the inclusion of public paths at the time of the Parish Survey. However, they have supplied no evidence to support their assertion and there is no evidence that anyone objected to its inclusion at any stage of the review. The Council must assume that there was a valid reason why the Parish Council considered the path was a public one and also that the correct procedures were followed when the maps were being compiled.
- 4.11 It should be noted that a lack of use post 1954 provides no evidence that a public path did not exist by 1954. Should the residents feel that since that time, the path has become unnecessary for public use, they may apply for an extinguishment order under section 118 of the Highways Act 1980 but the tests to be applied would differ and they will be required to fund such an application.
- 4.12 The fact that there may be alternatives available, the path was never way marked nor included in footpath guides is not relevant evidence. The amenity value of the path, its convenience or its inconvenience cannot be taken into consideration when assessing the evidence as to whether a modification order must be made.
- 4.13 Even though they make the assertion that the Council only has the evidence from the child who remembers walking the path with her mother to show that a right of way exists, this is not the case. The fact the path is marked on the Definitive Map is conclusive evidence of its existence. There is no requirement for the Council to prove the right exists. The onus is on those who contend that no right exists to provide evidence to prove their claim.
- 4.14 Finally, whether or not there is a desire by the public to use the path, this is irrelevant. The issue as to whether or not the path exists is purely evidential

## **APPENDIX 5**

### **EVIDENCE IN SUPPORT OF RESIDENTS' CLAIM**

- 5.1 A letter of support was submitted from the resident of Tyddyn Isa, Perriswood who states that in the 42 years she has resided at Perriswood, she has never seen or heard of any person walking or attempting to walk footpath 35 nor has she ever attempted or been directed to this path herself.
- 5.2 One walker responded to the notices displayed on site during the informal consultation period by stating that she has lived on the Gower for 37 years and was never aware of this footpath. She has always walked down the lane from Perriswood to the A4118 and considers the existence of the footpath unnecessary.
- 5.3 The residents of Plum Tree Cottage, formerly the Bungalow have lived at the property for 16 years. During that time they have not known anyone to have walked the path. They state that they have discussed the existence of the footpath with neighbours who have lived in Perriswood for 40 years who have indicated that the only people who have walked the paths in this area were the workers of the Penrice Estate.
- 5.4 One person has submitted that he lived in Bryngolau, Perriswood between 1977 and 2004 and was not aware of anyone using a footpath in the vicinity of footpath 35. He indicates that opening a public right of way directing walkers through properties would be an inconvenience.
- 5.5 The resident of Windsmoor, Perriswood has stated that in the 28 years he has lived at the property the footpath has not been in existence.
- 5.6 One person has submitted that she lived in Woodside between 1982 and 2011. Before that her grandparents had lived in the property since 1920. She used to stay with her grandmother and has had an intimate knowledge of the area since the 1950s. She states that until her grandfather died in 1939 he had been a blacksmith working opposite Home Farm who walked to work everyday along the path with others who worked for the Penrice Estate. She states that when the Penrice Estate sold off the properties in the 1950s, the path fell into disrepair. She lived in Woodside for 29 years and has not seen anyone use the path.
- 5.7 The owner of Haymarket submitted that she has lived in Perriswood since 1965 and her father who died in 1973 worked for the Penrice Estate and lived in Perriswood yet she has never been told about any such path. However, she was shown other paths in the area. She also states that she has spoken to two ninety year olds who were best friends with the family who lived in Rose Cottage in the 1950s but they

too have never heard of the path. She states that as the workers of the Estate retired or died the path would have fallen into disuse.

- 5.8 A representation was submitted from a person who claims to remember Perriswood in the 1950s and up to 1995 as she was a regular visitor. She states that she married in 1953 and visited her partner's relative fortnightly in Woodside. She states that in the early 1950s this included the plot of Plum Tree Cottage. She asserts that she never saw anyone walking through the garden and that the only person she saw walking the path throughout the 1950s was the person who had bought the piggery site. She states that there may have been a path between Perriswood and Home Farm when the houses were occupied by the tenants of the Estate but she remembers that these were sold off in the 1950s and any such use had ceased by then.
- 5.9 Another person has submitted that she lived at Rose Cottage between 1943 and 1946. She states that her mother enjoyed walking but she has no recollection of her mother taking this path to Home Farm and it was never mentioned in subsequent years when they used to talk of their time in Perriswood. She indicates that her mother was involved in the Pony Club and attended meetings during the footpath reviews though her interest was in relation to bridleways in Margam and Port Talbot. She asserts that though all members of the public were invited, very few attended and those with knowledge of the area may not have been present to ensure the paths were given the appropriate status.
- 5.10 Ilston Community Council has provided views on the claim. Firstly, they too suggest that the route was probably a private right of way for residents to work at Home Farm. They also state that the route does not appear in the Walks of Gower guides, is not way marked and they do not believe there is a need for the route as there are alternatives available.
- 5.11 A letter was received from a person stating that he had farmed near Perriswood in the 1940s and 50s. He worked as a tenant farmer until purchasing Perriswood Farm in 1951. He states that the access to Perriswood Farm was via the hamlet passing Windsmoor and Haymarket and along Cefn Bryn. He therefore claims to have passed through Perriswood several times a day and knew the residents well. He states that when the houses of Perriswood were owned by the Estate, some of the tenants also worked on the Estate and walked the route between Woodside and Rose Cottage through Hayes Wood as it was a more direct route. He asserts that this path was very little used and was in a poor state by the end of the 1940s. He does not remember it being used by the public.
- 5.12 A letter was submitted by a person who remembers the area between the early 1960s and the 1980s when he used to live in Penmaen. He never remembers walking the path in question.

- 5.13 Whether there has been use of the path post 1954 is not relevant and has no bearing on whether a right of way subsisted by that time.
- 5.14 Any opinion that the footpath is not necessary or that there are suitable alternatives are not relevant considerations. The claim must be determined based on whether the evidence shows that a right subsisted by 1954. The amenity value, the convenience or even inconvenience of the footpath cannot be taken into account.
- 5.15 It is acknowledged that the path was used by workers of the Penrice Estate who used the path as a route to work. However, this does not mean that members of the public did not also make use of the path. Furthermore, just because some assert they do not remember the public walking the path in the 1950s doesn't mean that a public path has not been established at an earlier date. Case law has established that where a path is created as a private track this does not prevent dedication as a public footpath through long term user.
- 5.16 The fact that some assert that they had never been told of the path can only be given little evidential weight. Similarly, any evidence of any person stating that they did not remember any public use during their fortnightly visit to the area cannot be given significant weight.
- 5.17 Although taken into account, little evidential weight can be given to the comments in relation to the two 90 year olds. It is acknowledged that they were not aware of the path in the 1950s, however, that does not mean that one did not exist and it does not mean that a public footpath had not been established at an earlier date.
- 5.18 It is important to note that whilst the path may have fallen into disuse following the cease of use by estate workers does not mean that public rights had not been established earlier. The Parish Council believed in the existence of a public footpath so as to record it in their survey.
- 5.19 It must be remembered that the Definitive Map is conclusive evidence of the existence of any path shown within it. Case law has established that it must be presumed that the path does exist unless sufficient evidence is submitted to outweigh that presumption. Furthermore, it must also be presumed that the correct procedures which resulted in its inclusion. Therefore, we must assume that the Parish Council were aware of evidence which suggested that the path was a public one.
- 5.20 Furthermore, it should be noted that there is no requirement for the Council to prove the path's existence. The onus falls upon those who contend that no path exists to provide proof of their claims. The question that must be asked is whether or not the evidence received is sufficient to warrant making a modification order. This evidence must be sufficient to outweigh the presumption under common law that the path does exist. It is considered that the evidence submitted is not sufficient.

## APPENDIX 6

### EVIDENCE OPPOSING THE RESIDENTS' CLAIM

- 6.1 The residents of one property of Perriswood have indicated that they do not want the path to be deleted and state that when they first moved to the area in 1994, they were informed by a resident that a footpath existed. The desire of some for the path to be retained on the definitive map is not a relevant consideration.
- 6.2 One individual accepts that the occupants of Perriswood probably were tenants of the estate and may have worked on the estate but he points out that the path does not link directly to any of the offices of the estate (the house nor any other farm). He indicates that it would be unlikely that the path would have been included in the Parish Survey if it were only being used by the employees of the estate. He states these workers may have used the path on their private business also. He accepts that he finds it difficult to see a reason for footpath 35 to exist but he asserts that the assumption it was only used for estate purposes is incorrect.
- 6.3 Whether the workers used the path on private business is not evidence that the way was a public one as they would presumably have been permitted to use the path as tenants and workers of the estate. Therefore, they would not have been using the path as of right but with permission.
- 6.4 One member of the Gower Society has stated how he has attempted to use the path but has found it to be obstructed. He states that many walkers who come off Cefn Bryn Common wish to continue along footpath 35 but are unable to do so. He agrees that the path may once have been a path for servants of the estate to get to and from work. However, he asserts that most footpaths are established initially in this way.
- 6.5 The representative of the Swansea Ramblers and the Gower Society states she has contacted several members of the Gower Society and some remember walking the path in the 1980s. She states that most recall attempting to use the path more recently but found it obstructed. She also states that the fact it was originally used by the tenants of the estate is not proof that there is no public right of way since a high percentage of footpaths started as paths used to access work, the church etc. She states the path provides a good link between Cefn Bryn, Perriswood and Penny Hitch and reduces the distance walked along the main road.
- 6.6 The fact that some remember walking the path in the 1980s is some evidence that a path did exist on the ground. However, it does not provide evidence of the status of the path by 1954. The amenity value of the path and the fact it provides good links between areas is not a



relevant consideration when determining whether the evidence shows a path to exist even though this may provide reasons as to why it was in use. She states that one member remembers walking the path in the 1940s. This would be some evidence of the status of the path by 1954.

- 6.7 The sister of the owner of the triangular section of land adjacent to the Bungalow which she refers to as the 'piggery' site shown as OS parcel 6 on plans 2 and 3 attached to this report has indicated that her brother remembers people walking a path. She stated that he said they used to walk along the access track onto the piggery site then across a stile into the adjacent field. This is no evidence of the existence of a public footpath prior to 1954.

## APPENDIX 7

### LEGAL TESTS FOR MAKING A MODIFICATION ORDER

- 7.1 The Council has a duty under the provisions of section 53 of the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review (Appendix 3)
- 7.2 Section 53(3)(c)(i) specifies that a modification order should be made following the discovery of evidence which, when considered with all other relevant evidence available shows "that a right of way subsists or is reasonably alleged to subsist" over the land in the area to which the map relates.
- 7.3 As made clear in the High Court case of R v Secretary of State for the Environment ex parte Mrs Norton and Mr R Bagshaw, this involves two possible tests;

**Test A:** Does a right of way subsist on a balance of probabilities?

This would require clear evidence in favour of the right subsisting and no credible evidence to the contrary

**Test B:** Is it reasonable to allege on the balance of probabilities that a right of way subsists?

Here, if there is a conflict of credible evidence and no incontrovertible evidence that a way cannot be reasonably alleged to subsist then the answer must be that one does subsist.

If either test is satisfied, the Council will be obliged to make a modification order.

- 7.4 Under s53(3)(c)(iii) an order should also be made following the discovery of evidence which, when considered with all other relevant evidence available shows "that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
- 7.5 The case of Leicestershire County Council v Secretary of State for the Environment and Rural Affairs [2003] established that where there is a question as to where the correct line of the path should be positioned, section 55(3)(c)(iii) will likely be the starting point, and it is only if there is sufficient evidence to show that the line is wrong, which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right, that a change took place. The presumption is against change, rather than the other way round.

- 7.6 In the case of *R v Secretary of State for the Environment ex parte Kent County Council* [1994], the Inspector had refused to confirm an order made under section 53(3)(c)(iii) on the basis that the confirmed order would have deleted the whole of the footpath whose position but not existence was in dispute. The Judge stated "it seems inherently improbable that what was contemplated by section 53 was the deletion in its entirety of a footpath or other public right of way of a kind mentioned in section 56 of the 1981 Act, the existence, but not the route of which was never in doubt".

## **APPENDIX 8**

### **FURTHER COMMENTS FROM ILSTON COMMUNITY COUNCIL FOLLOWING THE COMMITTEE MEETING OF THE 20<sup>TH</sup> JUNE 2012**

- 8.1 The Community Council state that they have not found any evidence in the West Glamorgan Archives Service to show that the Parish Councils held proper meetings to consider and approve the reports from the Parish Survey in 1951. Without evidence of these meetings and approval of the plans, they do not see how this Council can make the assumption that the footpath was properly included on the Definitive Map.
- 8.2 The Community Council further state that under the provisions of the National Parks and Access to the Countryside Act 1949 there was a requirement that the paths surveyed by the Parish Councils had to be approved and exhibited in each Parish for public inspection. They state that there are no records that this was done. They feel that any lack of evidence or lack of records should be brought to the attention of Committee Members as they do not believe that this Council can make the assumption that the inclusion of the path on the Definitive Map is correct and that the Parish Councils followed the correct procedures.

### **OFFICER COMMENTS ADDRESSING ISSUES RAISED BY ILSTON COMMUNITY COUNCIL**

- 8.3 Whilst the Community Council has not found evidence of proper meetings to consider and approve the Parish Survey results, the inclusion of any path on the Definitive Map is conclusive evidence of the existence of a public right of way under section 56(1) of the Wildlife and Countryside Act 1981.
- 8.4 The case of Trevelyan referred to in paragraph 3.6 in the main body of the report held that when considering such matters the surveying authority must start with the presumption that the Definitive Map is correct and that if there was no evidence of the right having existed then it would never have been marked on the map and that the authority must assume that the proper procedures were followed.
- 8.5 This is the ruling in law that the Council must follow when considering the claim that no right of way exists. There is no requirement for the Council to prove the Definitive Map is correct or to show that the proper procedures were in fact followed. As a result, this Council has to assume that the Parish Councils did follow the correct procedures with the records having been lost over the years.
- 8.6 Successive reviews of the Map and Statement were advertised in 1955, 1964 and 1970 but no member of the public, resident of Perriswood, landowner or any Parish Council availed themselves of the opportunity to object or even question the depiction of the path.

However, other persons within the Parish did make representations on other routes during these reviews, which establishes that the consideration of the status of such paths was brought to the attention of the public at these times.

- 8.7 The evidential test is on the balance of probabilities and the case law further states that in order to outweigh the initial presumption that the Definitive Map is correct, the evidence must be cogent and of sufficient substance. It is not considered that the evidence supplied is sufficiently substantial to warrant making a modification order to delete the path.
- 8.8 The comments submitted by the Ilston Community Council since the last Committee meeting do not warrant a change in the report recommendations.

However, other persons within the Parish did make representations on other routes during these reviews, which establishes that the consideration of the status of such paths was brought to the attention of the public at these times.

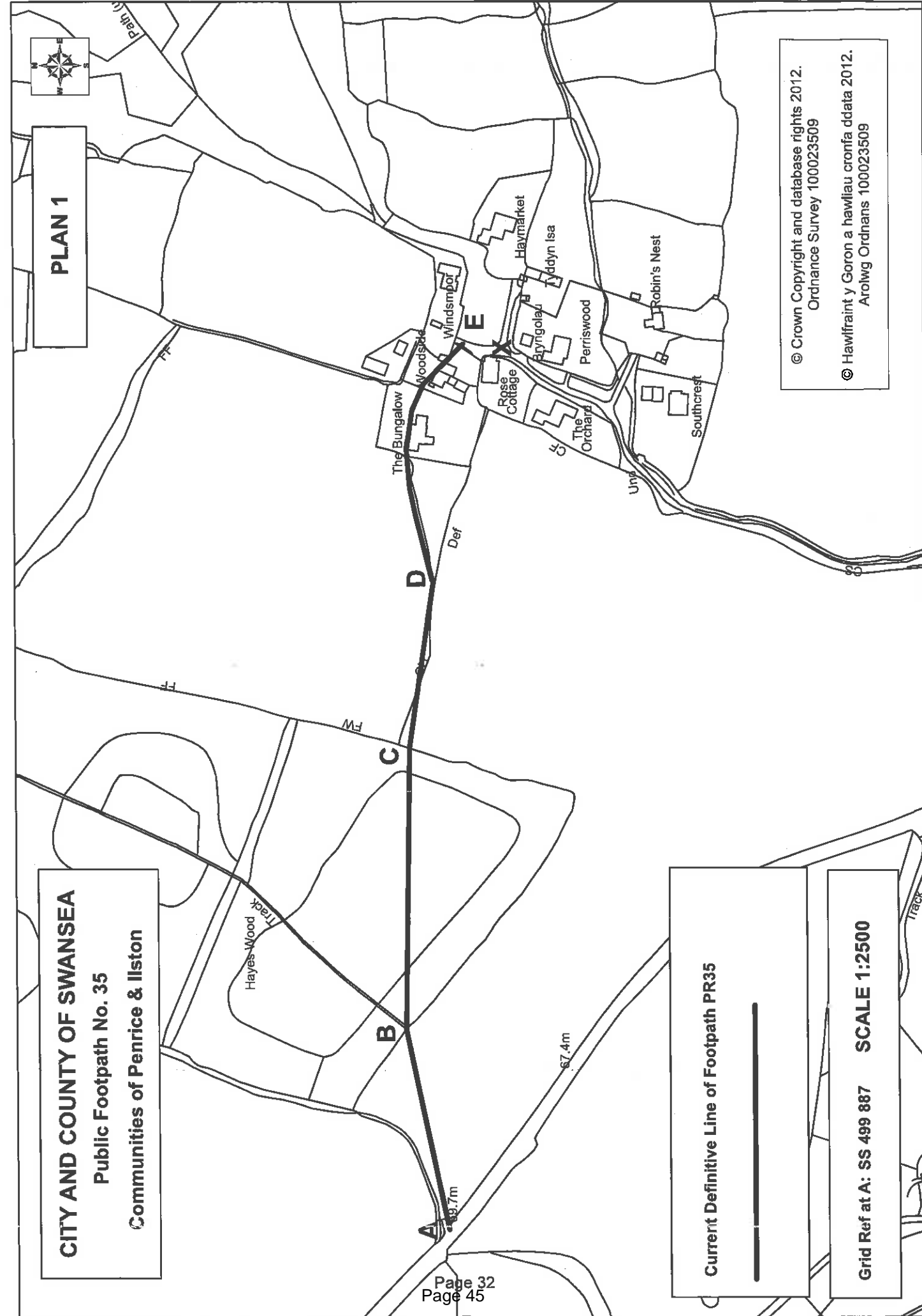
- 8.7 The evidential test is on the balance of probabilities and the case law further states that in order to outweigh the initial presumption that the Definitive Map is correct, the evidence must be cogent and of sufficient substance. It is not considered that the evidence supplied is sufficiently substantial to warrant making a modification order to delete the path.
- 8.8 The comments submitted by the Ilston Community Council since the last Committee meeting do not warrant a change in the report recommendations.

**CITY AND COUNTY OF SWANSEA**

Public Footpath No. 35

Communities of Penrice & Ilston

**PLAN 1**



Current Definitive Line of Footpath PR35



Grid Ref at A: SS 499 887    **SCALE 1:2500**

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# CITY AND COUNTY OF SWANSEA

Public Footpath No. 35

Communities of Penrice & Ilston

Note: The paths are plotted against the 1913 OS Survey - the boundary between the fields has changed between 1972 and the Modern Day. Therefore, more appropriate to show the boundary which existed at the relevant time

PR35 as shown on Provisional Map published 1964

PR35 as shown on First Definitive Map published 1970 (relevant date 1954)

Grid Ref at A  
SS 499 887

12  
17.496

SCALE 1:1500

PLAN 3

898 13  
8.898

*Perriswood*

ROSE COTTAGE

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Arolwg Ordnans 100023509

**CITY AND COUNTY OF SWANSEA**

Public Footpath No. 35

Communities of Penrice & Ilston

13  
9-898

Plotted against 1915 edition OS map (surveyed in 1913) so can be compared easily to the depiction of the path on the other reviews

PR35 as shown on Draft Special Review in 1971



Grid Ref at A  
SS 499 887

SCALE 1:1500

12

17-496

226

**PLAN 4**

2-006

81  
1-873

79  
1-221

78  
1-377

ROSE COTTAGE

82  
1-188

83  
1-915

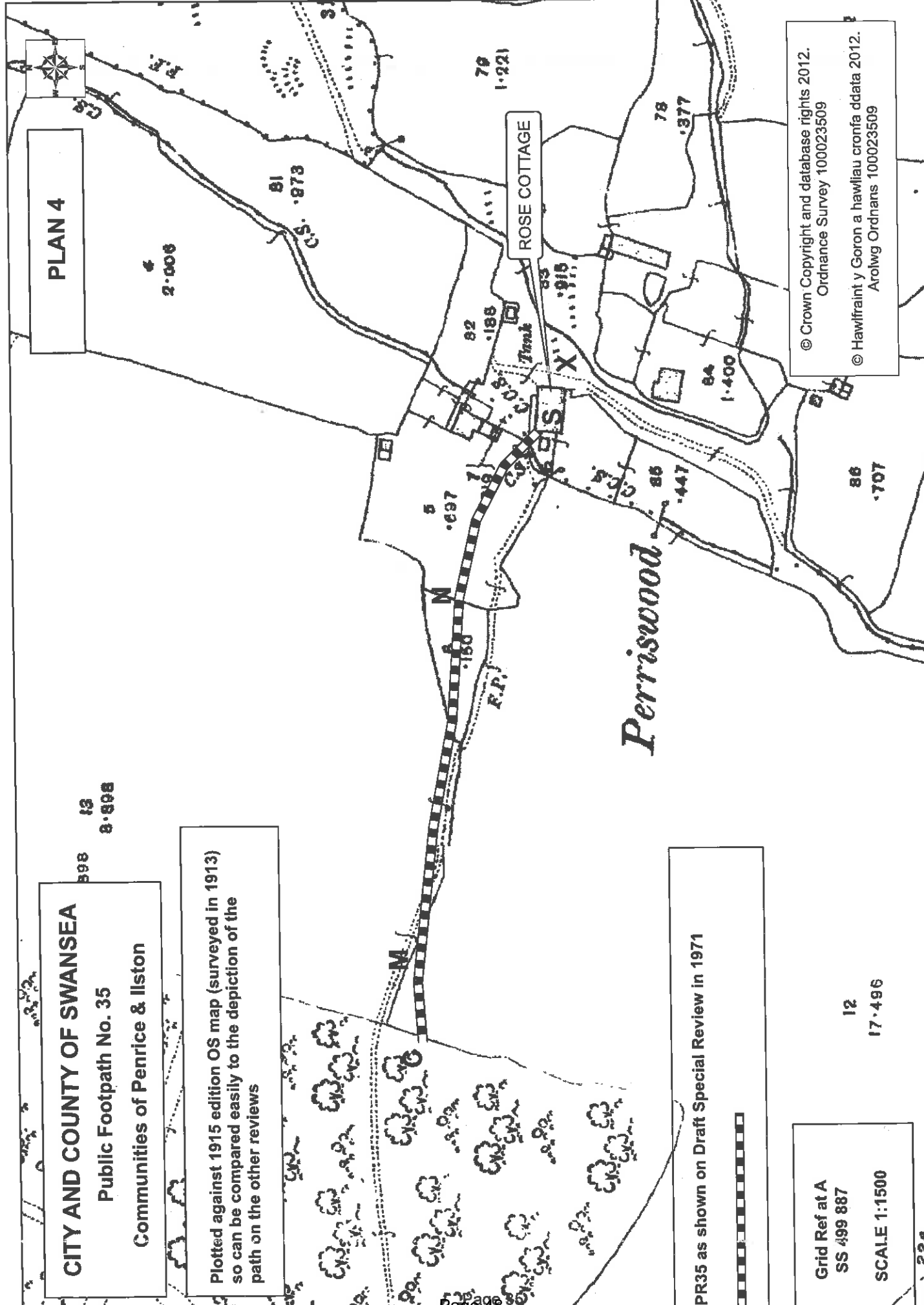
84  
1-400

85  
1-447

86  
1-707

*Perriswood*

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APPENDIX 3

LETTER TO OWNERS OF THE ALBERTA

Mr. C. Griffiths,  
33, Howard Street,  
Dundas,  
ONTARIO.

R02/83/22/08/00\*21

29th Feb, 1977

Mr. Taylor

66

LE  
7  
200  
740

Dear Madam,

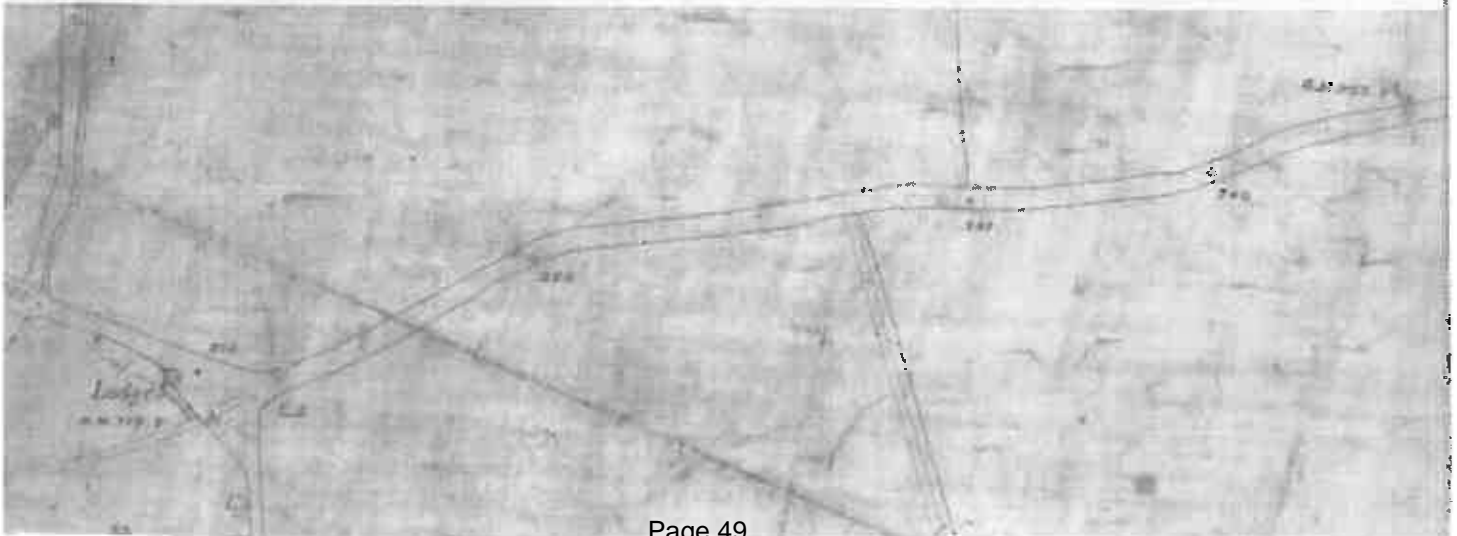
Committee of Enquiry - Footpath No. 35

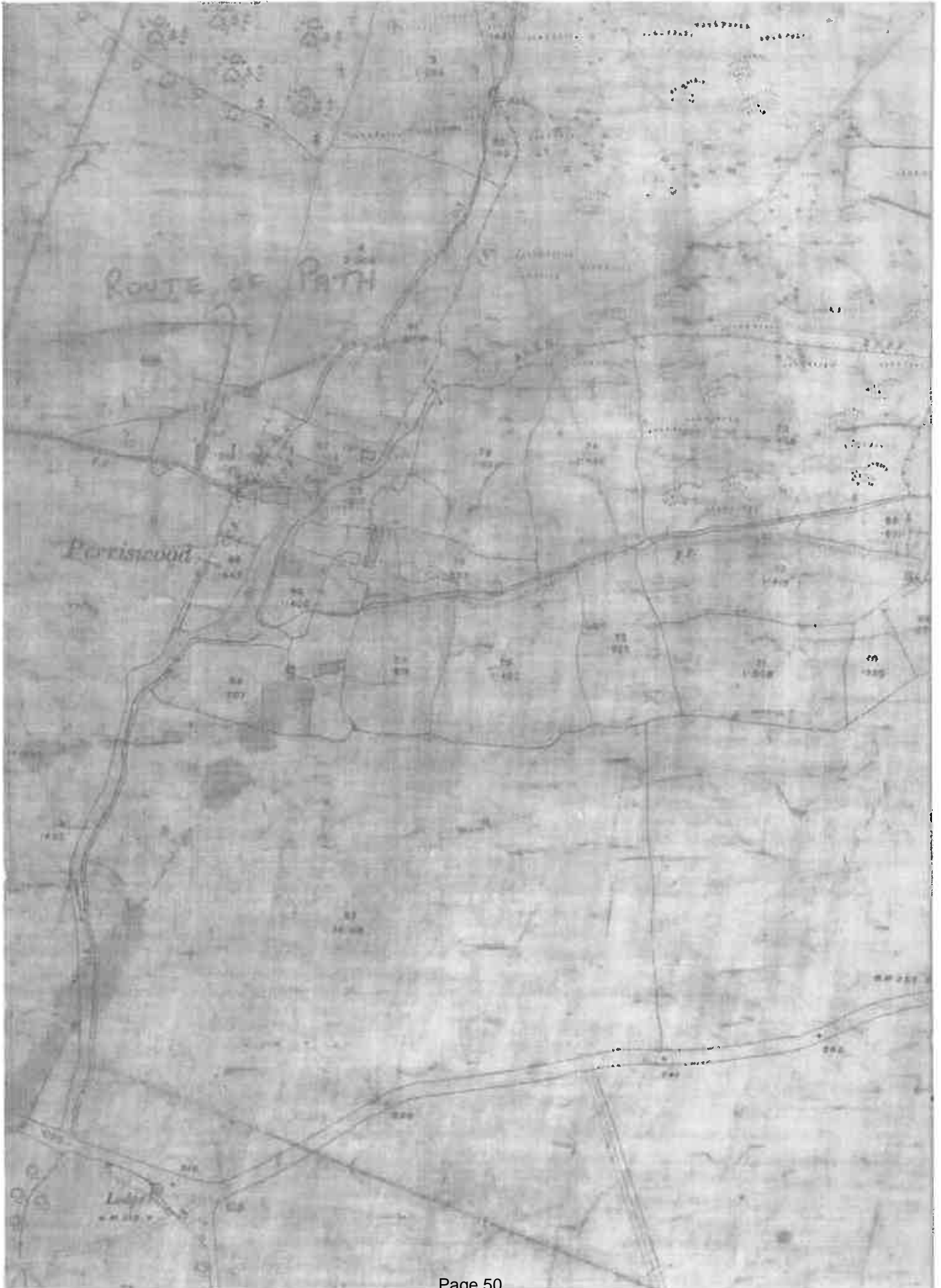
I am informed by Mr. Duffield of the Western Divisional Surveyors Office that you are concerned about the route of the above right of way which passes through your property. The enclosed extract from the 1915 Ordnance Survey Map clearly indicates the route, and you will see that it does, in fact, pass through the parcel of land presently occupied by the remains of an old greenhouse.

Should you require any further information in respect of this matter, please contact my assistant Mr. Taylor on the above number.

Yours faithfully,

  
County Planning Officer,





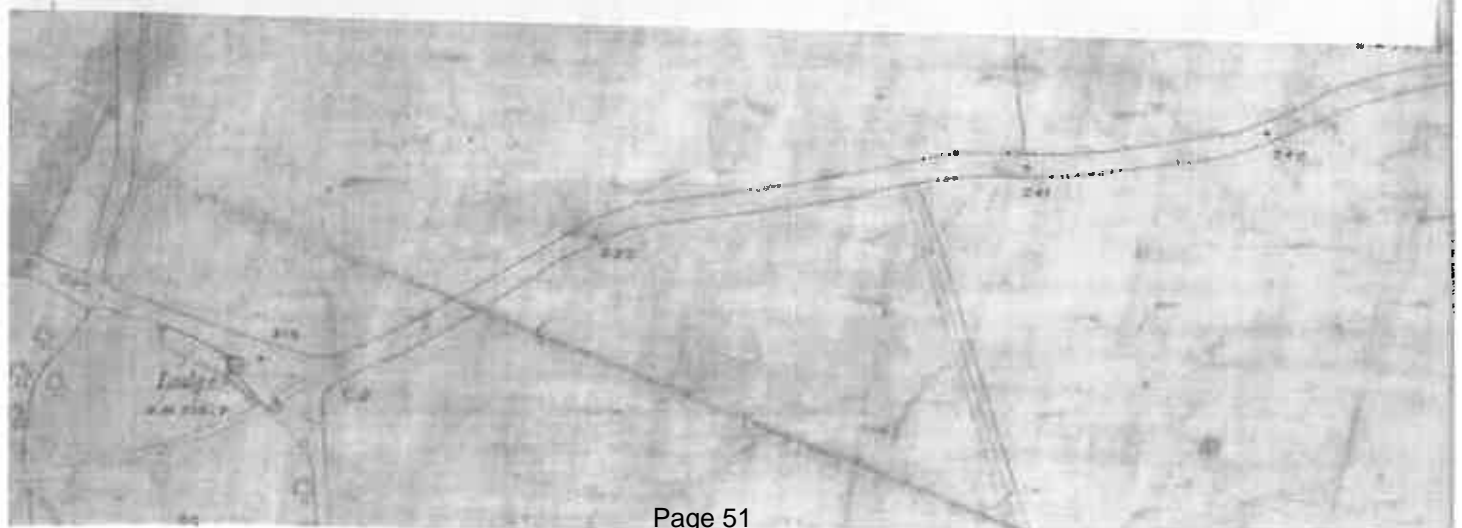
Community of Penrice - Footpath No 35.

Clearance of overgrowth undertaken by JC's team.  
In course of clearance, part of remains of greenhouse have  
been removed. The landowners (Mr & Mrs B Griffiths, 33, Bernack Street,  
Upland, Inverness) claim that the path is not shown on their  
title plan and that the path does not pass over the land on  
which the greenhouse was built. However, the 1915 edition of the  
Ordnance Survey map does show the original line of the path, and when  
this line is superimposed on the more D.S. map, it does indicate that  
the path covers the land on which the remains of the greenhouse stand.

ACTION

Sent print of 1915 O.S. map to landowners

— Print ordered 26.7.73





## APPENDIX 4



City and County of Swansea  
Legal, Democratic Services and Procurement  
Civic Centre  
Oystermouth Rd  
Swansea  
SA13SN

Plum Tree Cottage  
Perriswood  
Penmaen  
Swansea  
SA32HN

29/2/2016

Dear Mr. Arran,

Thank you for your letter and report relating to footpath 35.

My wife and I have no objection to a footpath diversion order being made but we do wish to make representations regarding its location as set out below.

In the early discussions and negotiations with Mr. Methuen- Campbell of Penrice Estate, he was in agreement to the footpath entering the field in the north east corner, this being in a similar location as the Council's preferred route as shown on your Plan 1 Footpath Penrice 35 dated 2010.(copy enclosed) . Mr. Methuen –Campbell later changed his mind and decided that he wanted the footpath to follow the historic route of 1915.

When I spoke to him on this matter and asked him why he had changed his mind, he said " we should all share the pain" Quite what pain it would have been for him to have an extra 25m of footpath along the edge of a field is a mystery to me. We would already be" sharing the pain" if the path was to enter the field in the north east corner of the field as it would still cross 50% of our frontage from our gate to the corner of the field.

In the early 1930'S The Penrice Estate declared that this was private and not a public right of way. Had the Estate complied with the Rights of Way Act of 1932 and declared, every six years, that the path was a private, Footpath 35 would not exist and we would not have the problem that we have now.

It seems to us, most unfair that, as a result of the Penrice Estate's non action on this matter, we now have a footpath in our garden and to add salt to the wound Mr. Methuen – Campbell is allowed to choose the route of the footpath on our land.

The National Parks and Access to the Countryside Act of 1949 required Councils to produce maps of footpaths that were considered to have public path status in the early 1950's which is also the basis of the Council's report. It is not their status in 1915 as Mr. Methuen Campbell wants.

In 1951 the Parish Council surveyed the path and the Parish Map was drawn which showed the path in the field to the south of our property and the accompanying Parish Card described the path in the same location. This is the only record in existence of anyone actually walking the path and should be considered as being the most importance evidence there is in relation to the route of the path at that time. This map was also to a larger scale than any of the subsequent maps and the survey would have been carried out by someone who would have had local knowledge of the area.

The Draft Definitive Map of 1955 and accompanying card were virtually the same as the Parish Map and Card .

Subsequent cartographers must have accepted that the route described on the Parish Card was correct as it was never altered throughout the mapping process.

In subsequent attempts to record the line of the path, minor discrepancies would have been inevitable as a result of the small scale of the maps. If they had been mapping different routes then they would surely have changed the descriptions on the cards.

in your report of 10/10/2012 appendix 2 item 8.8 you question why the Parish Map shows the path exiting Hayes Wood to the south of the fence line and not north of the fence as the historic map of 1915 shows. I would point out that all the subsequent draft maps, definitive maps, provisional maps, special revue map and even the Current Definitive map, 7 number in total, all show the path exiting Hayes Wood at the same point as the Parish Map therefor, on the balance of probabilities, one can assume that the point of exit of the path from Hayes Wood after 1951 was as shown on the Parish Map.

In section 3.6 you mention that the owners of the Piggery received a letter from the County Surveyors dated 29/7/1977 . This letter mentions clearing a path through the Piggery but what they actually cleared was the route shown on the Historic Map of 1915. Surely this is not relevant as it was not the footpaths route as shown on the maps of the early 1950'S as required by the 1949 Act. Mr. Griffiths states that no footpath was shown on his deeds when he purchased the land and that there was no path crossing his land.

We have been told by residents who lived and still live in Perriswood at the time, that when Mr. Griffiths purchased the Piggery, the lady who owned Woodside stopped him having any vehicular access. They also say that Mr. Griffiths had a major disagreement, on the same matter, with Mr. and Mrs. Skillbeck who owned the Bungalow ( Plum Tree Cottage ). They say that as a result of this, Mr. Griffiths was seldom seen in Perriswood or on his land. We have lived in Perriswood for 21 years and have only seen him or his family on three or four occasions.



We find it somewhat unbelievable that the owners of the Piggery have seen people walking, what would have been, the Historic route when residents of Perriswood, some who have live here for over 50 years, have never seen anyone walking the path. However, this should not be relevant for the reasons stated in the previous paragraph.

With regard to item 5.3, my wife and I did not realise that you were waiting for a response from us. We were waiting to hear from yourselves. Apologies for that.

My wife and I feel that, for the reasons stated in this letter, the route of the public path diversion order should follow the Councils preferred route as shown on Plan 1 footpath Penrice dated 2010 ( copy enclosed ). This is similar to the route shown on the Parish Map of 1951 and the First Draft Definitive Map relating to 1954, and are a representation of a route that was actually walked in response to the requirements of the National Parks and Access to the Countryside Act of 1949.

This route would be agreed by Woodside and the new owners of Rose Cottage.

If this request is not to be permitted then we would ask that the route shown on your Proposed Diversion Map be amended slightly as I have shown marked in red on your map which I have marked as Plan 2 ( copy enclosed ).

The amended route as shown would have less impact on the use of our land and enjoyment on it. It would also give us an opportunity to screen off the route from the remainder of the garden. Privacy is vitally important and if members of the public are to walk through our garden we will take steps to reduce the impact that this has on our enjoyment of our property. A slight amendment to the route as proposed would be less intrusive. In addition, whilst the route going through our garden will undoubtedly have a significant impact on the value of our property, a slight amendment to reduce the amount of land taken up by the route is likely to reduce the financial impact on us.

The route I have proposed would be no less convenient for the public to use. The impact on the adjoining property, the Piggery, would also be reduced as the route of the right of way would enter in the corner of their land as opposed to part way up it.

Therefore we believe that our request is not an unreasonable one and should not adversely affect anyone including those living locally and members of the public should they wish to exercise the public right of way over our land.

Finally, I understand that there is new evidence that Community Councilor Mr. Roy Church walked the path from Perriswood to the main road near Home Farm in the 1970'S. He said that the route that he took, which was present at the time, was as follows. He walked between two properties and entered the field in the corner near Rose Cottage and then through that field along the fence line and entered Hayes Wood through the gap in the wall and on through to the main road. This is virtually the same route as shown on the Parrish Card. This is further proof that this is the correct route of Footpath 35.

We hope that you will consider this new evidence when making your decision.

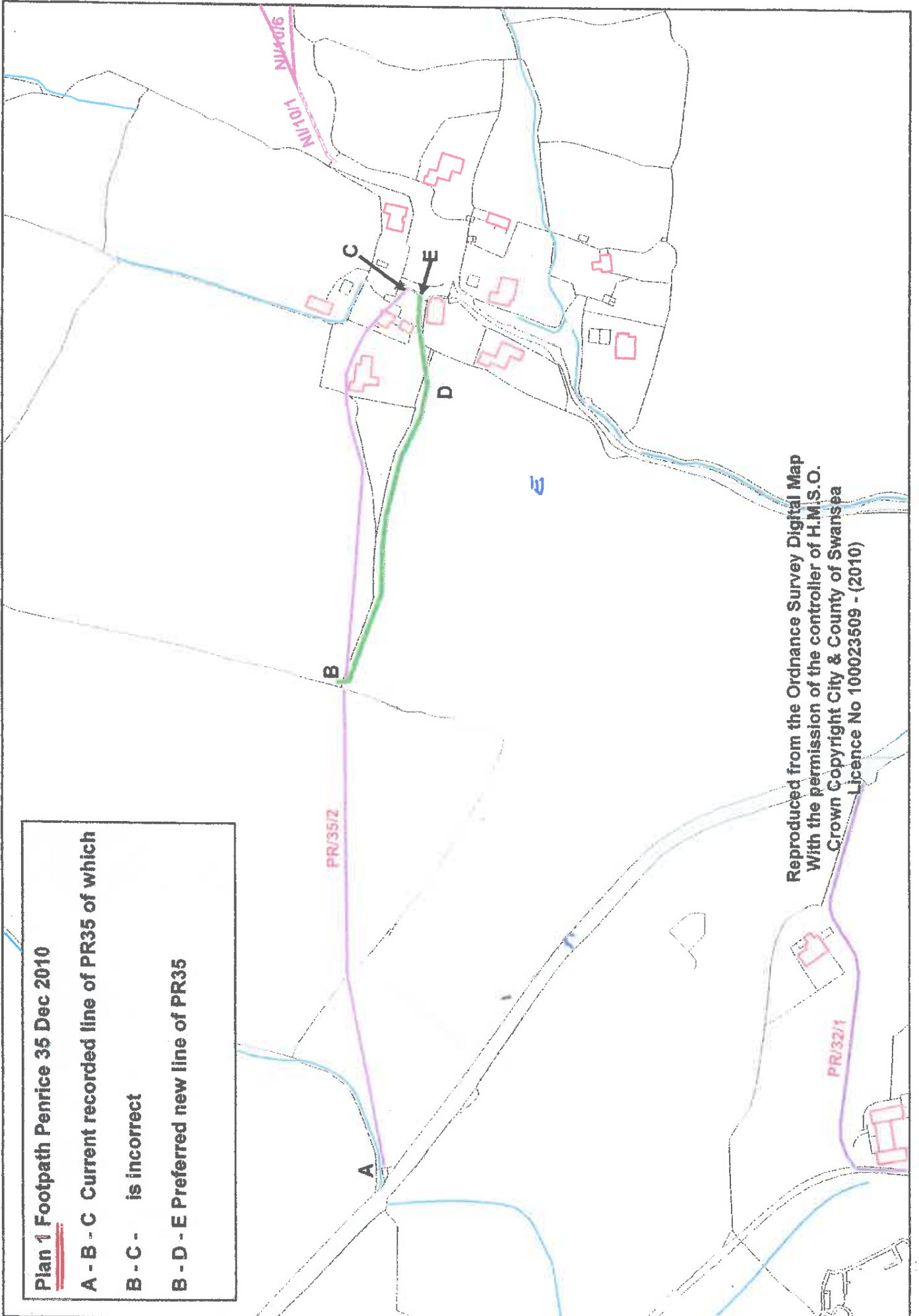
Yours Sincerely

David and Pam Owen

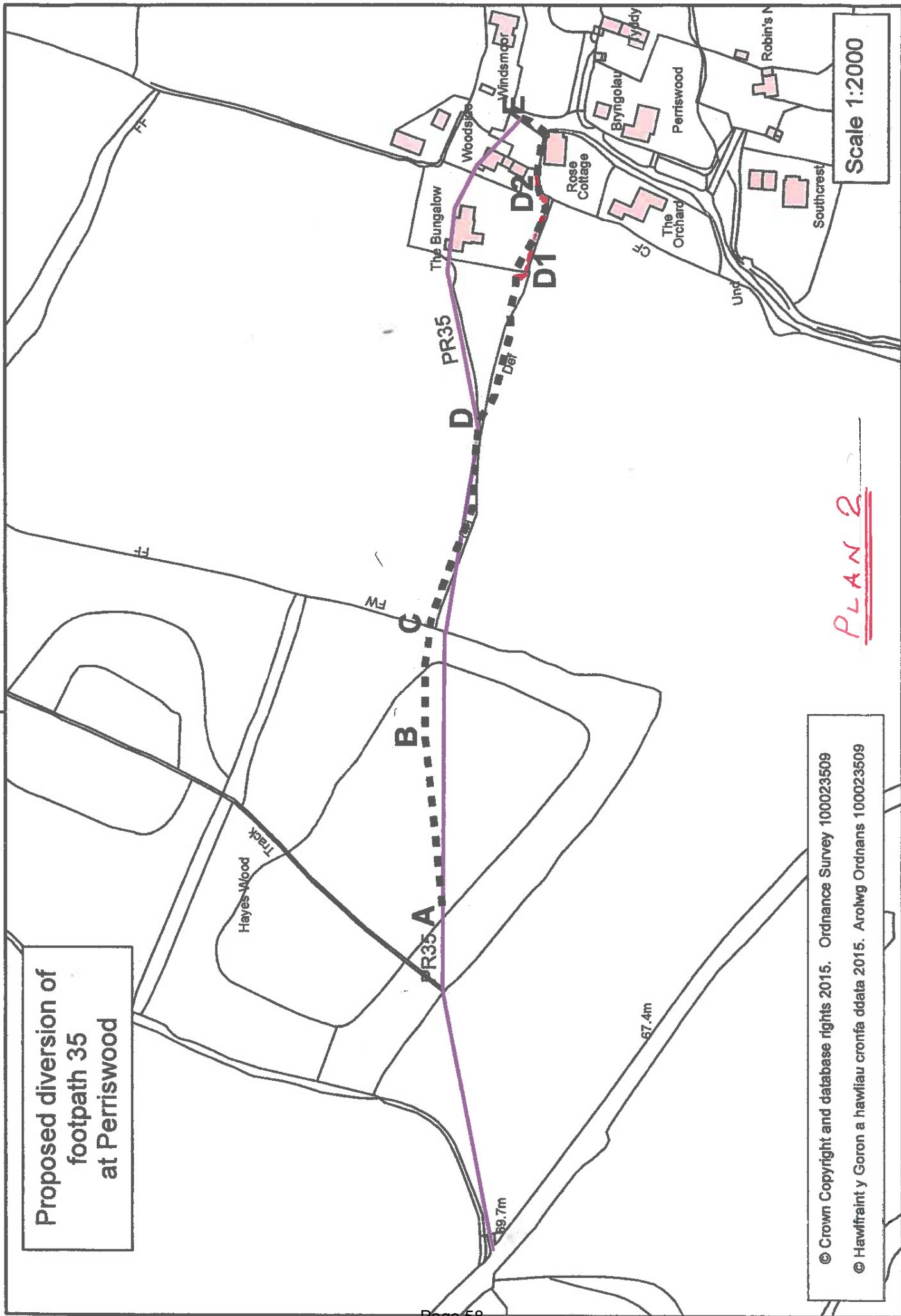
**Plan 1 Footpath Penrice 35 Dec 2010**

- A - B - C** Current recorded line of PR35 of which
- B - C** is incorrect
- B - D - E** Preferred new line of PR35



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Proposed diversion of  
footpath 35  
at Perriswood



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**For the attention of Patrick Arran**

Legal and Democratic Services  
City and County of Swansea  
DX: 743540  
SWANSEA 22

Legal Services  
18 MAR 2016  
Our Ref: jc24/dict4/1018961/257  
Your Ref:  
Date: 14 March 2016

When calling please ask for: **James Clark**  
e-mail: **jc24@footanstey.com**  
Direct Line: **+44 (0)1872 243344**  
Direct Fax: **+44 (0)1872 242458**

**By DX and Email**

Dear Sirs

**Public Footpath No. 35: Public Path Diversion Order**

We are instructed by the receivers of Green Star Developments Limited, the freehold owner of Woodside, Perriswood, Penmaen, Swansea, SA3 2HN.

Further to your letter dated 4 February 2016 enclosing the report of the head of Legal and Democratic Services, our clients have instructed us to write to you, supporting the officer's recommendation to make a public path diversion order in relation to the above footpath.

Our clients are pleased to see that the Council is making progress with this matter, the Committee having acknowledged on 10 October 2012 that the current alignment of Footpath 35 is erroneous. As members may be aware, the current alignment of the footpath as shown on the Definitive Map shows it running through the dwelling itself on our clients' property. This has adversely affected our clients who cannot sell the property, as the current alignment of the footpath has a significant adverse effect on the property's value and means prospective purchasers cannot obtain a mortgage. The situation also adversely affects members of the public, who cannot walk along the route shown on the Definitive Map.

We note that the current alignment of the footpath shows it also running through the dwelling known as Plum Tre Cottage (but referred to on the plan as 'The Bungalow'). We assume that the owners of that property would experience similar issues to those facing our clients in the event they decided to sell or charge it in the future.

For the reasons set out above, my clients consider that, for the purposes of section 119 of the Highways Act 1980, it is expedient to divert the footpath. Such a diversion would clearly be interests of our clients and as the report identifies, it would also be in the interests of the public as it would be a more direct and convenient route.

I would be grateful if you could confirm that this letter (or a summary of it) will be put before the committee when it meets next month.

Please kindly acknowledge safe receipt.

Yours faithfully,

  
Foot Anstey LLP

Foot Anstey LLP, High Water House, Malpas Road, Truro, Cornwall, TR1 1QH.  
Tel: +44 (0)1872 243300 Fax: +44 (0)1872 242458 DX: 81200 TRURO

Patrick Arman,  
Head of Legal &  
Democratic Services.

25.2.16.



Haymarket  
Perriswood,  
Penmaen,  
Swansea  
SA3 2HN

Dear Sir,

Public Footpath No. 35

I am in receipt of your report dated 5<sup>th</sup> Feb 2016. I do not want to make a comment on whether the above path should be diverted from the back of two properties, to the front gardens of same. As you already know, I disagree with it going in either place.

For all the council's attempts to prove that this path was a public one, when we all know that it was only a private one; no one has listened to what we the residents and ex-residents have had to say.

Everything the council puts forward in pages & pages of mostly unreadable jargon, is taken as gospel truth, whereas for those of us against this footpath, whatever we have given as evidence is seen as "heresy".

Who are the three 'landowners affected' that approve of this footpath? No one I know of. If it has to go somewhere why can't it go in the first left hand corner of the

Cont.

Gateway of Plum Tree Cottage and into the field, where it ends up anyway at the end of their garden, causing much less distress.

The family that were brought up in Rose Cottage from the early 50's to late 70's and then moved into The Orchard until 1994, contacted you to say that there was never any indication that a footpath passed their house or that they knew of one. Even though the people who bought The Orchard in 1994 have said that they were told by their family there was!

Mrs Wall, who was at the time in the early 50's the resident of Woodside, had previously owned all the land where the Piggery, The Bungalow, Windsmoot & Woodside now stand. When the Piggery was again sold in 1977 to the Griffiths, all access was stopped.

The area has been neglected, overgrown & impassable for years, so how they can say that they remember people walking this path when they have hardly ever been on the land in over 35 years, is unbelievable.

cont.

I hope that the Planning Committee will read every piece of evidence that the residents have submitted & not just the Council's papers.

I cannot see that anything will be gained by opening up a public footpath across two properties, where walkers will have to negotiate more traffic when emerging onto the highway, than if they went down the lane, over the road and into the 'laundry gate', onto a public path through Pennie Estate to Penny Hitch & beyond.

Yours faithfully,

V. M. Kinnison



Your Ref. ROW-224/KAO

41 Rhydypandy

Momrston

Swansea

SA6 6PB

March 15th 2016

Mr Patrick Arvan

Head of legal + Democratic Service

City & County of Swansea

Oystermouth Road

Swansea SA1 3SN

Dear Mr Arvan,

Public Footpath No 35 - Communities of Penrice  
& Ilston.

Thank you for your letter regarding  
the above footpath. I am replying on  
behalf of my brother Mr Rhydder Griffiths  
who is the owner of the parcel of  
land known as 'The Pigeony'.

I have had numerous conversations with  
Mr Chris Dale of the Countryside Access  
Team about this footpath and have  
provided several documents and  
photographs.

We would have no objection to

a diversion of the footpath along  
AFGH IJKE as set out in the report.  
We believe this to be the route of the  
original footpath which passes partly  
over the land over which there is  
a right of way for all purposes  
for the benefit of 'The Piggery'

We see no objection to the proposed  
public path diversion provided the  
existing vehicular right of way is  
not adversely affected.

If there are any further developments  
I would be grateful if you would  
keep me informed

Yours faithfully  
Delyth Hopkins

**O'Carroll, Kieran**

---

**From:** Thomas Methuen Campbell <trmmethuen@yahoo.co.uk>  
**Sent:** 04 December 2014 10:36  
**To:** O'Carroll, Kieran  
**Cc:** Painton, Matt; Edward Harris  
**Subject:** Re: Footpath 35 at Perriswood

Dear Mr O'Carroll

Thank you for your email and the attached letter.

I confirm that the Estate would be happy with the route that is now being proposed.

I look forward to hearing from you in due course.

Regards

Thomas Methuen-Campbell

Sent from my iPhone

On 27 Nov 2014, at 16:25, "O'Carroll, Kieran" <[Kieran.O'Carroll@swansea.gov.uk](mailto:Kieran.O'Carroll@swansea.gov.uk)> wrote:

Dear Mr Methuen-Campbell

I would be very grateful if you would kindly consider the attached letter

I shall look forward to hearing your views on the matter in due course

Kind regards

**KIERAN O'CARROLL**

LEGAL, DEMOCRATIC SERVICES & PROCUREMENT | GWASANAETHAU CYFREITHIOL, DEMOCRATAIDD A CHAFFAEL  
CITY & COUNTY OF SWANSEA | DINAS A SIR ABERTAWE  
ROOM 3.2.8 | CIVIC CENTRE | CANOLFAN DDINESIG  
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**01792 (63)7233**

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**CITY AND COUNTY OF SWANSEA**  
**DINAS A SIR ABERTAWE**

Mr Thomas Methuen-Campbell  
The Penrice Estate

Please ask for: Kieran O'Carroll  
Gofynnwch am:  
Direct Line: 01792 637233  
Linell Uniongyrchol:

E-Mail: Kieran.O'Carroll@swansea.gov.uk  
E-Bost:

**By Email Only**

Our Ref: ROW-0000244/KAO  
Ein Cyf:

Your Ref:  
Eich Cyf:

Date: 27<sup>th</sup> November 2014  
Dyddiad:

Dear Mr. Methuen-Campbell

**Re: Footpath 35 at Perriswood, Penrice**

I write as the legal officer acting on behalf of the Council's Countryside Access Team in this long outstanding matter. I understand that you have been in negotiation with the Solicitors acting for Mr & Mrs Owen to reach an agreement as to a suitable route for the footpath given that the evidence in the Council's possession was deemed insufficient to realign the path by modification order.

I am advised by my client department that an agreement between all parties was not achieved. However, they do recall you stating previously that you would agree to the route shown on the 1916 edition of the ordnance survey map. My client department have kindly provided me with a plan showing the route which was surveyed and recorded by the ordnance survey in 1916 and I enclose a copy of this for your information.

The boundaries of the properties have obviously changed over time and my client department have kindly plotted the route of the footpath surveyed in 1916 as accurately as possible onto a modern ordnance survey map showing the boundaries as they exist today. I also enclose this for your attention.

I would therefore be grateful if you would kindly confirm whether this is a route that you would be agreeable to or whether you would consider any alternative. Once we are clear on your position on the matter, we will then discuss with the other parties involved.

I thank you for your assistance in this matter and very much look forward to

**LEGAL, DEMOCRATIC SERVICES AND PROCUREMENT**  
**GWASANAETHAU CYFREITHIOL, DEMOCRATAIDD A CHAFFAEL**  
CIVIC CENTRE, OYSTERMOUTH ROAD, SWANSEA, SA1 3SN DX: 743540 SWANSEA 22  
CANOLFAN DDINESIG, HEOL YSTUMLLWYNARTH, ABERTAWE, SA1 3SN DX: 743540 SWANSEA 22

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I dderbyn yr wybodaeth hon mewn fformat arall, cysylltwch â'r person uchod.



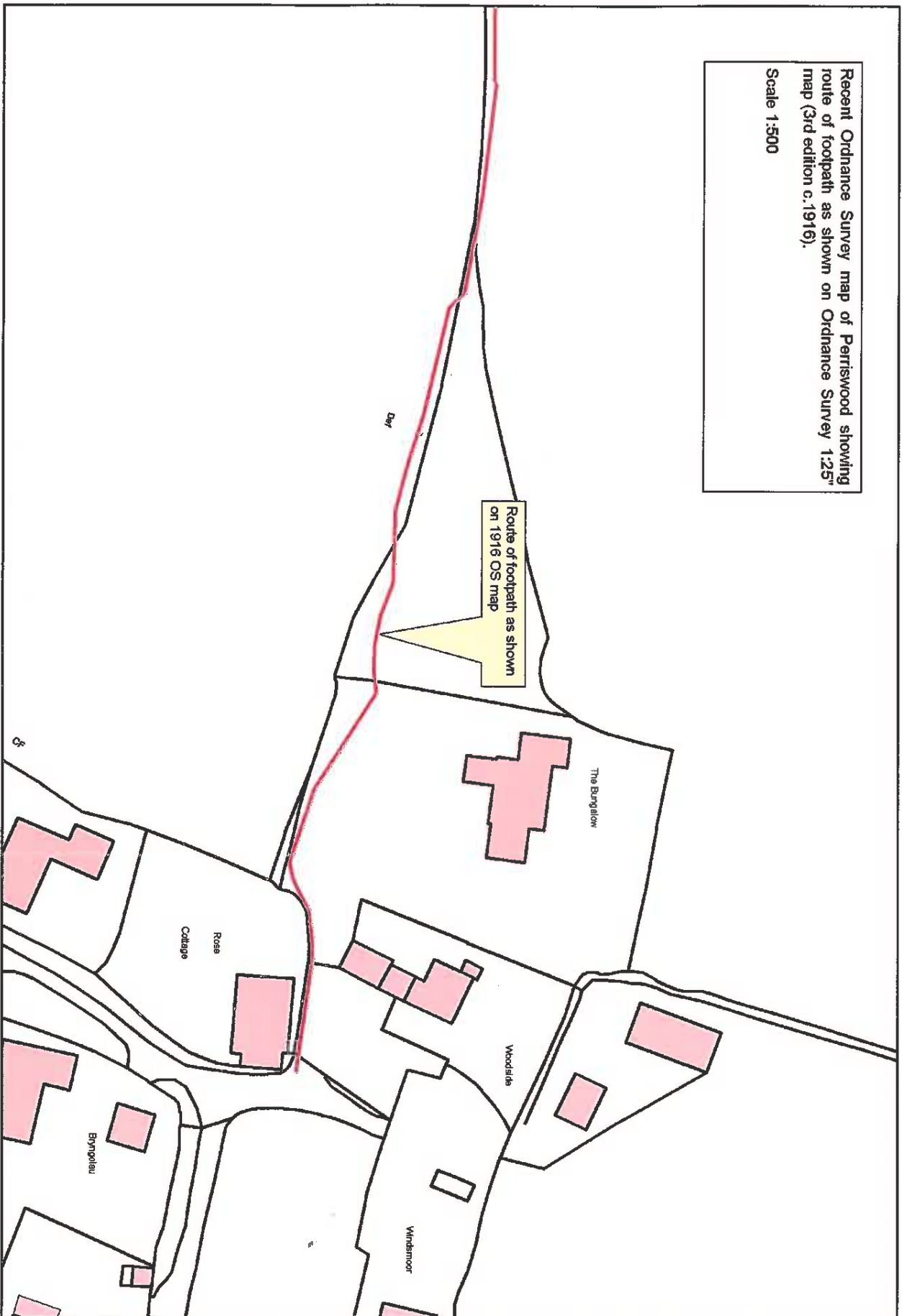
your response.

Yours sincerely,

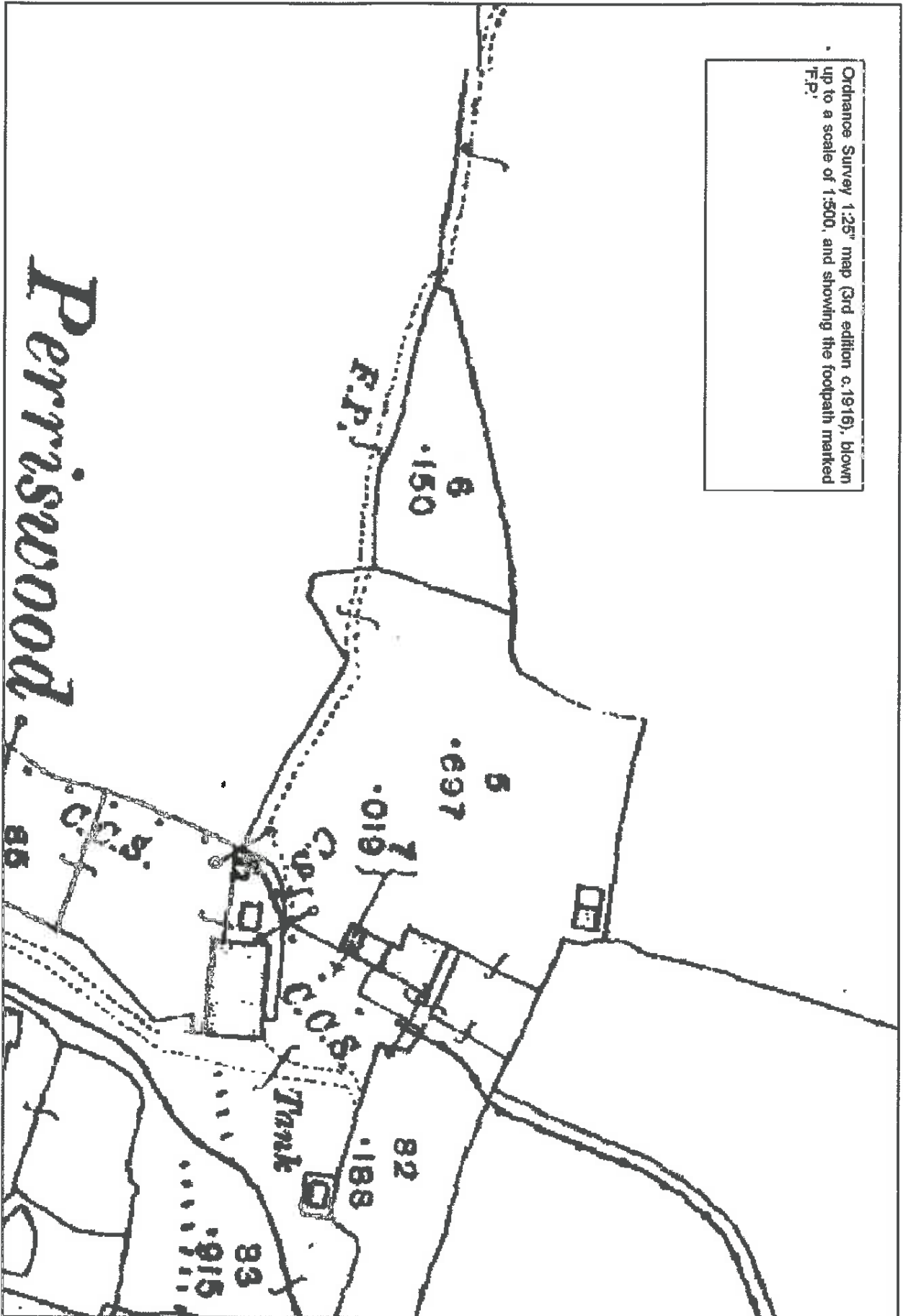
A handwritten signature in black ink, appearing to read "P. Arran". The signature is written in a cursive style with a long horizontal stroke at the end.

**Patrick Arran**  
**Head of Legal, Democratic Services & Procurement**

Recent Ordnance Survey map of Perriswood showing route of footpath as shown on Ordnance Survey 1:25" map (3rd edition c.1916).  
Scale 1:500



Ordnance Survey 1:25" map (3rd edition c.1916), blown up to a scale of 1:500, and showing the footpath marked 'F.P.'

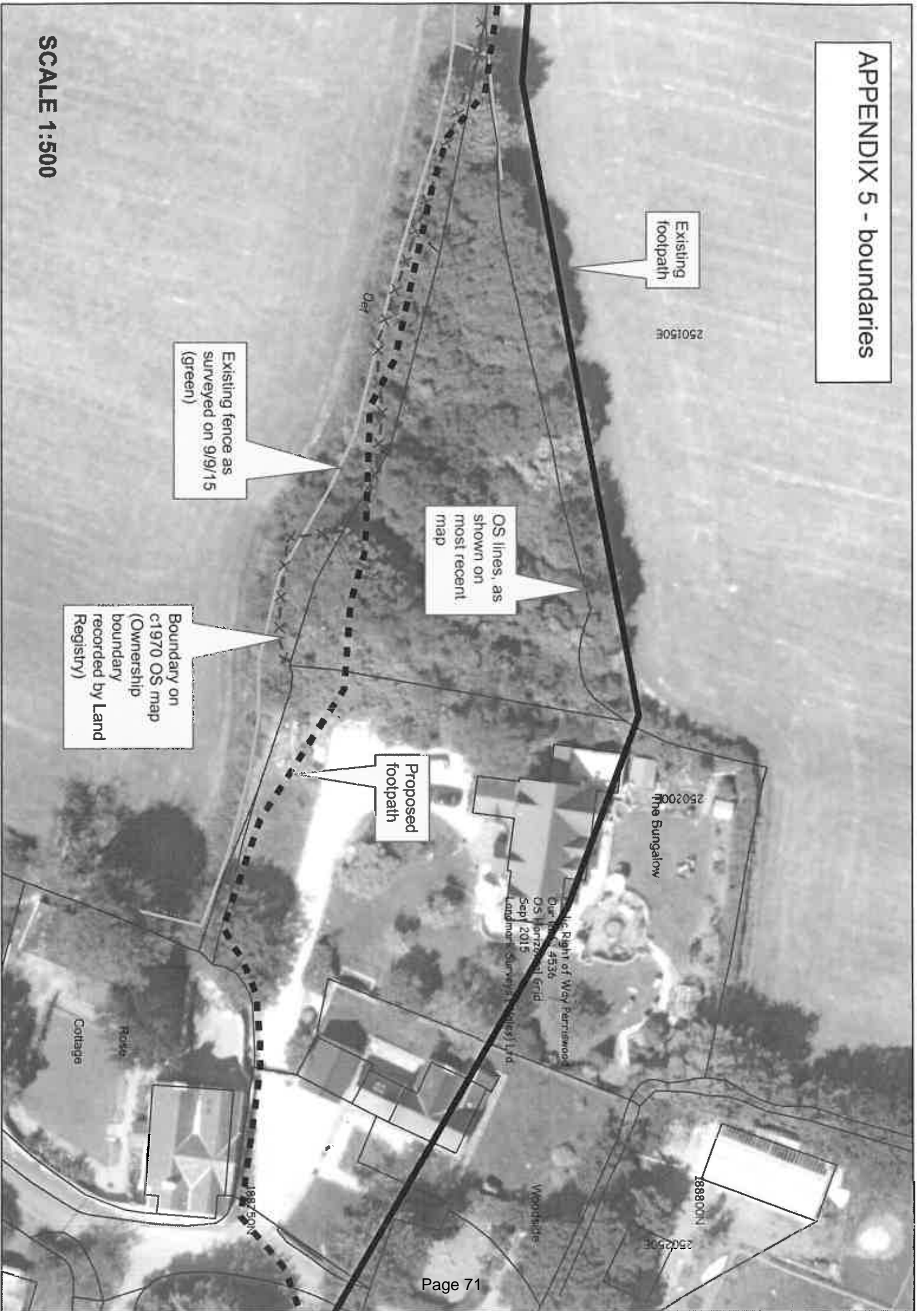


*Perriswood*





APPENDIX 5 - boundaries



SCALE 1:500

# Agenda Item 6

## Report of the Head of Legal and Democratic Services

Planning Committee – 10 May 2016

### APPLICATION TO REGISTER LAND KNOWN AS PARC Y WERIN, GORSEINON SWANSEA AS A TOWN OR VILLAGE GREEN

#### APPLICATION NO. 2734(S)

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

#### 1.0 Introduction

- 1.1 The Council has received an application by Gorseinon Community Councillors James Dunkley and Claire Elizabeth Lewis in respect of land known as Parc y Werin, Gorseinon, Swansea. The application is made by Cllrs Dunkley and Lewis in a personal capacity and not on behalf of the Community Council. The application seeks to register land as a Town or Village Green. A plan of the land in question appears as Appendix 1.

## **2.0 History of the Application**

- 2.1 The land is owned by this Council. The Council in its capacity as owner of the land has made an objection to the application. A number of other objections have also been received from residents from the locality of the application site.
- 2.2 The Head of Legal and Democratic Services has delegated authority to instruct Counsel to act as Inspector and to advise on the application and the appropriate procedure to be adopted in determining the application including whether a public inquiry would be necessary to consider the application. Mr. Alun Alesbury, MA, Barrister-at-law was instructed to advise.

## **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 in respect of the planning permission granted by the Planning Committee on 8th December 2015 for the development of a new school.
- 3.2 Mr. Alesbury is a recognised expert in this area of law and has been appointed on numerous occasions to advise on applications and 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 have 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 tests to be satisfied in respect of an application for town or village green status are completely different to those involved for a planning application. The criteria relevant to the granting of a planning permission are, as a matter of law, completely different from those relevant to a Commons Act determination. A Commons Act determination is entirely dependent on matters of *fact* relating to the past history of the land concerned and the legal consequences of those facts, once the facts have been established. Views as to what *ought* to happen (or be permitted to happen) on the site in the future are completely irrelevant.

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

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

and

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

5.4 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.

5.5 *“. . . 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.

5.6 *“. . . 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’.

5.7 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.

5.8 *“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.

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

The relevant 20 year period in this application is measured backwards from the date the application was received on 23<sup>rd</sup> November 2015.

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

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

6.2 This Committee must be satisfied based on the evidence and the report of the Inspector 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 an Advice dated 19<sup>th</sup> February 2016 (which is attached as Appendix 2) and these are set out below.

7.2 Members will note from paragraph 7 of the Inspector’s Advice and Recommendations that the Council as Objector has expressly accepted that the application site at Parc y Werin has been extensively used since the 1920s as a park for recreation by local people and the general public; that there have been no ‘permissive’ signs at the park; and that the gates of the park were not (at any material time) closed or locked.

7.3 However, three main lines of argument have been put forward by the Council as Objector as to why the application site is still not eligible to be registered under Section 15(2) of the Commons Act 2006. These can be summarised as being that the use of the park by the local public was not “as of right” as required by the legislation; that there is a ‘statutory incompatibility’ between the basis on which the Council has held the land concerned and finally that

the Applicants had not identified an appropriate 'Locality' in respect of whose inhabitants the claim for registration was made. The Inspector considers these points as follows:

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

This is addressed in paragraphs 9 and 10 of the Inspector's Advice and Recommendations. He concludes that the administrative area of the Gorseinon Town Council is plainly capable of being a 'locality' for the purposes of the application.

#### 7.5 **Statutory Incompatibility**

The Inspector considers the argument submitted by the Council in its objection that the precise basis on which the Council, and its local government predecessors as owners, have held the various parts of the land at Parc y Werin since their original acquisition. He is of the view that on the information he had considered does not present a clear basis on which it would be appropriate or right to reject the Applicants' claim, without calling on the parties to provide further submissions and evidence in clarification.

#### 7.6 **“As of right”**

The issue of whether the use of the land has been “as of right” is considered by the Inspector on paragraphs 18 to 31 of his Advice and Recommendations.

The Inspector discusses the relevant case law and in particular the decision of the Supreme Court in the case of *R (Barkas) –v- North Yorkshire County Council* [2015] AC 195, [2014] UKSC 31 where the Court equated having a statutory right to use a piece of land to having *permission* to use it. This means that if there is something about the basis on which the Council (or its predecessors) held the land concerned which gave the public a right, or a permission to use the land, in particular during the relevant 20 year period, then that land *cannot* be registered as 'town or village green' because it cannot have been used so as to meet the 'as of right' test.

Consideration is given to the fact that part of the present Parc y Werin was purchased by the former Swansea RDC under an Indenture of 1924 under statutory powers under the Housing Acts 1890 to 1919 and further that recreational/leisure use of the relevant part of Parc y Werin by the local public will have been 'by right', not 'as of right', during the whole of the period being considered.

## **8.0 Formal Conclusion and Recommendation**

- 8.1 The Inspector concludes that there is no justification for the convening of a local public inquiry in order to consider the matter further. He takes the view that the application simply cannot succeed as a matter of law because the use of the application site cannot have been 'as of right', in the sense required by the law.
- 8.2 He recommends that no part of the application site at Parc y Werin should be added to the statutory register of town or village greens and that further this decision can properly be taken without convening a public local inquiry.

## **9.0 Recommendation**

- 9.1 It is RECOMMENDED that the application for registration be REFUSED for the reasons set out in Mr. Alesbury's Advice and Recommendations.

## **10.0 Equality and Engagement Implications**

- 10.1 There are no Equality and Engagement implications to this report.

## **11.0 Financial Implications**

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

## **12.0 Legal Implications**

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

**Background papers:** Application file.

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

Appendix 2: Advice and Recommendations of the Inspector, Mr. Alun Alesbury, M.A., Barrister at Law, dated 19th February 2016

**CITY AND COUNTY OF SWANSEA**  
**Application for Registration of Town or Village Green**  
**Section 15 Commons Act 2006**  
**Parc Y Werin, Gorseinon, Swansea**  
**Application No. 2734(S)**



**Area subject to application**  
 Scale: 1:2500

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**CITY & COUNTY OF SWANSEA**

**COMMONS ACT 2006, SECTION 15**

**APPLICATION TO REGISTER LAND KNOWN AS  
PARC Y WERIN, GORSEINON,  
AS A 'TOWN OR VILLAGE GREEN'**

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**ADVICE AND RECOMMENDATION**

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1. I am asked to advise the Council of the City & County of Swansea ('the Council'), in its capacity as Registration Authority under the *Commons Act 2006*, in relation to an application received on 23<sup>rd</sup> November 2015, for an area of land known as Parc y Werin, at Gorseinon, to be registered under *Section 15(2)* of the Act as a 'town or village green'. The land is in the freehold ownership of the Council itself, and as its name implies, it has

(it seems) been laid out for many years as a public park or recreation ground.

2. The Council in its landowner capacity has in fact objected to the application, and there are also a number of other objectors. The Applicants have responded in writing to the objections. Part of the background to this situation is that there are plans to develop some of Parc y Werin as the site for a new Primary School; planning permission for that development was granted on 8<sup>th</sup> December 2015. Rather earlier than that, it seems that a Cabinet decision was taken within the Council in July 2015 (with no objections having been lodged at the time), whose aim was to appropriate the intended school site from a ‘park or recreation’ purpose to a purpose associated with the provision of the new school (presumably therefore a holding ‘for the purposes of education’).
3. Although there are prospective amendments to *Section 15* of the *Commons Act*, whose effect when implemented will be to make it impossible for a ‘town or village green’ application to be made where a planning application for development is in process, it appears that those amendments have not been brought into effect in Wales at a time which is relevant to this present application.

4. The Council as Registration Authority under the *Commons Act* has in place procedures which include the possibility of holding a non-statutory inquiry, under an independent inspector, into ‘village green’ applications where there are issues of fact in dispute, and/or where the land in question is owned by the Council. Clearly at least the latter of those criteria applies in the present case. The questions which I am asked to address at the present stage are as to the most appropriate process in order to determine the application, and in particular whether this might be a case where it is appropriate, in the light of the detailed objections and responses submitted, for the application to be determined ‘on paper’, without the need to convene a public inquiry.
  
5. Clearly, if this were a case where there was a substantial dispute of fact, whose resolution one way or the other is likely to determine the application, as well as the land belonging (as it does) to the Council itself, it is unlikely, given the Registration Authority’s adopted procedure for ‘village green’ applications, that it would *not* be a case where the normal assumption would be that an inquiry should be held. In reality therefore the present question becomes whether or not, on such of the facts as are undisputed (or not materially disputed), there are clear legal grounds for concluding that, whatever the Applicants may argue, the land concerned *cannot* as a matter of law be registered under *Section 15* of the *2006 Act*.

6. I should perhaps at this point note that, although other objections have been lodged than that of the Council as landowner, and other letters sent in support of the application, beyond the material directly provided by the Applicants [all of which I have read, on both sides], I have formed the clear view that the above question can in fact be answered by addressing the points which have been put forward on behalf of the Applicants themselves, and the Council in its role as the main Objector.
7. The task of consideration of the issues here is rendered rather more straightforward by a number of clear concessions which have been made by the Council as Objector, in its representations. Thus the Council as Objector has expressly accepted that the application site at Parc y Werin has been extensively used since the 1920s as a park for recreation by local people and the general public; that there have been no ‘permissive’ signs at the park; and that the gates of the park were not (at any material time) closed or locked.
8. Nevertheless the Council as Objector has raised three main lines of argument as to why the application site is still not eligible to be registered under *Section 15(2)* of the *Commons Act*. In brief they are that the use of the park by the local public was not “*as of right*”, in the sense required by the legislation; that there is a ‘statutory incompatibility’ between the basis

on which the Council has in fact held the land concerned over the years, and registration under the *Commons Act*; and finally that the Applicants had not identified an appropriate ‘Locality’ [or ‘Neighbourhood’] in respect of whose inhabitants the claim for registration was made. It will however in fact be most convenient if I now consider these three lines of argument in the reverse order to the one in which I have just set them out.

### **‘Locality’**

9. The application had put forward the administrative area of the Gorseinon Town Council as the relevant ‘Locality’. That area is plainly capable of being a ‘locality’, in the rather particular legal sense which the courts have said should be applied in interpreting that term. However the Council as Objector questioned whether that Town Council area had been in existence for the whole relevant 20 year period (November 1995 to November 2015).
  
10. Material provided in response by the Applicants convinces me, sufficiently for the purposes of this present Advice, that what is now the Town Council has been in existence, covering the same area, since at least 1986, initially calling itself the Gorseinon Community Council. This particular ground of

objection therefore seems to me, on the material provided on paper, not to be a sound one.

### **Statutory Incompatibility**

11. This objection is based on the line taken by the Supreme Court in its relatively recent judgment in the case of *R (Newhaven Port and Properties Ltd) v East Sussex County Council* [2015] AC 1547, [2015] UKSC 7.

That case related to the somewhat unusual factual circumstance of a ‘village green’ claim having been made in respect of a tidal ‘beach’ which was itself within the territory of a working port or harbour. The working of that harbour was both governed and empowered by various pieces of local and more general harbour legislation. It was held by their Lordships in the Supreme Court that registration of the piece of land concerned as a ‘village green’ was incompatible with the statutory empowerment, under other more specific provisions, of the use of the same piece of land as part of a working harbour.

12. I have to say that I do not find the reasoning and explanation of the principal judgment in *Newhaven*, given by Lord Neuberger and Lord Hodge jointly (with Lady Hale and Lord Sumption agreeing), entirely easy

to follow, in terms of the intended scope of any principle that they were laying down. I also note in passing that Lord Carnwath did not agree with the majority on this point. It is clear that a ‘statutory incompatibility’ principle applies when there is an active, statutorily empowered current use (in that case the harbour use) whose continuation is manifestly at odds with registration under the *Commons Act*. But on the other hand, as the Applicants in this present case point out in their Response, Lords Neuberger and Hodge did specifically say (*Newhaven*, para. 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.*”

13. The precise basis on which the Council, and its local government predecessors as owners, have held the various parts of the land at Parc y Werin since their original acquisition (to put it simply) in 1921 and 1924 respectively, has been the subject of considerable, and interesting, comment in the submissions in this case from both the main parties. I do not intend to repeat or report all of that material here. Suffice it to say that on the basis of the written representations so far, there is not in my judgment a clear and compelling argument that a ‘village green’ registration would be incompatible with some general principle to be extracted from the *Newhaven* judgment.

14. I do not reject the argument of the Council as Objector; I merely say that in my judgment, if this were the issue on which the whole case turned, it would need to be argued more fully, on the basis of the clearest possible exposition and understanding of the background historical facts. This may well require the issue of some sort of Directions on the part of the Registration Authority, directing the parties' attention to aspects of the issue on which further submissions and clarification would be encouraged. Whether that would in practice be achievable through a further exchange of written representations, or whether it would in reality require the convening of a local inquiry to consider the arguments and underlying facts more fully, I leave to one side for the moment.
15. I note also that, in part at least, the Objector's argument on this point relies on a purported 'appropriation' of a substantial part of Parc y Werin which was carried out in July 2015 by the Council's Cabinet, which (it seems) was intended to appropriate the relevant land to educational purposes (with a view to building the proposed school) from the purposes for which it had been held by the Council before. July 2015 was of course within (even if only by a few months) the 20 year period to which the Applicants' claim under *Section 15(2)* relates.



16. As a matter of impression, from the documents provided with the Objector's submissions, I am not satisfied that the purported appropriation was carried out properly or effectively; the apparent wording of the Cabinet resolution concerned did not even mention the purposes to which (or indeed from which) the land was being purportedly appropriated from one 'Director' (of Place) to another one (of People). I have considerable reservations about the effectiveness of that as an appropriation, and in my view the Registration Authority ought certainly to seek further submissions and clarification, before there could be any reliance on this 'appropriation' as part of a basis for rejecting the Applicants' application.
17. In summary then, on the 'statutory incompatibility' argument, my advice is that there is not at present a clear basis on which it would be appropriate or right to reject the Applicants' claim, without calling on the parties to provide further submissions, and (where practicable) further evidence in clarification.

## “As of Right”

18. Leaving aside the potential argument about statutory incompatibility, the concessions made by the Council as Objector (noted at my paragraph 7 above), together with other aspects of the factual background which appear to be uncontested, would appear to indicate that, on the face of things, all the ingredients of the statutory criteria in *Section 15(2)* have been met here, provided only that use of the park by local people had been ‘*as of right*’. These three words within the statutory criteria have received a great deal of attention from the courts, and indeed their implications for the present case have been quite fully addressed by the parties in their representations.
  
19. It has been completely clear, since the decision of the Supreme Court in *R(Barkas) v North Yorkshire County Council* [2015] AC 195, [2014] UKSC 31 (and was fairly obvious even before that), that where land is owned or provided by a public authority, in circumstances giving rise to a *right* for the public to make use of the land, then such land cannot have been used ‘as of right’, for example by the ‘local public’. In other words ‘*as of right*’ effectively means ‘*as if of right*’; to meet the statutory criterion, local people have to have been using the land concerned *as if* they had the right to do so, but when in fact they did not have the right.

20. Their Lordships in *Barkas* equated having a statutory right to use a piece of land to having *permission* to use it, in the context of the classical definition and understanding of ‘as of right’ use as being use ‘without force, without secrecy, and without permission’. This means that if there is something about the basis on which the Council (or its predecessors) held the land concerned which gave the public a right, or a permission, to use the land, in particular during the relevant 20 year period, then that land *cannot* be registered as ‘town or village green’. It cannot have been used so as to meet the ‘as of right’ test.
21. As far as I can see, there is not any material dispute between the parties as to the basic facts in relation to the original acquisition of the two main parts of the application site at Parc y Werin by the Council’s predecessors. The part acquired as a leasehold in 1921, and then enlarged to a freehold in 1944, appears indisputably to have been acquired under the *Public Health Act 1875*, with the assistance of the *Local Government Act 1894*, for the express purpose of being laid out as ‘public walks or pleasure grounds or a recreation ground’.
22. It is true, as is pointed out for the Applicants, that neither the 1921 Lease nor the 1944 Indenture (making it up to a freehold) expressly mention *Section 164* of the *1875 Act*. The 1921 Lease makes a number of

references to the land being intended for use for public walks or pleasure grounds (or a recreation ground); the 1944 Indenture calls it ‘the Purchaser’s Pleasure or Recreation Ground’; and additionally some 1932 Byelaws refer to Parc y Werin as a ‘pleasure ground’ within the Llŵchwr Urban District. Although the Applicants argue against this view, there can in my judgment be no reasonable basis for concluding that the land which both parties have called the ‘1921 Land’ has been held for any other purpose than as a public walk or pleasure ground under *Section 164* of the *Public Health Act 1875*, right through until 2015 at least; and my preliminary view is that it is probably still so held by the Council at the present time.

23. I do not regard the Applicants’ arguments in relation to the 1921 Land as having any cogency. It is simply obvious, in my view, that the land has been held by the Council and its predecessors on a basis which Supreme Court authority says cannot have allowed for ‘as of right’ use by the local public which could have given rise to a successful ‘town or village green’ claim under the *Commons Act*. It follows that, as far as the 1921 Land is concerned, the present application in my judgment cannot possibly succeed. In these circumstances there is no justification (as far as this part of the land is concerned) for holding a public local inquiry to hear further

evidence and argument, in my opinion. The issue can be properly decided on the basis of the material which has already been provided on paper.

24. It seems clear however that the part of the present Parc y Werin that was purchased by the old Swansea RDC under an Indenture of 1924 (the ‘1924 land’) was acquired under different statutory powers, under the *Housing Acts 1890 to 1919*. It is clear from the historic plans produced by both sides that the part of the 1924 land which is in the present application site (and the present Parc y Werin) is only a relatively small proportion of the total land then acquired; presumably the rest of that land was indeed used for the provision of actual housing.
25. I am not however impressed by the Applicants’ argument that the plan to the 1924 Indenture shows that the part of the land within the present application site was specifically envisaged as housing plots, and intended to have actual houses built on it. It seems to me much more probable, indeed almost certain, that the plots shown on the 1924 plan indicated the previous (or previously intended) state of subdivision of the land concerned, rather than having anything to do with the detail of the local authority’s then intended housing development.
26. The Objector’s argument is clearly correct (in my view) that there were statutory powers in the housing legislation (as there still are to this day) to

provide areas within land held for housing purposes, to be used as ‘open spaces’, or ‘places of recreation’. Indeed that was precisely the nature of the piece of land which the Supreme Court were considering in the *Barkas* case.

27. Rather contrary to what the Applicants seem to argue, there does not appear to be any evidence or suggestion that the part of the 1924 land within the application site was ever laid out with actual houses, rather than as part of a park or recreation ground. There is no suggestion, for example, that houses were first built there, and then demolished. On the contrary, the clear impression given by the totality of the material, and not contradicted by any of the evidence which I have seen, is that, to the extent that this land was laid out for anything after 1924, it has always been laid out as part of the larger area of park/recreation ground.
  
28. In these circumstances, and given that the land has been continuously owned (and maintained it seems) by the relevant local authority throughout, in my view the Objector must be correct in its argument that it can be assumed from the circumstances that the area concerned was properly provided, under statutory powers, as an open space or recreation ground within an overall larger area being developed for housing.

29. As such, it is correct to say that the situation here is effectively on all fours with that considered in the *Barkas* case. The arguments put forward on behalf of the Applicants on this point are not in my view at all convincing. Thus in my judgment the correct conclusion to reach on the largely undisputed facts is that, in the case of the 1924 land as well, recreational/leisure use of the relevant part of Parc y Werin by the local public will have been ‘by right’, not ‘as of right’, during the whole of the period being considered.
30. It follows, in my view, that there is no justification for the convening of a local public inquiry in order to consider the matter further. The application simply cannot succeed, in my judgment as a matter of law, because the use of the application site cannot have been ‘as of right’, in the sense required by the law.
31. I ought perhaps to state, for the benefit of all who read this Advice and my Recommendation, that what I say relates only to the statutory criteria under *Section 15* of the *Commons Act 2006*. The question of what *ought* to happen in the future at Parc y Werin is wholly outside the scope of my consideration, and is a matter for local political decision.

## **Recommendation**

32. My recommendation to the Registration Authority accordingly is that no part of the application site at Parc y Werin should be added to the statutory register of town or village greens, for the reasons given in this Advice, and that this decision can properly be taken without convening a public local inquiry.

Cornerstone Barristers  
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London WC1R 5JH  
*and*  
One Caspian Point  
Pierhead Street  
Cardiff Bay CF10 4DQ

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



**CITY & COUNTY OF SWANSEA**

**COMMONS ACT 2006, SECTION 15**

**APPLICATION TO REGISTER LAND KNOWN AS  
PARC Y WERIN, GORSEINON,  
AS A 'TOWN OR VILLAGE GREEN'**

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**ADVICE AND RECOMMENDATION**

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Mrs Sandie Richards  
Principal Lawyer  
Council of the City & County of Swansea (Registration Authority)  
County Hall  
Oystermouth Road  
Swansea  
SA1 3SN

DX: 743540 SWANSEA 22

# Agenda Item 7

## Report of the Head of Economic Regeneration and Planning

### Planning Committee - 10 May 2016

#### Provisional Tree Preservation Order P17.7.4.599

#### Tavistock Road and Parc Wern Road, Sketty, Swansea. 2016.

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

**Recommendation:**

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

**For Decision**

#### 1. Introduction

- 1.1 This report has been modified in response to comments made at the Planning Committee Meeting on 12<sup>th</sup> April 2016 and a deferment for site visit on 10<sup>th</sup> May 2016.
- 1.2 The provisional Order was served on 28<sup>th</sup> January 2016

#### 2. Objections and Representations

- 2.1 Two letters expressing objections have been received within the minimum required consultation period. No letters of support have been received.
- 2.2 Mr Booker of 17 Tavistock Road objects to the trees on his property being included due to the following reasons:
  - they do not have amenity value
  - that they are dangerous.
  - that the procedural requirements of the Regulations have not been followed.
  - that the method used for assessing the trees is vague and hardly a reason for implementing a TPO.
  - None of the trees are rare or make a significant contribution to the character of the area
  - The trees are not suitable in their current position
  - Correspondence from neighbours was ignored and withheld from the Secretary of State at the time of Mr. Booker's objection to the original order.
- 2.3 Kevin Lane & Company Solicitors has objected on behalf of Dr and Mrs Andrews at 10 Queens Road to one of two copper beech at their property being included.

- 2.3.1 The objection is on the grounds that the tree is causing damage to the boundary wall and they are fearful of it collapsing.
- 2.3.2 Mrs Andrews also stated that the tree is too close to their house when she spoke at the previous Planning Committee.
- 2.3.3 Kevin Lane & Company Solicitors also state that the tree impinges on the access of sun, light and air to the front of the property.
- 2.3.4 They also make a representation about the other copper Beech stating that they would like to prune it.

### **3 Appraisal**

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

- 3.3.6 The trees are at the end of the large garden of 17 Tavistock Road and are some distance from the house; this is replicated for the adjacent property in Parc Wern Road.
- 3.3.7 An objection cannot be escalated to the Secretary of State. An appeal can be made to the Secretary of State following confirmation on a point of law; this also applies to the new TPO.
- 3.4 The Beech tree at 10 Queens Road is cracking the boundary wall and causing a slight lean, but this is not excessive at this moment in time. If the damage worsens an application can be made to remove the tree, the circumstances at the time will be assessed on its own merits.
- 3.4.1 The copper beech is a mature specimen and will have a reduced growth rate due to the limited available rooting area. The purple leaves of this tree also make it a slow growing specimen. These factors will make further damage to the wall happen over a long period of time.
- 3.4.2 The tree is a mature specimen, damage to the house is unlikely as the juxtaposition has been established for some time and no damage has been reported. Subsidence is also unlikely as this requires a shrinkable (clay soil) that is unlikely to be present in this part of Swansea.
- 3.4.3 The tree can continue to contribute to local amenity for at least ten years.
- 3.4.4 Removing such a tree to increase light levels would not usually be entertained if the tree is protected.
- 3.4.5 Kevin Lane & Company Solicitors has been informed of the procedure for applying to do work to protected trees.

#### **4. Recommendation**

- 4.1 It is recommended that the Tree Preservation Order: Tavistock Road and Parc Wern Road, Sketty, Swansea. 2016; TPO P17.7.4.599 be confirmed without amendment.
- 4.2 If the committee members decide that the beech tree at 10 Queens Road should not be included in the TPO, it is recommended that Tree Preservation Order: Tavistock Road and Parc Wern Road, Sketty, Swansea. 2016; TPO P17.7.4.599 be confirmed with the modification of tree T12 omitted.

**Contact Officer:** Alan Webster  
**Extension No:** 5724  
**Date of Production:** 25th April 2016

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: 10<sup>TH</sup> MAY 2016

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

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

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



## TWO STAGE VOTING

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

The first vote is taken on the officer recommendation.

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

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

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

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

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

## CONTENTS

ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
1	2014/0977	<p>Parc Ceirw, Cwmrhydyceirw Quarry and adjoining land, Cwmrhydyceirw, Swansea</p> <p><b>Proposed cessation of landfill and other operations enabled by residential development circa 300 dwellings, public open space, associated highway and ancillary work (outline)</b></p>	APPROVE
2	2015/2223	<p>Land off Fabian Way Swansea SA1 8LD</p> <p><b>Erection of a detached tyre and auto-care centre and two detached units (Class A3)</b></p>	APPROVE
3	2015/2258	<p>Land at Cawsi Farm Mynydd Gelli Wastad Road Morriston Swansea SA6 6PX</p> <p><b>Care home facility incorporating elderly mentally infirm facility, special needs facility and private hospital (outline)</b></p>	REFUSE
4	2016/0086	<p>Land at Cefn Betingau Farm, Morriston, Swansea, SA6 6NX</p> <p><b>Removal of condition 8 of planning permission 2013/0865 granted 28th August 2013 to remove the need for hedge planting</b></p>	APPROVE
5	2016/0605	<p>38 Oakleigh House School Penlan Crescent Uplands Swansea SA2 0RL</p> <p><b>Detached outbuilding to facilitate two extra classrooms</b></p>	APPROVE

**PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016**

ITEM 1

APPLICATION NO.

2014/0977

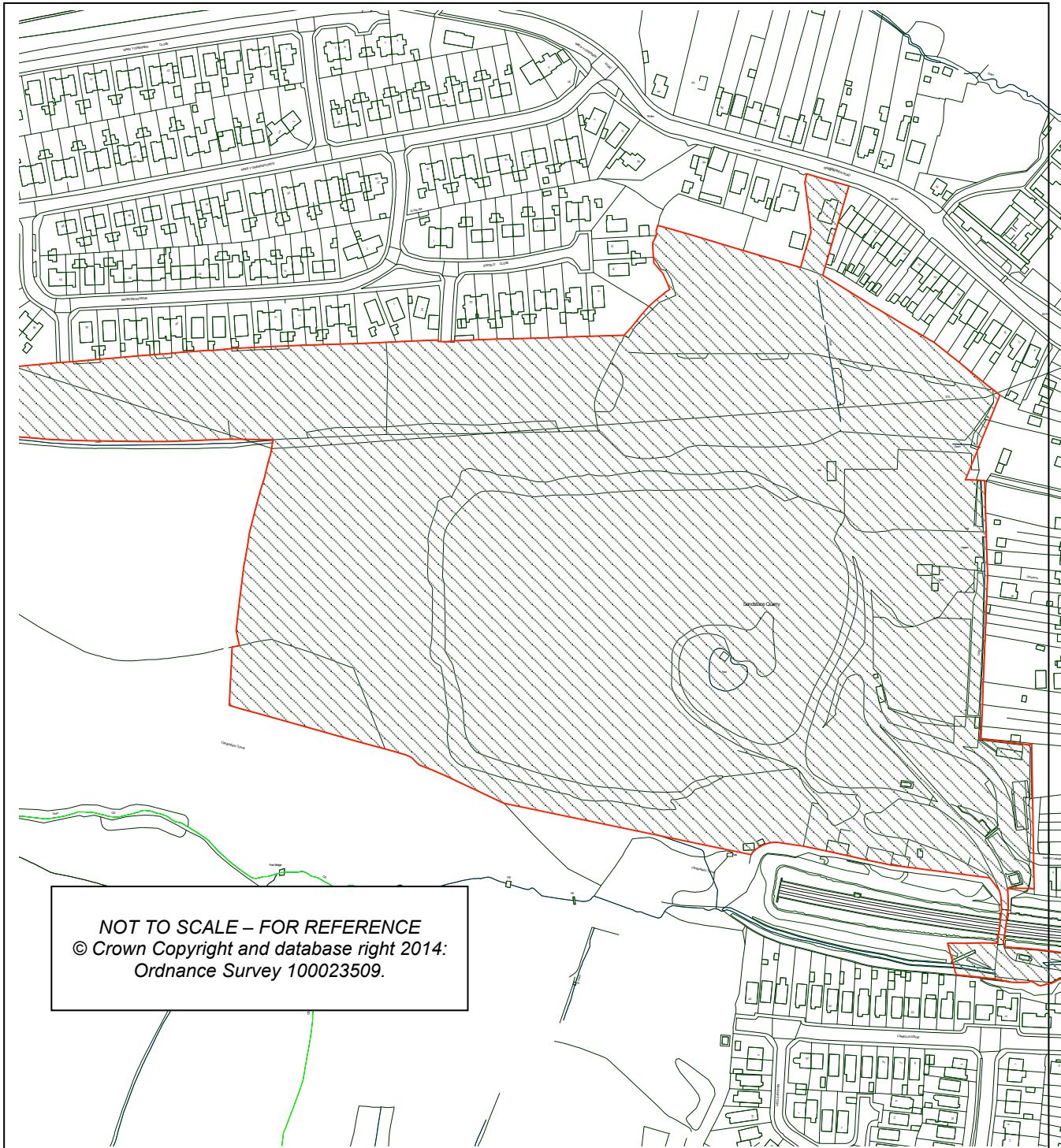
WARD:

Morrison

**Location:** Parc Ceirw, Cwmrhydyceirw Quarry and adjoining land, Cwmrhydyceirw, Swansea

**Proposal:** Proposed cessation of landfill and other operations enabled by residential development circa 300 dwellings, public open space, associated highway and ancillary work (outline)

**Applicant:** Edenstone Homes Ltd and S I Green UK Ltd





## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 1 (CONT'D)

APPLICATION NO.

2014/0977

### **BACKGROUND INFORMATION**

**This application is reported to Committee as it exceeds the development threshold set out in the Council Constitution. A site visit has been requested.**

### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
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 EV28	Within locally designated areas the natural heritage will be preserved and enhanced wherever possible. (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)

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 1 (CONT'D)	APPLICATION NO.	2014/0977
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 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 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)	
Policy HC24	Provision of public open space within new residential developments. (City & County of Swansea Unitary Development Plan 2008)	

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 1 (CONT'D) APPLICATION NO. 2014/0977

- 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 AS10 Accessibility - Incorporation of appropriate traffic management measures in new developments. (City & County of Swansea Unitary Development Plan 2008)
- Policy AS4 Accessibility - Creation and improvement of public rights of way. (City & County of Swansea Unitary Development Plan 2008)

### SITE HISTORY

<b>App No.</b>	<b>Proposal</b>
2014/1132	To lop 2 Birch tree covered by TPO 364 Decision: Withdrawn Decision Date: 23/04/2015
2001/1223	Erection of detached storage building Decision: Grant Permission Conditional Decision Date: 30/10/2001
2003/0394	Siting of two detached portacabins and portable toilet block Decision: Withdrawn Decision Date: 11/11/2003
2011/0498	Residential development for 58 dwellings (outline) Decision: Withdrawn Decision Date: 12/07/2011
2010/0825	Construction of site offices, mess facilities, weighbridge, wheel cleaning facility, resurfacing of car parking areas and access roads, creation of surface water attenuation pond, fuel store and acoustic fencing to a maximum height of 4m Decision: Grant Permission Conditional Decision Date: 12/01/2011
2015/2544	Variation of condition 1 of planning permission 2010/0825 granted 12th January 2011 to extend the period of time in which to start work Decision: Approve Conditional (S73) Decision Date: 17/03/2016

**RESPONSE TO CONSULTATIONS**

The application was advertised in the local press, by notice and 104 neighbours were consulted. EIGHTY LETTERS OF OBJECTION have been received, ONE LETTER OF COMMENT and ONE MIXED LETTER OF COMMENT. The responses may be summarised as follows:

1. Concerns the development would increase traffic congestion in the area around the school which is already congested at the beginning and end of the school day.
2. Concerns the existing roads around the development area are not wide enough to accommodate the traffic arising from the development.
3. Concerns the construction traffic associated with the development would be detrimental to highway safety and the living conditions of existing residents.
4. Concerns regarding the loss of greenbelt and farmland.
5. Concerns the development will be sited at the quarry where unknown quantities of unknown waste have been dumped. Air quality may be affected in certain weather conditions due to the presence of methane. How will the gases be vented? Will building works disturb the waste and leech chemicals into water courses.
6. Concerns the development would have a detrimental impact to wildlife in the area and their habitat.
7. Concerns local schools and doctors surgeries are over capacity.
8. Concerns the proposals would result in a loss of privacy to existing residents.
9. Concerns no provision has been made for a children's play area.
10. Concerns the proposal includes the provision of 3 storey houses within a dense arrangement, this would not be in keeping with the character and scale of dwellings in the area.
11. Concerns that the open space should be provided as part of the planned development.
12. Concerns the development may cause land drainage problems in the local area.
13. Concerns that the sewerage system may not be able to cope with an extra 300 houses.
14. Concerns the proposed access off Maes Y Gwernen Road may cause traffic accidents.
15. Concerns emergency service routes to the hospital and surrounding houses would be adversely affected by the development.
16. Concerns the development would result in increased traffic pollution.
17. Concerns there is little demand for new housing in the area.
18. Concerns regarding the impacts of the chemical treatment of Japanese knotweed on residents, including children, and wider concerns relating to building on a site with Japanese knotweed including the availability of mortgages.
19. Concerns the proposals state the quarry development will not be started until up to 50% of the houses have been constructed, which will take 4+ years (phases 1 and 2). This should be phase 1 to make sure the quarry is dealt with and not forgotten by the developers or the developers may go bankrupt.
20. Concerns the traffic from the development will cause a noise nuisance for existing residents.
21. Concerns regarding the loss of TPO trees at the site.
22. Concerns a previous application for 100 houses on the site was rejected because it was too near the quarry – now it is proposed to build within the quarry.
23. Concerns regarding methane gas and the effects in the coming years.

**PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016**

ITEM 1 (CONT'D)

APPLICATION NO.

2014/0977

24. Concerns the open space and additional public access lanes to the development may attract anti-social behaviour.
25. Concerns regarding the long term maintenance of the site including landscaping, roads and lighting.
26. Concerns regarding the loss of value to neighbouring properties as a result of the development.
27. Concerns regarding the health of children playing within the development.
28. Concerns the development would impact on the access to 42 Maes Y Gwernen Road.
29. Concerns the development would result in the loss of green space.
30. Concerns the landfill should be retained in favour of exporting waste to other authorities.
31. Concerns the provision of a lay-by for the school may put children's lives at risk
32. Concerns the development would destroy the community spirit amongst residents in the area.
33. Concerns that if the developers build out housing without remediating the quarry, then it may not be legal for houses to be built within close proximity to the quarry.
34. Concerns regarding injuries to the occupiers of the development from golf balls from the adjacent golf club.
35. Concerns that the development should provide adequate leisure/recreation facilities.
36. Concerns regarding whether additional bus services will be provided.
37. Concerns regarding the placement of the new pedestrian crossing on Maes Y Gwernen Road would add more traffic noise, congestion and access issues.
38. Concerns the grass verge outside the school should be retained for its flora and fauna, its character, and as a safe zone for parents and children to meet and talk.
39. Concerns the proposed parking area within the school would result in the loss of school playing fields.
40. Concerns the transport assessment does not reflect the traffic problems occurring and the school and don't take account of local factors.
41. Concerns regarding the impact of the new access off Maes Y Gwernen Road on the residential amenity of neighbouring occupiers.
42. Concerns planning applications have previously been refused for residential developments at No. 53 Maes Y Gwernen Road and that this application should also be refused, in view of its impacts on neighbours.
43. Concerns regarding the stability of the land at No. 57 Maes Y Gwernen Road from the formation of the access road.
44. Concerns regarding who will manage and monitor the quarry and pumping station in the future.
45. Concerns regarding what controls will be in place to prevent the developer from leaving the landfill and/or housing incomplete and possibly in a dangerous condition.
46. Concerns ground water pumping is not a satisfactory permanent solution to the drainage problems as the developer may cease to trade.
47. Concerns the development will make access to and from the rear lane of the terraced houses in Maes Y Gwernen Road very difficult and dangerous.
48. Concerns that the proposed road improvements should be undertaken prior to any houses being built.
49. Concerns the proposed development including the road layout and barriers will have an impact on customer parking for the corner shop, will impact on access to the hairdresser and will prevent daily deliveries of stock to the business.

**FOLLOWING THE SUBMISSION OF AN AMENDED MASTERPLAN AND UPDATED ENVIRONMENTAL INFORMATION, A FURTHER RE-CONSULTATION EXERCISE WAS UNDERTAKEN.**

The application was advertised on site and previous objectors were consulted. FOURTY LETTERS OF OBJECTION WERE RECEIVED AND TWO LETTERS OF COMMENT. The letters do not raise any additional issues over and above those summarised above.

**Other Consultation Responses:**

Highways Observations 26.04.16

Background

- 1.1 This proposal is for the redevelopment of the existing site to erect up to 300 houses under an outline planning permission (with access being considered currently). A Transport Assessment has been submitted in support of the application. The site extends to an area of approximately 35 acres
  - 1.2 The Transport Assessment has assessed the transport and traffic implications of the development and the results indicate that the proposal is acceptable.
  - 1.3 The roads leading to the site are mainly estate roads residential in nature although Heol Maes Eglwys is more heavily trafficked being a single carriageway road providing a link to Morryston Comprehensive, Morryston Leisure Centre and Morryston hospital. The introduction of the pedestrian crossing will be of benefit to provide a direct pedestrian link to these trip attractor sites.
2. Transport Assessment/Traffic Generation
- 2.1 The Transport consultants Vectos did a scoping exercise for the Transport Assessment and the following junctions were asked to be included in the document:
    - Maes-y-Gwernen Road/Maes-y-Gwernen Drive;
    - Maes-y-Gwernen Road/Heol Maes Eglwys/Llanllienwen Road/Cwmrhydyceirw Road;
    - Chemical Road/Heol Dyfan;
    - A48 Clasemont Road/Vicarage Road/A48 Pentrepoeth Road;
    - A48 Pentrepoeth Road/Sway Road/Clase Road;
    - Sway Road/Chemical Road/Clydach Road;
    - Clydach Road/Llanllienwen Road/B4603;
    - Heol Maes Eglwys/Morryston Comprehensive School/Rhodfa Fadog;
    - M4 slips/Neath Road/Ffordd Cwm Tawe/B4603.

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2.2 The proposed vehicular access points are indicated at being available at:

- Brodorion Drive (secondary)
- Enfield Close (secondary)
- Maes y Gwernen Close (primary).

The existing quarry access has not been included as an option.

Other pedestrian/cycle routes/links are shown to be available increasing the permeability of the site.

Works to facilitate access to the existing highway network will need to be completed under a section 278 Agreement with the Highway Authority.

2.3 Ultimately all the vehicles end up passing along Maes y Gwernen Road and past the primary school, hence the majority of the highway related works have been concentrated there. The other area to benefit will be at Heol Maes Eglwys where a pedestrian crossing has been agreed.

2.4 The base flows are derived from junction turning counts undertaken on 7/11/13 and the data has been growth factored to 2014 and 2019.

2.5 The TRICS data samples are appropriate for the site (54 separate sites were compared). The modal splits are derived from the TRICS data and the 2011 census for the Morryston Wards.

2.6 Traffic generation is predicted to be 48 arrivals and 127 departures in the am peak hour (175 in total) and 120 arrivals with 70 departures in the pm peak hour (190 in total). This equates to just over 3 vehicles a minute during the peak hour and does not give rise to any capacity issues. These figures are offset by the existing trip generation so it is considered that the TA document is robust. Junction testing was undertaken where the predicted impact was in excess of 5%, this resulted in ACRADY/PICADY modelling being undertaken at a number of junctions. All of the junctions remained within capacity and it was concluded that no additional infrastructure to mitigate for the traffic generated by the development was required.

2.7 The personal injury accident PIA data was obtained for the extended area for the previous 5 years. The report showed no fatal accidents, 5 serious and 88 slight. Of these only three were anywhere near the site. The PIA data does not indicate any safety issues on any of the roads or junctions within the proposed development area as the majority were caused by driver error.

2.8 The TA indicates that the roads will be designed using Manual for Streets criteria although regard will need to be made for shared use footways and accessibility to allow public transport to enter the site. It is not clear whether the roads will be adopted but notwithstanding that they will need to be designed to Highway Authority standards and specification.

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### 3. Parking

- 3.1 Parking for the site will be dealt with at the stage of reserved matters and will be provided in accordance with the CCS Parking Standards. This aspect will be addressed at detail stage should consent be given. This will include the need for visitor parking.

### 4. Highways improvements/Section 106 agreement

Extensive negotiations have taken place with the developer/agent since the planning application was submitted in July 2014. A number of different options were put forward and the following highways improvements have been finally agreed:

1. A toucan crossing on Heol Maes Eglwys (plus maintenance)
2. A zebra crossing outside the school
3. Guard railing and signage outside the school

The site build out is anticipated to be in three phases with one third of the costs being provided at 40% build out, 65% build out and finally 90% build out.

This has been agreed and should enable the mitigation measures to be provided in a timely fashion commensurate with the housing provision.

### 5. Access by other modes

- 5.1 The estate to the north of the site is served by a bus frequency of 2 hours whereas an hourly service serves Cwmrhydyceirw Road/Chemical Road. There may be scope to service the site using the existing bus provision. Pedestrian links to the site would further enhance the accessibility of the site.

- 5.2 Whilst no internal highway layout has been provided it will be a requirement for at least one of the footways to be of a suitable layout to allow for shared cycle/pedestrian use, this is usually a minimum of 3m width. This is a requirement as set out in the Active Travel Act.

- 5.3 The site is located within 1km of NCN Route 43 which connects Swansea to Builth Wells and also links to NCN Route 4.

### 6. Conclusion

- 6.1 The analysis shows all junctions remaining within capacity for the post development scenario, and as such the TA shows the development proposal are acceptable in terms of additional traffic generated being able to be accommodated by the existing infrastructure.

### 7. Recommendation

- 7.1 I recommend no highway objection subject to the following;



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- i. The internal road serving the site shall be constructed in accordance with details to be submitted and agreed. Shared use footways should be included to encourage walking/cycling.
- ii. Each dwelling shall be provided with suitable parking facilities in accordance with details to be submitted and agreed.
- iii. 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.
- iv. No development shall commence until the section 106 Agreement has been agreed and signed off, subsequent payments being due in accordance with the approved phasing scheme as and when the development thresholds are met.
- v. 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.
- vi. All off-site highway works (access points) 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 , Guildhall Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Team Leader (development), e-mails to, tel. no. 01792 636091

### The Coal Authority 12.08.14

The Coal Authority is satisfied with the broad conclusions of the reports submitted as part of the Environmental Statement, informed by the site investigation works; that coal mining legacy issues are not significant within the application site and do not pose a risk to the proposed development. Accordingly, The Coal Authority **does not object** to the proposed development and no specific mitigation measures are required as part of this development proposal to address coal mining legacy issues.

### Housing Department 2.10.14

The Housing Market Assessment identifies a high need for affordable homes in this area.

The projected need is 2100 of which 100% could be affordable. Therefore we will be seeking the provision of 30% Affordable Housing.

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We ask that the scheme would include a range of DQR compliant house types and mix of tenure, pepper potted throughout the site, to include social rent, intermediate rent and sale such as low cost home ownership (to be determined/negotiated). The design and specification of the affordable units should be of equivalent quality to those used in the Open Market Units. Two & three bedroom units are the preferred property type. The units should be disposed of via an RSL.

### 16.10.14 Parks Department

The nearest play provision to the proposed development is in Heol Tir Du Park which is over a Kilometre away from the development, children wishing to use this facility would also have to cross main roads. I therefore propose we seek to enter into a planning obligation to secure an offer of a financial contribution from the developer for the provision of an equipped play area to LEAP standard within the development and also a commuted sum of £75,000 for its future maintenance by the Council.

### Pollution Control Division 16.10.14

Clearly there are areas of concern surrounding this application not least of which is the issue of on site gas generation and its potential implications. The applicant has provided data suggesting minimal gas generation from the landfill site itself but has also suggested that some gas levels detected may be arising from a separate and distinct source. This however has not been conclusively proved.

In either case the main concern is over potential gas migration to the detriment of receptors, particularly residential receptors, brought within the existing permitted site boundary should the application be granted.

From the data presented to date it would seem that it is unlikely that the “public open space” element will present any detrimental human health impact, provided that the proposed mitigation measures are put in place, but this will need further assessment in the light of additional data still to be collected.

It is noted that further and continual ground gas monitoring is to take place as part and parcel of the requirements to be imposed by Natural Resources Wales as a consequence of the landfill operation ceasing should the outline application be granted. Both gas and leachate management systems will form a requirement of the closure agreement and will be required to continue many years after closure.

Notwithstanding the above I see no reason to oppose the granting of outline permission though it must be acknowledged that further monitoring data is to be provided and that, should a full application be forthcoming, conditions will be imposed.

### Pollution Control Division 20.10.14

Recommend standard conditions in relation to: contaminated land investigation, imported aggregates, imported soils, land gas monitoring and protection measures and a construction method statement.

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### Pollution Control Division 25.04.16

The pollution control division have observed the discussions and reporting on this site over 30 years. We have reviewed the comments in this report and are satisfied that its technical content is correct. We have no objection to this report going forward to committee on the following basis:

The pollution control division has not been the waste regulation team since April 1996; that role passed over to the Environment Agency, which is now Natural Resources Wales.

Natural Resources Wales are not objecting to this proposal and accept that the waste permit will stay in place for enforcement purposes. They have recommended certain matters which should also be the subject of planning control. We agree with this approach especially if the more important public safety issues can be incorporated in a section 106 agreement as outlined in this report.

Given our experiences with this site over many decades, it is our view that there are no overriding difficulties with noise, dust, odour, landfill gas, or water pollution, that cannot be dealt with through planning controls or permit enforcement by NRW. This is assuming that the proposal goes ahead in the manner discussed with the present permitted company and their existing consultants. Clearly we cannot assume that things will not go wrong at some point, although if the developer and the permit holder act in compliance with all the necessary controls, the site should stay under safe control and any potential short-term nuisance should be minimal. All the potential public health risks are minimal given the length of time the waste mass has been stabilising within the quarry.

The unusual feature for this area is the absolute need for permanent pumping arrangements to keep the site water table at the bottom of the quarry. This is discussed in the report and legally binding requirements will need to stay in place for the surrounding housing to be protected. Our normal role in dealing with development on or near contaminated land and any other Environmental Health issues will be dealt with by the team but enforcement will be through the NRW permit or the planning conditions. Other notices will be used later to deal with any construction noise issues as normal.

### Natural Resources Wales (NRW) 10.12.14

**We would request that determination of the application is deferred to allow for the receipt and assessment of the further information which is material to the consideration of the application.**

### **Further Information Required prior to determination**

We welcome the submission of the Environmental Statement (ES), however there are a number of outstanding issues, which need to be addressed prior to determination of the application.

### **1. Environmental Permit**

SI Green UK hold an Environmental Permit authorising the excavation and relocation of wastes originally deposited in the former landfill area of the quarry into a new engineered landfill phase as part of the redevelopment of the site as a non-hazardous landfill.

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SI Green have held preliminary discussions with Natural Resources Wales (NRW) regarding plans to now leave the historic waste in situ, cap the historic waste deposits and close the landfill site. None of the historic waste would be relocated. This change would require a variation to the site permit but to date no application to vary the permit has been received.

*Groundwater*

The permit holder has recently submitted a proposal to us regarding the possible restoration of the site, which includes a scheme to manage groundwater in perpetuity by pumping. Ground water at the quarry is maintained below the existing waste mass by a pumping regime operated by the permit holder. If pumping ceases and groundwater levels are allowed to recover we would expect the natural hydraulic gradient to the south / south east would be restored, possibly saturating the existing waste deposit. The planning application suggests a land trust would take on the responsibility of the environmental permit and pumping requirements.

**We have concerns regarding this approach as reliance on the Environmental Permit to maintain the ground water pumping in perpetuity cannot be guaranteed and as the EPR Regulated site is required to operate without causing an unacceptable risk to the environment, either an alternative mechanism should be sought or we require evidence that the pumping regime can be delivered and maintained.**

*Landfill gas management*

Currently there is no active landfill gas abstraction at the site; the landfill gas management system comprises passive gas venting wells and gas monitoring boreholes. No gas migration attributed to the landfill has been detected to date, however active gas management in the future cannot be ruled out.

**It is unclear if and how a rise in the groundwater level would impact on gas production and/or odour emissions. Therefore, we recommend that further information is provided in order to clarify this matter.**

The ES includes potential impact of landfill gas on the surrounding environment (within Appendix 8). – The current landfill Gas Risk Assessment referenced in the planning application is based on moving the waste.

**A revised Gas Management Plan (GMP) is required if the waste is to remain in situ. We would recommend that this is submitted for review and comment, prior to determination.**

The proposed development site is also located within 250m of a landfill site that is potentially producing landfill gas.

Landfill gas consists of methane and carbon dioxide is produced as the waste in the landfill site degrades. Methane can present a risk of fire and explosion. Carbon dioxide can present a risk of asphyxiation or suffocation. The trace constituents of landfill gas can be toxic and can give rise to long and short term health risks as well as odour nuisance. The risks associated with landfill gas will depend on the controls in place to prevent uncontrolled release of landfill gas from the landfill site. Older landfill sites may have poorer controls in place and the level of risk may be higher or uncertain due to a lack of historical records of waste inputs or control measures.

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Under the conditions of the Environmental Permit for the landfill, the operator is required to monitor for sub-surface migration of landfill gas from the site. An examination of our records of this monitoring shows that there is no previous evidence of landfill gas migration from the site that could affect the proposed development. This environmental monitoring data from the site is available on our public register.

You should be aware of the potential risk to the development from landfill gas and should carry out a risk assessment to ensure that the potential risk is adequately addressed. Your Authority's Environmental Health and Building Control departments would wish to ensure that any threats from landfill gas have been adequately addressed.

In addition, new developments within 250m of an existing landfill (waste) facility could result in the community at the proposed development being exposed to odour, noise, dust and pest impacts. The severity of these impacts will depend on the size of the facility, the nature of the waste it takes and prevailing weather conditions. If the operator can demonstrate that they have taken all reasonable precautions to mitigate these impacts, the facility and community will co-exist, with some residual impacts. In some cases, these residual impacts may cause local residents concern, and there are limits to the mitigation the operator can apply. Only in very exceptional circumstances would we revoke the operators permit.

As the planning application is within the EPR permit site boundary any development must not compromise the operator's ability to manage and monitor the landfill site in accordance with their permit. The operator remains responsible for maintaining, monitoring and controlling activities at the site throughout closure and aftercare until permit surrender.

Contracts should be in place with landowners that allow the operator appropriate access (If necessary the operator may use the provisions of the Environmental Permitting (England and Wales) Regulations 2010, regulation 15 (and schedule 5, part 2)). We expect to be notified before installation through an amendment to the sites operational techniques, management plans, working plan or closure report, if the development is likely to have an impact on:

- The inspection, maintenance and/or integrity of the landfill cap
- The restoration profile.
- Landfill gas management, including
  - o Monitoring fugitive emissions
  - o Gas abstraction infrastructure, including replacement
  - o In-waste gas monitoring
- Maintenance and monitoring of leachate infrastructure
- Groundwater infrastructure
- Surface water management and/or the quality of run off
- Obtaining topographic surveys
- Any monitoring to provide evidence that the waste is 'stable' for a surrender application
- Site security

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Amended procedures must ensure that operators continue to comply with permit conditions (and Landfill Directive, article 13(c) requirements, where applicable).

## **2. Contaminated Land**

As stated above the site currently benefits from an Environmental Permit for a new non-hazardous engineered landfill. The permit was granted on the basis of the former landfill being excavated and the waste placed into this new engineered landfill. We understand from the Environment Statement that the current proposal involves leaving the former landfill insitu and placing a cap over it.

Although capped the former landfill will still generate leachate which poses a risk to groundwater beneath and adjacent to the site. Section 8.8 of the Environmental Statement (*Geraint John Planning, July 2014*) references a hydrogeological risk assessment which is in the process of being prepared by MJCA in support of the planning application. This will assess effects on groundwater from the former landfill area.

**We request that the risk assessment is submitted to NRW for review and comment, prior to determination.**

We also note that Section 7.44 of the Planning Statement (*Geraint John Planning, July 2014*) which has been supplied with the application requests that a condition is applied to any permission granted to restrict any future landfilling at this location.

We would support this approach, the operators could also apply to NRW to vary their current Environmental Permit to limit the waste input to zero, which would also restrict future landfilling at this location.

Within the Drainage Statement (*Shear Design, February 2014*) we note that the surface water drainage scheme will utilise the existing lagoon sump on the quarry floor. The proposal is to allow the operational range of the sump to increase from its current fixed level of approximately 32mAOD up to a maximum of 37mAOD.

Allowing the water levels to rise within the lagoon may lead to a consequential rise in adjacent groundwater levels. Section 8.19 of the Environmental Statement states '*The groundwater levels recorded at the quarry generally are above the level of the base of the former landfill area*'. This is supported by the cross sections provided in Appendix 8.2 of the Environmental Statement

Allowing groundwater levels to rise further may lead to ingress on groundwater into the landfill, generating leachate and therefore increasing the risk of pollution. The hydrogeological risk assessment, currently being produced, should assess the effects of rising groundwater levels on the waste mass and assess the risk of pollution to groundwater occurring.

## **3. Surface Water Disposal**

We note from the submitted drainage strategy (*Ref. 13169.D100C.02.03 - dated 24th February 2014*) that two options are presented for surface water drainage at the site, both of which propose discharging into Cwmrhydyceirw Stream at Greenfield rates or lower.

**We request that the applicant explores all Sustainable Drainage Systems (SuDS) for the site. If it is demonstrated that SuDS cannot be implemented, then we would wish to be provided with the evidence, prior to determination.**

Ultimately the drainage system design is a matter for your Authority's engineers. However we would want to ensure that the surface water drainage system is 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.

**We therefore recommend that a full surface water drainage strategy be submitted to and approved by your Authority, prior to determination.**

#### **4. Foul Water Discharge**

We note that foul water flows are to be discharged to the main public sewer and that as with surface water disposal, two options are suggested. **We strongly recommend that, prior to determination of this proposal, 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 for both these options.**

We advise that your Authority must also be satisfied that the proposals for foul water disposal can be constructed, adopted and properly maintained, across the site; with particular consideration given to the proposed dwellings within Parcel D; which would require a new foul pumping station.

**Further details should be provided of the measures by which the new pumping station would be maintained, prior to determination.**

**In addition we also recommend that a Final Report Drainage Survey is submitted, in order to ensure that there are no misconnections once the site is complete. This could be conditioned as part of any planning permission that your Authority may be minded to approve.**

#### **5. Watercourses**

We note that the ES mentions diverting or culverting the stream in order to construct a number of the proposed residential properties. NRW would advise that culverting is avoided and that the stream remains open, after its diversion. This would be in line with the Water Framework objectives for this particular catchment.

We recommend that this is incorporated into any final design/layout for the scheme and if it is not then we would suggest that reasons must be provided to your Authority as to why this measure cannot be implemented.

**Further comments and Matters which could be addressed by Condition**

## 6. Ecology

The initial Extended Phase 1 Habitat survey work was undertaken during February & March 2014, which is outside the optimum period for many plant species. Nevertheless, we note from the findings that the site is comprised of an excavated quarry, enclosed by mature hedgerows and trees, with areas of scrub colonising certain areas.

Other habitats include; semi-improved grassland, marshy grassland, grazed paddocks and areas of older mature woodland. A sump pond is located at the centre of the site (within the quarry), along with other ephemeral waterbodies.

The ES identifies losses for a number of the habitat areas highlighted in the previous paragraph, as a result of the development, but proposes a series of Mitigation Measures, which are highlighted in Chapter 7 (Section 7.158) and Chapter 9 (Section 9.3) of the ES, along with the intention to deliver the more targeted Mitigation Measures through an Environmental Management Plan (EMP). **We advise that following discussion and agreement with your Authority's Planning Ecologist, the provision of the EMP and implementation of the mitigation measures should be made enforceable planning conditions, should your Authority be minded to grant permission.**

## 7. Protected Species (Bats)

We note that a series of three activity surveys were undertaken to ascertain the level of use of the site and that surveyors undertook two walked transect of the site (as shown in Appendix 7.3) and which also involved the use of detectors and recording equipment.

Chapter 7 of the ES states that a number of derelict quarry building are present on site, but these are regarded as being of negligible roosting potential, due to a lack of roofs, exposed interiors and their light and airy nature. Newer buildings are of a prefabricated design and were also classified as being of negligible roosting potential.

We note that only one structure was regarded as having some potential for roosting bats. This was a concrete and brick structure with large vertical fissures running down the outer wall. A dusk emergence survey was undertaken (9 June 2014), but no bats were noted.

**Given that only one survey was carried out and that the use of such features by bats is often infrequent, we recommend that a further survey of this feature is undertaken, prior to the commencement of any works within the vicinity of this feature. We recommend that this is made an enforceable planning condition.**

We also note that an assessment of trees at the site for their potential to support bats, considers them all to be Category 3 (no bat roosting potential).

The surveys themselves recorded a total of four species: common pipistrelle, soprano pipistrelle, Noctule and Myotis spp. The report states that the majority of activity at the site involved pipistrelle foraging and communing (mainly along boundary features, woodland corridors, hedgerows, water bodies). Other activity includes commuting/foraging by Noctules across the site, with occasional Myotis spp recorded throughout the site.



We note that the current masterplan (Figure 3.1) indicates that species poor hedgerows will be removed as part of the development, along with the breaching of existing section of older woodland/hedgerow (in the north of the site). These have been identified as being of value for foraging/commuting bat species, although the ES states that alternative foraging routes will remain available. Nevertheless, there will be a potential overall loss in foraging/connectivity.

Sections 7.177 – 7.179 identify the potential issues affecting bats as well as the general mitigation measures laid down in section 7.158. In order to provide clarity, we advise that a specific Mitigation & Management Plan for Bats is provided which could form part of the overall Construction and Environmental Management Plan (CEMP) mentioned in the ES.

**We advise that the areas to be covered by planning obligations and/or conditions in relation to bats are as follows:**

- The preparation of a design strategy/masterplan for the site which seeks to maximise connectivity and foraging opportunities across the site, replacing any hedgerows or corridors which may be lost wherever possible. This must include, but not exclusively, details of methods of works; timing and duration of works; action to be taken in the event any bats are found.
- The submission and implementation of a lighting scheme to ensure lighting measures do not conflict with bat use of the site, to be agreed with the LPA in consultation with NRW prior to the start of any construction works on site. The scheme shall include low level lighting (where appropriate), along with the siting of lights to ensure that flight paths/foraging/commuting corridors are not illuminated and demonstrate that disturbance to bat flight paths will be avoided). The scheme should address construction activities and the operational phase.
- The submission and implementation of a mitigation planting/landscaping plan to be submitted to, and agreed in writing with the LPA, prior to the start of works. This must include details of planting and management which will maintain flight lines and 'dark corridors' across the site, ensuring connectivity to foraging habitats.

## **8. Protected Species (Peregrine Falcons)**

We note from the ES that a pair of Peregrine Falcons was recorded as using the part of the site as a breeding location. As mentioned in the report, this species is protected under the Wildlife and Countryside Act 1981 (as amended). As such it is illegal to intentionally take, injure or kill any wild bird, or to take, damage or destroy an active nest or its contents.

In addition, Peregrine Falcons are also listed as a Schedule 1 species and are a protected from intentional or reckless disturbance when at, or close to an active nest or when with dependent young.

It is extremely important that consideration is given to this species and to how any disturbance will be avoided and in particular the potential consequences of locating housing within the quarry. Measures to avoid disturbance need to be incorporated and demonstrated in the design and landscaping of the site, and in site clearance, construction and the operation of the site.

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We are supportive of the Mitigation Measures highlighted in Chapters 7 and 9, along with the provision of an agreed Environmental Management Plan (EMP). However, in addition to avoiding any construction disturbance in the breeding season, the proposals need to ensure that any proposal does not lead to future disturbance of the breeding peregrines.

Locating any new houses, footpaths, public access areas; in the vicinity of the nest should be avoided. Any scrub / trees which provide screening between the nest site and human presence / activity on the site, should remain in situ and be supplemented with additional planting, if necessary.

We note that a significant adverse impact could not be ruled out until further detailed design (of proposals in the vicinity of the nest) is undertaken to provide a more definitive assessment and or additional measures are identified to reduce disturbance risk.

**We advise that a specific strategy/mitigation plan for this species is agreed with your Authority's Planning Ecologist, prior to work commencing on site. This should be delivered via an appropriate condition, should your Authority be minded to grant planning permission.**

#### **9. Protected Species (Other)**

We note from the survey results that no evidence of great crested newt, otter or badger was observed. However, the site is considered likely to support a 'good' population of Common Lizard, as a number of individuals were recorded. In addition, a number of ponds/watercourse were identified at the site with survey work confirming the presence of Palmate Newts, Common Frog and Common Toad. Smooth Newts were also been identified as being present during an earlier survey in 2010.

**Therefore, appropriate mitigation measures for these species should be agreed with your Authority's Planning Ecologist, prior to work commencing on site, via enforceable planning conditions, should your Authority be minded to grant planning permission.**

#### **10. Landscape**

We note the submission of the document entitled; '*Parc Ceirw, Morriston, Swansea: Landscape and Visual Assessment (Ref: 1461301/R1)*', dated May 2014 by Solty Brewster Consulting.

The report concludes that of the four viewpoints which were assessed, only viewpoint 1 is considered to have a moderately significant effect on visual amenity, principally due to the close proximity to the site and the lack of existing screening. The overall conclusion of the assessment is that the site would be appropriate to accommodate the proposal, without leading to unacceptable change to the visual amenity with the surrounding area.

The decision will lay with your Authority as to whether you are satisfied with the viewpoints presented as part of the assessment and the conclusions of the report. **We leave to the discretion of your Authority, as to the wording of any condition to secure appropriate mitigation; should you be minded to grant planning permission.**

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## 11. 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 statement / pollution prevention plan with particular reference given to the protection of the surrounding land & water environments.

## 12. Waste Management

Given the nature, location and size of the proposed development, we would recommend that a site waste management plan (SWMP) for the project is produced.

### NRW 24.07.15

Our technical advice remains as stated in our previous response, we write to provide you with an update on our thinking in respect of the planning and permitting interactions.

It is our understanding that should the planning permission be granted for housing in and around the site, SI Green intend to apply for definitive closure of the landfill. However, it is also our understanding that SI Green will not apply for definitive closure of the landfill until such time as any planning permission is granted.

Due to this scenario, and as part of your consideration of this application, we wish to highlight the possibility of residential housing being constructed close to, or on, a permitted non-hazardous landfill remains. Should the landfill be developed there would be a significant risk to the amenity of the development (noise, dust and odour) and there is the potential for landfill gas generation, gas flaring and possible electrical generation activities should sufficient gas be produced.

Until the landfill site is definitively closed, Natural Resources Wales would not permit additional development or unauthorised human access within the permitted site boundary. There are areas of proposed housing and public access which would be within the current permit boundary.

If SI Green were to apply for, and be granted, definitive closure for the site, these access restrictions may be reduced subject to provision of necessary risk assessments (see previous correspondence). However, free access to all of the public open space proposed in the application cannot be guaranteed. Access restrictions to critical infrastructure, such as the ground water pumps and landfill cap, would need to be in place in order to prevent any damage or vandalism.

Following discussions with the applicant and the operator of the landfill, we acknowledge that in principle it would seem possible to manage the interaction of the regimes through the inclusion of appropriate conditions/measures in both the Environmental Permit and Planning Permission.

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Our Industry Regulation Team will be able to discuss the potential wording of permit conditions with the current permit holder should planning permission be granted, but we would defer to your advice on whether appropriate protective requirements could be included in your consent if planning permission was to be issued.

Planning controls / conditions would need to secure the following objectives:

- 1) The prevention of the commencement of development within the areas of land covered by the Environmental permit until such time as the landfill was formally 'Definitively Closed' for the purposes of the Environmental Permitting Regulations.
- 2) The restriction of development/access to certain areas of the landfill site which would need to be protected/secured for necessary landfill aftercare.
- 3) The continued requirement for pumping of groundwater (or otherwise). Pumping is currently used to artificially lower groundwater levels in the vicinity of the quarry. Cessation of pumping would allow groundwater levels to return to its natural hydraulic gradient.

#### NRW 16.10.15

Since providing our original response NRW have held meetings with the operators and developers of the site. The comments made in our letter of 24 July 2015 aimed to summarise the current position and highlight that until such time the landfill is officially closed (by way of an application to NRW), landfill operations could commence at the site. Landfill closure precedes permit surrender. Surrender would only be granted in compliance with the Landfill Directive.

We have subsequently received further risk assessments (August 2015) in which the permit holder confirms, pending planning being granted, that the historic wastes could be left in situ and that an application for closure subject to further capping works would be made.

**Having received this additional information, we provide the following comments, for your consideration.**

#### **Hydrogeological Risk Assessment (HRA) and Groundwater Management**

Information has been provided by the applicant to supplement the current Hydrogeological Risk Assessment and demonstrate the environmental risk of leaving the historic waste in situ.

We have considered this information as part of ongoing compliance work in relation to the site's Environmental Permit (EP). The potential environmental risk from leachate discharging to groundwater beneath the historic waste deposits remains, should the suggested control mechanism of groundwater pumping cease. Currently groundwater levels are maintained at an artificially lowered level, via this pumping regime to ensure the historic waste deposit does not flood.

Whilst the Environmental Permit currently has conditions that require groundwater pumping, this cannot be relied upon in perpetuity to protect any development. Therefore, an alternative legal mechanism must be sought to ensure pumping is maintained.

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We defer to your Authority on whether appropriate protective requirements could be included. Your Authority need to be satisfied that you have sufficient information and confidence in the measures that are proposed by the applicant.

We note that Section 8.8 of the Environment Statement (submitted with the planning application), references the original HRA, which intended to move the waste, within the permitted site boundary. As an updated HRA has now been submitted, which proposes to leave the waste at its current location, we suggest that your Authority may wish to ensure that Section 8.8 of the ES is updated to reflect this.

### **Gas Risk Assessment (GRA)**

An updated Gas Risk Assessment (GRA) leaving the historic waste in situ has also been received by NRW and the further information we requested from the applicant has now been provided.

In the absence of guaranteed closure of the landfill site, the potential for further landfill development still exists. Therefore, we must highlight that (given the permitted waste types), should the landfill be developed, then landfill gas is likely to be produced.

In the event of the permanent closure of the site (and if the historic waste is left in situ), the data suggests that current landfill gas generation is low. However, there is uncertainty in relation to future gas generation should the current waste mass become flooded in the event of groundwater pump failure.

We note that additional boreholes are proposed as part of the gas risk assessment and that the enlarged monitoring data set will be used to produce an updated gas risk assessment for the Environmental Permit. Extension of the gas monitoring network to the North should also be considered.

As has been stated above, a review of the current data suggests landfill gas generation rates are low, however until it can be demonstrated otherwise, gas protection measures in the proposed houses will need to be taken into consideration. We advise that your Authority's Environmental Health and Building Control departments may wish to provide advice on this aspect of the development.

### **Proposed use of the restored former landfill area as public open space.**

In our response of 24 July 2015, we highlighted concerns over public access to the currently permitted landfill and historic waste deposit, should the planning permission be granted for use as a public access open space. We highlighted that until the site is definitively closed, unauthorised human access within the permit boundary would be prevented (via a legally enforceable condition).

Within section 8 of the Environmental Statement supplied with the planning application, the risk of public exposure to the former landfill is discussed. We recognise that capping the landfill will reduce the exposure pathway to historic wastes.

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Your Authority would need to be satisfied that you have sufficient information and confidence of the measures that would need to be taken to; restrict, protect and manage key infrastructure and monitoring points whilst the site is in aftercare (the period between definitive closure and the ultimate surrender of the permit which is likely to span many years, rather than months).

**To conclude, given the complexities of this application, we advise that your Authority should consider the following matters in relation to the establishment of the principal of development and the interfaces between regulatory regimes:**

The proposed development encroaches on an area permitted by Natural Resources Wales for the development of an operational landfill site. You therefore need to consider whether it is feasible / appropriate to establish the principal of development where there is the potential to create a conflict of regulatory regimes and as a result impact on the potential for deliverability of the development.

Your Authority may wish to consider whether it would be feasible / appropriate to place restrictions on phasing of the development. For instance, development being limited to areas outside the permit boundary until such a time as landfill closure is granted.

Definitive closure of the landfill would guarantee no future waste disposal operations could be undertaken at the site. For the site to enter 'definitive closure' the permit holder will need to submit an application (and associated evidence) to Natural Resources Wales for determination. To date no application has been received. The permit would remain in force until surrender.

We are not in a position to pre-empt any formal determination process for site closure. This raises confidence and certainty considerations for your determination. If your Authority considers this an issue, a solution may be to explore with the applicant the opportunity to parallel track both planning and permit (closure or partial surrender applications), at least to the extent where a resolution to issue could be confirmed.

If the above are not feasible, then a further option would be for the applicant to secure a reduction in the area covered by the landfill permit. This would need to take the form of a formal application to NRW to partially surrender the permit. If granted the effect would be to enable consideration of an amended proposal, limiting the development to those areas surrounding the quarry which would be outside of a modified permit boundary. Once again we would be unable to pre-empt the necessary formal determination processes.

#### NRW 9.11.15

Further to our previous response of 16 October 2015, we note that you were seeking further clarification in relation to the proposed open space, which includes the landfill cap.

Once the landfill has entered closure, then public access could be allowed, **but** the area would continue to require management which would involve the restriction of access to critical infrastructure (such as Ground Water pumps and Monitoring Bore Holes). It would also require ongoing management to ensure that the integrity of the engineered landfill cap is not compromised.

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Until the operator makes an application to vary the existing permit to take the permitted area (including the historic landfill), into closure and the closure is accepted by NRW, then the current EPR permit restricts public access.

Your Authority may wish to consider whether it is feasible / appropriate for a phased approach to the number of houses, in relation to public access. Furthermore, the operator would also need to ensure that sufficient time was allocated, in order to make an application to take the site into closure, and to undertake any required works, prior to NRW being able to grant closure.

The developer/operator may have considered this, but it is important that sufficient time would need to be allowed in order to take the site into closure, if the granting of planning or phases of planning are to be dependent on closure being accepted. As previously stated, the duration of aftercare (the period between definitive closure and the ultimate surrender of the permit) is likely to span many years, rather than months.

As previously stated NRW are not in a position to pre-empt any formal determination process for site closure, or any application to reduce that area covered by the landfill permit.

Dwr Cymru Welsh Water (DCWW) 19.11.14

The proposed development is in an area where there are water supply problems for which there are no improvements planned within our current Capital Investment Programme AMP5 (years 2010 to 2015). Any increased demand will exacerbate the situation and adversely affect our service to existing customers and potential users of this proposed development. We consider the proposal to be PREMATURE and therefore **OBJECT** to the development.

DCWW 17.02.15

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development. Following Hydraulic Modelling Assessment of the proposal we withdraw our objection of the 19th November 2014.

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 Dwr Cymru Welsh Water's assets (including foul water and surface water to be drained separated, no surface water to connect to the public sewerage system, unless otherwise agreed, land drainage run-off shall not be discharged to the public sewerage system and the submission of scheme for the integrated drainage of the site showing how foul water, surface water and land drainage will be dealt with.

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### Drainage and Coastal Management 18.11.14

We have reviewed the updated Drainage Strategy, ref 13169.D100E.02.03, dated 12<sup>th</sup> November 2014 and based on the report we are satisfied that an appropriately designed surface water drainage scheme can be achieved on site, therefore we recommend that the following conditions are appended to any permissions given (in relation to the requirement for a strategic site wide surface water drainage strategy and reserved matters application to be accompanied by a detailed surface water strategy).

### Education Department 16.10.14

The catchment area for this development is Morryston, and the catchment schools are:

English Medium Primary	Cwmrhydyceirw Primary
English Medium Secondary	Morryston Comprehensive
Welsh Medium Primary	YGG Tan y Lan (Nursery to Y3; Y4 in 2015)
Welsh Medium Primary	YGG Lon Las (Y3 to Y6; Y4 to Y6 in 2015)
Welsh Medium Secondary	YGG Bryn Tawe

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

#### **Based on 300 dwellings**

Primary: 93 Pupils (£964,596)

Secondary: 66 Pupils (£1,045,968)

### **Rationale**

Primary:

There is no capacity for growth in Welsh Medium.

- The surplus capacity at YGG Lon Las (which is the nearby Welsh medium primary school for Y3 to Y6) in January 2014 was 53 with the projection figures for January 2021 as being down to surplus capacity of 3. In addition, there are demountables which should be excluded from the calculations in this instance and this would bring the situation there to an **over capacity of 201 pupils. Please see chart below.**
- The surplus capacity at YGG Tan y Lan (which is now the catchment Welsh medium primary school for Nursery to Y3, to Y4 in Sept 2015 etc. is a growing school) in January 2014 was 52 with the projection figures for January 2021 as being down to an **over capacity of 16 pupils. Please see chart below.**

There is also little surplus capacity in the English Medium primary provision at Cwmrhydyceirw Primary School which is a large school and the concern that some of the capacity is in substandard demountables. There is scope to extend on the site. In January 2014, Cwmrhydyceirw Primary had surplus capacity of 5 pupils, with a projection for January 2021 of a surplus capacity of 0 pupils. But, by omitting the current demountables on site (2 x doubles and 1 x single) for the purpose of this calculation, then the surplus capacity reduces even further to a situation of being **over capacity by 127 pupils.**



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**Please see chart below.**

In order to accommodate any primary aged pupils from this development in this instance, Education will therefore require the full generated amount of £964,596 plus inflation as two of the named schools are already over capacity with no unfilled pupil places. The request for a developer's contribution on this basis would therefore be currently required for Cwmrhydyceirw Primary School with a % split shared with YGG Tan y Lan in the first instance.

Secondary:

Whilst the development will generate 66 secondary pupils there will be no request for a specific contribution towards the English Medium secondary provision at this present time as there is sufficient capacity within the catchment school. In January 2014, Morryston Comprehensive had an unfilled surplus capacity of 229 pupils, with a projection for January 2021 of being 262 pupils. In addition, Morryston Comp. School is currently undergoing since July 2012 a major rebuild (Phase 1), with Phase 2 now scheduled to be completed by December 2014, when there will be capacity to take increased pupil numbers.

There is no capacity for growth in Welsh Medium. However, there will also be no request made for a specific contribution towards the Welsh medium secondary provision at this time as there is sufficient capacity within the catchment school of YGG. Bryn Tawe. In January 2014 the school had a surplus capacity of 354 with the projection for January 2021 now being a surplus capacity of only 2 pupils.

**N. B. Projected Unfilled Pupil Capacity (Based on January 2014 Projections)**

	Jan-14	Sep-14	Sep-15	Sep-16	Sep-17	Sep-18	Sep-19	Sep-20
<b>Cwmrhydyceirw Primary</b>	5	5	4	5	5	4	4	0
<b>Cwmrhydyceirw Primary with demountables removed from calculations.</b>	-122	-122	-123	-122	-122	-123	-123	-127
<b>Morryston Comp.</b>	229	241	286	291	304	294	269	262
<b>YGG Lon Las</b>	53	28	12	4	1	15	15	3
<b>YGG Lon Las with demountable removed from calculations.</b>	-151	-176	-192	-200	-203	-189	-189	-201
<b>YGG Tan y Lan</b>	52	27	15	1	-17	-22	-24	-16
<b>YG Bryn Tawe</b>	354	338	311	258	203	133	72	2

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One has to bear in mind that there are a number of other proposed Candidate development sites for the Morryston area which are still under consideration by Planning, (including Planning Application No 2013/1632 – Land at Heol y Fran) and the results of all these would further exacerbate the situation.

### Conclusion

**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 the full Developer's contribution of **£964,596 plus inflation for mainly Cwmrhydyceirw Primary school** enhancements to provide improved facilities at the school, and with a small % split shared with YGG Tan y Lan, in the first instance.
- Education would not be seeking the Developer's Contribution of £1,045,968 for secondary education at Morryston Comp. School and YGG Bryn Tawe at this present time.

### Education Department 17.02.16

Revised contribution request, in light of viability issues at the site, of no less than £750,000 to build a 3 class extension.

### South Wales Police Design Out Crime Officer 15.04.16

Advice has been provided on designing out crime within the development and concerns have been expressed regarding the provision of parking courts within the development.

### Planning Ecologist 25.04.16

The key ecological issues are protection for the peregrine falcon, a reptile mitigation plan and a habitat management plan for the open space. There will be habitat loss as a result of the development it is at the moment a quiet undisturbed refuge and it's important that this impact is minimised. As a result of the new stronger biodiversity duty we need to ensure there is no overall ecological loss on the site.

### Landscape Assistant (Arboriculturist) 25.04.16

The outline application shows several groups of internal trees to be removed. Mitigation for the loss of the category B trees should be incorporated in a landscaping scheme.

The indicative layout appears to have dwellings in close proximity to retained trees; this will require careful consideration when finalising the detailed plans by either site or unit layouts. Boundary trees in group G13 are protected by a tree preservation order and also should be considered when the detailed plans are drawn.

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An arboricultural impact assessment will be required to assess the impacts of the development on trees and vice versa. The proximity of the trees to the units will require a tree protection plan and arboricultural method statement to be submitted at the reserved matters stage to demonstrate that the final layout is feasible; this will address all the impacts highlighted by the arboricultural impact assessment.

The outline application shows several groups of internal trees to be removed. Mitigation for the loss of the category B trees should be incorporated in a landscaping scheme.

The indicative layout appears to have dwellings in close proximity to retained trees; this will require careful consideration when finalising the detailed plans by either site or unit layouts. Boundary trees in group G13 are protected by a tree preservation order and also should be considered when the detailed plans are drawn.

No objection subject to conditions.

### Network Rail 25.04.16

After studying the details submitted with this application, Network Rail submits a holding objection on the grounds we require details of their drainage plans to ensure our culvert isn't compromised. We also require further details of their construction method as one of our tunnels is in close proximity to where they plan to construct their dwellings.

### **APPRAISAL**

This application seeks outline planning permission for a development of circa 300 dwelling on the site of Cwmrhydyceirw quarry and surrounding land. The proposal includes the demolition of all on site buildings including the existing dwelling at No. 53 Maes Y Gwernen Road and works to enable the quarry to be engineered and remediated to provide an area of public open space. Strategic access to the site (i.e. the proposed access points to the development) are the only matters, together with the principle of the development, that are for consideration under this application.

The site includes the quarry, an area of pasture land to the south of Brodorion Drive and Enfield Close, and a parcel of greenfield land that separates the quarry from properties on Maes Y Gwernen Road. The site is defined to the south by a railway line and the golf course. The overhead lines which cross the northern part of the site are intended to be grounded to facilitate the development.

There is considerable planning history relating to the quarry and its later uses as a concrete plant and a landfill site for non-hazardous waste. Whilst the quarry itself appears to have been in operation prior to any formal planning controls its use as a concrete plant is documented in planning applications submitted in the 1960's and 1970's. There are currently no operations on the site associated with this use. In terms of the landfilling operations, planning permission was granted in 1981 (81/0486/03) for the landfill operation and associated restoration of the quarry. The permission refers to the importation of non-toxic solid waste from the construction industry. Planning permission was later granted at appeal in 1985 (84/0505/05) to extend the range of permitted waste materials by the addition of non-toxic wastes from other commercial and industrial sources.

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The inspector noted that, in his view, the quarry face was a potential danger to the general public, and particularly to children in the locality. He considered it would be in the best interests of the local inhabitants for the quarry to be filled as quickly as possible to remove the danger to life and limb. The site operated for a number of years, receiving wastes of varying types, including biodegradable municipal wastes and industrial wastes such as filter cakes and ashes. NRW believe approximately 85,000 tonnes of waste were deposited and currently remain in-situ. Whilst there are no current landfill operations taking place at the site, the site benefits from an Environmental Permit, granted in 2008, which permits 125,000m<sup>3</sup> of waste to be deposited at the site per year, over a 6 year period. Members may recall that planning permission was also recently approved (Planning Ref: 2015/2544) to extend the time period to commence development for the construction of site offices and associated works to facilitate landfilling operations.

Planning applications for housing developments have also previously been submitted at the site. In 1989 planning permission was refused for residential development at land adjacent to Brodorion Drive (88/1378). The application was refused on the grounds that the development would be prejudicial to the aims of Draft Swansea Local Plan and that it would be premature, pending the completion of tipping operations and subsequent restoration works.

In 2011, outline planning permission was submitted and subsequently withdrawn for a residential development of 58 dwellings on land to the south of Brodorion Drive (Planning Ref: 2011/0498). There is a current application, for outline planning permission, also on land to the south of Brodorion Drive, for residential development of 24 dwellings. No action has been taken on this application, following a request for further information by the local planning authority.

Following a request from the applicant, the Council issued a Screening Opinion in 2014 advising that an Environmental Impact Assessment (EIA) would be required for the proposal. The scope of the assessment has been narrowed down to the assessment of the ecological impacts of the development and the environmental, health and safety impacts associated with developing the landfill for housing. The content of the Environmental Statement (ES) submitted with the application is discussed in more detail later within this report.

The application has also been supported with the following documents: Design and Access Statement, Transport Statement, Drainage Strategy, Tree Survey, Landscape Visual Impact Assessment and Planning Statement.

### **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 impacts on visual and residential amenity, highway safety, ecology, trees, drainage and impacts associated with providing housing in close proximity to a landfill site, including health and safety impacts.

Planning 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 10<sup>th</sup> November 2008.

Reference to the UDP proposals maps show that the whole site, with the exception of a small parcel of land adjacent to the railway line, which is within the green wedge, is identified as white land in the urban area. UDP Policy HC2 is therefore relevant and supports housing developments within the urban area where the site has been previously developed or is not covered by conflicting plan policies, subject to the application complying with the various policy criteria. Under HC2 housing developments are supported where they do not result in:

- i. Ribbon development or contribute to the coalescence of settlements,
- ii. Cramped/Overintensive development,
- iii. Significant loss of residential amenity,
- iv. Significant adverse effect on the character and appearance of the area,
- v. The loss of important urban greenspace
- vi. Significant harm to highway safety, or
- vii. Significant adverse effects in relation to:
  - a. Landscape,
  - b. Natural heritage,
  - c. Security and personal safety,
  - d. Infrastructure capacity,
  - e. The overloading of available community facilities and services.

In line with the objectives of Planning Policy Wales 2016 (8<sup>th</sup> Edition) and TAN 12: Design (2016), 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. These policies, and national planning guidance, support the use of previously developed land over green field sites. In addition, UDP policies EV3, AS1, AS2 and AS6 require that new development provide satisfactory access and facilities for parking.

In terms of design and layout the Council has produced Supplementary Planning Guidance (SPG) entitled 'Places to Live: Residential Design Guide', which relates to developments of 10 or more dwellings. This document contains information on design principles that should be incorporated into new developments together with the appropriate amenity standards.

The current proposal needs to be considered in the context of the surrounding area. The site forms part of the Cwrhydyceirw to Birchgrove Railway Site of Interest for Nature Conservation (SINC) as such Policy EV28 is relevant, which refers to the sites of local importance. Moreover, UDP Policy EV30 seeks to protect and improve hedge, tree and woodland areas.

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With regard to drainage from this site, the development must be considered with reference to UDP Policies EV33, EV34, EV35 and EV36 regarding sewage disposal, surface water run-off, development and flood risk.

Given the industrial/commercial history of the site, clearly consideration must be given to both land stability and land contamination matters. The development will therefore be considered under UDP Policies EV38 and EV39.

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. In this respect the Council has adopted the Planning Obligations Supplementary Planning Guidance (2010) which is used to consider requests for contributions in respect of affordable housing, education provision, outdoor play space(see also HC24) and highways/transportation.

In terms of the overall principle of a housing development on the site, only part of the site lies outside of the urban area and this land forms a landscaped embankment with the railway line which is not proposed to be developed under this planning application, as such the inclusion of this land within the application site would not conflict with the Council's green wedge policy under UDP Policy EV23. The residual land within the application site is white land in the urban area. It is located close to schools, bus services and other services in Cwmrhydyceirw and is therefore considered to be a sustainable location for a housing development. In broad land use terms therefore, and setting aside any technical constraints associated with the development, the use of land for housing is considered to be acceptable in principle.

In terms of the emerging Local Development Plan, it is noted the site has been submitted as a candidate site and has been included as a housing site within the draft LDP proposals maps. Whilst little weight in favour of the proposals may be afforded to the status of the site under the emerging LDP, there is no doubt that the redevelopment of the site for housing for circa. 300 units would make a material contribution to the Council's housing land supply, which is currently below the 5 year supply required under national planning policy set out in Planning Policy Wales.

### **Visual Impact, Design and Layout**

The application has been accompanied by a 'Landscape and Visual Appraisal' document which assesses the visual and landscape impacts of the development from representative viewpoints within the locality of the site (Brodorion Drive, Cwmrhydyceirw Road and Heol Brillau) and from a wider viewpoint (Blawd Road).

The site does not fall within any statutory or non-statutory landscape designation. There is a grade II listed park and garden (Cwmgelli Cemetery) located some 2.8km from the site and two scheduled ancient monuments, Morris Castle and Llangyfelach Cross Base, located 2.9km and 1.7km from the site respectively. Due to the distance of these features from the application site, in line with the conclusions of the landscape and visual appraisal, it is considered the development would not have a significant effect on the landscape context of these features.

Of the representative viewpoints assessed, the view from Brodorion Drive is considered to have a moderately significant effect on visual amenity. This is due to the proximity of the development from this viewpoint and the lack of screening along the northern boundary. The loss of the views to the paddock at the rear of Brodorion Drive and Enfield Close has been raised as a concern by local residents. Whilst these concerns are understandable, the change in the local landscape is inevitable if the site is to be developed for housing. The site is located within the urban area and subject to the adherence to UDP design policies and SPG, the impact on the local landscape in this area is considered to be acceptable.

From other viewpoints, mainly the roofscape of the development would be visible from surrounding roads, although from Heol Brillau the development would be identifiable from ground level. The development would be viewed in context with the existing surrounding townscape and would be partially screened by existing vegetation as such it is considered, in line with the conclusions of the landscape and visual appraisal, that the proposed development would not have a significant landscape impact.

Turning to the design and layout of the development, the broad vision of the design is to provide residential development focused on the quarry bowl with views of the townscape and countryside beyond. The quarry bowl would be developed as an area of public open space including a LEAP with pedestrian routes around the quarry.

The development has been broken up into several development parcels (A,B, C and D) based on their characteristics and past use. The northern part of parcel A and parcel B are undeveloped greenfield sites. The paddock at the rear of Brodorion Drive and Enfield Close is generally level and is bordered by trees with the golf course to the south. Parcel B backs onto Enfield Close to the west and Maes Y Gwernen Road to the north. The levels drop gradually down from Enfield Close to Cwmrhydyceirw Road, there is a line of TPO conifer trees bisecting parcel B. The southern part of parcel A has previously been quarried, although not to the extent of the main bowl as such the land levels drop down from the western boundary with the golf course and generally slope down towards the southern boundary with the golf course. In contrast to parcels A and B, parcel C contains historic features from the cement works and the facilities for the current operations at the landfill. Parcel D is an existing shelf within the quarry bowl which has been prepared for future landfilling.

The application has been supported by an illustrative masterplan which serves to illustrate in broad terms how the site is intended to be developed. This is supplemented by a design and access statement which explains the context of the site, its constraints and the evolution of the design to its present form.

Access points to the site would be off existing highway access points on Brodorion Drive and Enfield Close. A further access is proposed off Maes y Gwernen Road facilitated by the demolition of No. 53. Three other separate pedestrian access points are indicated to be provided from Maes y Gwernen Road, Cwmrhydyceirw Road and Railway Cottages. The existing access to the development across the railway bridge would be retained as a construction access during the construction phase and thereafter would be retained as a pedestrian/cycle route to the development.

The masterplan illustrates new roadways with frontage development on both sides of the new road extending along and parallel with Brodorion Drive. The roadway from Enfield Close would link up with the Brodorion Drive roadway and head south in a loop road with development backing onto the southern and western boundaries with the golf course together with perimeter blocks that overlook the quarry basin. This pattern of urban form consisting of perimeter blocks with frontage development onto the spine road and development overlooking the quarry bowl is replicated across the site. The proposed development parcel within the quarry bowl would face towards the quarry and provide natural surveillance of the open space area.

Concerns have been raised in letters on objection that the scale of the buildings within the proposed development would not accord with the character of the local area, which is a mix of two storey dwellings and bungalows/dormer bungalows. The application has been accompanied by indicative scale parameters which set out the upper and lower limits of the buildings within the site. The master plan indicates the scale of the buildings that would be provided within the various development blocks. The majority of the proposed buildings would be no greater than two storey. The masterplan illustrates that there would be four pockets of two and a half or three storey development within the site, these would be located on prominent locations within the site and would serve to provide variety in the street scene and define important corner plots. None of these larger scale buildings would be sited around the perimeter of the site adjoining existing neighbouring dwellings. The scale of the buildings and their distribution within the site, as indicated on the illustrative masterplan is considered to be acceptable.

Concerns have been raised by the South Wales Police design out crime officer regarding the provision of parking courts within the illustrative design details. These concerns are noted and it will be necessary to address the matters raised at the reserved matters stage having regard to the overall design strategy for the development, which is to focus and orientate the development facing towards the quarry basin.

The overall design principles of the master plan are supported and have been expanded upon by more detailed sketch drawings to flesh out the development blocks indicated on the masterplan. The Council's urban design officer considers the information provided to be acceptable. There is, however, a residual concern regarding the proximity of the development in parcel A to the boundary trees, however, this matter can be addressed at the reserved matters stage. Overall it is considered that the proposed development, as indicated on the illustrative masterplan, demonstrates that the site can be developed in a manner that would not result in any significant detrimental impacts on the character and appearance of the area and would accord with the Council's design Policies EV1, EV2, HC2 and the guidance contained within the 'Residential Design Guide' SPG.

### **Residential Amenity**

Concerns have been raised in letters of objection that the proposed development would result in the loss of privacy to existing occupiers surrounding the development. Whilst this application is outline with all matters reserved apart from access, the illustrative layout submitted demonstrates that a sensitively designed layout can be accommodated on this site without harming the residential amenity of future or existing residents. Any scheme on this site would have to meet the standards of separation between residential properties normally applied by the Council (in accordance with the adopted SPG) and meet the requirements for amenity space and car parking requirements.



The development would be sited in close proximity to the existing bungalows and dormer bungalows on Brodorion Drive and Enfield Close. A more detailed sketch plan has been provided for this area which illustrates that the development could be accommodated within this part of the site without resulting in any significant overlooking, overshadowing or overbearing impacts upon the occupiers of existing properties. Elsewhere around the perimeter of the site the masterplan indicated that satisfactory separation distances, in accordance with the SPG, can be achieved to existing properties on Maes Y Gwernen Road and Cwmrhydyceirw Road.

The provision of a new access road off Maes Y Gwernen Road would have the potential to result in increased noise and disturbance to the occupiers of the properties either side at No. 57, which is at a higher level, and No. 51, which is at a lower level, than the existing dwelling. The existing dwelling has a wide frontage of some 26m and then splays inwards on the western boundary reducing to some 13 metres at the rear of the site. The side elevation of No. 57 would be sited some 9 metres from the new access road whereas the dwelling at No. 51 would be sited some 5 metres away. These distances with mitigation measures in the form of landscaping and robust boundary treatments with these properties, would ensure that there would, on balance, be no significant impacts to the occupiers of these properties from noise or disturbance from traffic movements. There are existing high boundary treatments along the common boundaries with both No. 51 and No. 57 at the rear of these properties. The provision of any new high boundary treatment at the rear of these properties would not therefore result in any significant overbearing or overshadowing impact to the occupiers of these dwellings. Where the site narrows at the rear of No. 53 both dwellings either side of the access road have outbuildings at the rear of their gardens as such these areas are not used as outdoor amenity space. In light of this and subject to the provision of a suitable robust boundary treatment along the garden boundaries within these properties, it is not considered, on balance, that the provision of the access road would result in any significant noise or disturbance to the occupiers of neighbouring properties when in their rear gardens.

The vehicular access points off Brodorion Drive and Enfield Close would be sited in close proximity to existing dwellings sited either side of the existing highway. The proposed development would result in regular vehicular movements along these access roads. Noise from traffic using these access points may be audible from the grounds of these properties, however, given the low vehicle speeds within the estate and that the development incorporates three access points, which would spread traffic across these access points, it is not considered the noise from traffic movements associated with the development would be so significant as to cause a harmful impact upon the living conditions of the existing occupiers of properties on Brodorion Drive and Enfield Close adjoining the new access roads.

Concerns have been raised in letters of objection regarding the impacts of the development on existing residents from noise disturbance and traffic pollution both during the construction phases and the operational phase. It is acknowledged that there will be some disturbance to existing residents during the construction phase from traffic and construction activities, which may continue for the duration of the build programme (estimated to be some 6 years). Any significant impacts, it is considered, can be mitigated through the effective management of construction traffic, for example, by minimising construction traffic during peak times and by utilising the Vicarage Road access as the preferred construction access for the development.

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Moreover, impacts associated with construction activities can be minimised by good building practices and effective site management. The provision of a Construction Pollution Management Plan will set out how the applicant intends to minimise pollution arising from the development, this will be secured by a condition, and should provide satisfactory mitigation for any significant impacts upon existing residents. The area surrounding the application site is not located within an air quality management area, whilst acknowledging the development will result in more traffic on the surrounding road network, it is not considered the traffic generation arising from the development, estimated within the applicant's transport assessment, would result in any significant traffic pollution within the local area.

Having regard to the above, on balance, it is considered that the proposed development would not result in any significant impacts on the residential amenities of the occupiers of existing dwellings in the locality. The proposed development would therefore be in accordance with UDP Policies EV1, EV40 and HC2.

### **Access and Highway Safety**

Vehicular access to the development will be from existing access points off Enfield Close and Brodorion Drive together with a new primary access to the development off Maes Y Gwernen Road. Pedestrian/cycle connections are indicated to be provided onto Vicarage Road and Cwmrhydyceirw Road, thus improving the permeability of the site. In addition, a pedestrian access point and an emergency access point are indicated at the existing access from Railway Cottages.

The application has been accompanied by a transport assessment which assesses the capacity of junctions within the area. Traffic generation is predicted to be 48 arrivals and 127 departures in the am peak hour (175 in total) and 120 arrivals with 70 departures in the pm peak hour (190 in total). This equates to just over 3 vehicles per minute in both the AM peak and PM peak. The predictions are based on nationally held data for residential developments (TRICS) based on a mixture of houses and flats.

Computer modelling demonstrates that all of the tested junctions remained within capacity as such it was concluded that no additional infrastructure was required to mitigate the traffic generation arising from the development. Reference to personal injury data does not indicate any safety issues on any of the roads or junctions within the locality of the development as the majority were caused by driver error.

A significant number of objections have been received relating to the highway safety impacts of the development, particularly during the peak times for school pick-up and drop-off and that access to existing properties on Maes Y Gwernen Road would be adversely affected, should the development be approved.

It is noted that there is localised congestion in the area around the school at peak times and the provision of the additional traffic arising from the development heading down Maes Y Gwernen Road will likely exacerbate this localised congestion. In order to mitigate this the applicant had indicated the provision of a lay-by on the grass verge along Maes Y Gwernen Road and the provision of a staff parking area within the school grounds accessed off Heol Maes Eglwys.

However, these schemes, which totalled some £98,000 have not been included within the development because of the viability issues at the site, with priority instead being given to the highway safety measures which include the provision of a zebra crossing and guard railing outside the school and a toucan crossing at Heol Maes Eglwys to link with the footbridge crossing the M4. These improvements, it is considered, would mitigate any significant highway safety impacts arising from the development and would improve pedestrian connections from the development. Given the proximity of the development to local schools and the pedestrian and cycle connections the development would provide, it's likely that a good number of trips to local schools and services would be made on foot or on bike, which would serve to reduce the traffic impacts of the development during the school run. Concerns have been raised that emergency vehicles would not be able to travel along Maes Y Gwernen Road during peak times, whilst this concern is noted, in emergencies drivers often respond accordingly to allow emergency vehicles to pass, it is therefore considered that this would not be a sustainable reason to refuse the planning application. In addition, the masterplan indicates that the Railway Cottage access would be used as an emergency access, this requirement can be agreed by a planning condition.

The submission indicates that the roads will be designed using Manual for Streets criteria although regard will need to be made for shared use footways and accessibility to allow public transport to enter the site. Whilst no internal highway layout has been provided, save for that indicated on the masterplan, it will be a requirement for at least one of the footways to be of a suitable layout to allow for shared cycle/pedestrian use; this is usually a minimum of 3m width. This is a requirement as set out in the Active Travel Act. Parking for the development will need to be in accordance with adopted standards.

It is not clear whether the roads will be adopted or maintained by a management company, notwithstanding this, they will need to be designed to Highway Authority standards and specifications, this can be secured by a planning condition. The long term maintenance and management of the highway infrastructure can also be secured by a planning condition.

The Head of Highways and Transportation has requested a condition to requiring the submission of a travel plan in order to encourage sustainable modes of transportation. The provision of a Construction Traffic Management Plan has also been requested and this matter can be requested by an informative, rather than a condition, as the provision of this information and its approval is administered by the Highway Authority.

Having regard to the foregoing, the Head of Highways and Transportation has raised no objection to the application on highway safety grounds, having regard to this advice, the development is therefore considered to be acceptable in terms of highway safety and would be in accord with UDP Policies AS1, AS2, AS10 and EV3.

### **Landfill Impacts and Remediation**

The construction of a residential development around and within a permitted landfill site raises a number of concerns regarding the appropriateness of this relationship in terms of health, safety and amenity.

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A fundamental element of this proposal is to ensure that, should planning permission be granted, there is a mechanism in place to cease any further landfilling operations at the site. Without such a mechanism the proposals would potentially result in new dwellings being constructed within, and in close proximity to, an active landfill - such a relationship would not be acceptable in terms of the potential noise, odour and dust impacts to the occupiers of the residential development. Moreover, NRW has advised of the potential impacts of landfill gas generation, gas flaring and possible electrical generation activities, should sufficient gas be produced if landfilling is to continue at the site.

In order to address this issue, it will be a requirement that the applicant enters into a Section 106 planning obligation to cease any further landfilling operations at the site, save for those works required to cap the landfill and provide the area of open space as indicated on the masterplan. Upon the receipt of the planning permission the applicant then intends to apply to NRW for the definitive closure of the landfill. If accepted by NRW the site would then enter the 'aftercare' phase which spans the period between definitive closure and the ultimate surrender of the permit, which NRW has suggested would span many years, rather than months. Until the landfill is definitively closed, NRW would not permit additional development or unauthorised human access within the permitted landfill boundary. NRW has further commented that if definitive closure of the site is granted, access restrictions may be reduced subject to necessary risk assessments being undertaken, however, free access to all of the public open space could not be guaranteed with access to critical infrastructure being restricted such as ground water pumps and monitoring boreholes.

NRW has highlighted concerns regarding the potential conflict between the development of the site for housing and the regulatory requirements that run with the landfill permit and suggested placing restrictions on the phasing of the development to ensure that the development is limited to those areas outside the permit boundary until such time that the landfill is definitively closed. This requirement, which can be secured by a planning condition, is considered to be essential to ensure that any conflict with the requirements of the permit is avoided. This requirement would effectively limit the development site, prior to definitive closure, to the paddock within Parcel A (adjoining Brodorion Drive/Enfield Close), all of Parcel B and the majority of Parcel C.

The landfill is proposed to remain in its present location, and will not be disturbed save for the provision of a cap of low permeability material to inhibit rainfall infiltration into the underlying waste. Whilst the detailed design of the cap is subject to the approval of NRW, it is anticipated the design will involve reducing the existing soil coverage to a depth of 300mm, the placement of geomembrane and geocomposite drainage layer and the replacement of the excavated soil to a thickness of some 1.4m. This cap will enable the former landfill, together with the residual areas within the quarry basin, to be used as an area of public open space and for housing (Parcel D), once the landfill has been definitively closed.

Letters of objection have been received stating that the landfill should be remediated and the open space provided as part of the first phase of the development. Concerns have also been raised that the developer may go bankrupt and fail to provide the open space area. Clearly the timely provision of the open space and associated play area are an important consideration.

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The opening up of the quarry, once remediated, as an area of open space will be of significant benefit to the surrounding community by providing an expansive area of open space with access routes within and around the quarry basin. The development of this element of the scheme will, however, require an element of housing development to take place as an enabling development to fund the remediation and open space works. Furthermore, in line with NRW's comments, access to the open space will only be allowed once the site has been definitively closed and enters the aftercare phase, as such, it would be unreasonable and would prevent housing being built that would make a timely contribution to the housing supply, to insist on the open space being provided within the first phase of the development.

It is therefore recommended that a condition is included to the effect that no more than 120 dwellings shall be developed until the open space area has been provided and is available for use, save for any access restrictions required by NRW. Furthermore, in order to expedite the landfill closure process and facilitate the timely provision of the open space, it is recommended that a condition is imposed requiring that the application for the definitive closure of the landfill be submitted to NRW prior to the commencement of development at the site. These requirements should ensure that the open space and play area are provided in a timely manner, without compromising the overall viability of the site.

#### Landfill Gas

Even with no further landfilling operations at the site, the proximity of the insitu landfill to the proposed residential development must be assessed and, where necessary, mitigated in terms of landfill gas impacts. Landfill gas is the term used to describe any gas derived from landfilled waste and commonly relates to gas generated as a result of the biodegradation of the waste deposited in a landfill site. The main components of landfill gas are methane and carbon dioxide (typically 64% and 34% respectively). Typically the remaining components comprise low concentrations of oxygen and nitrogen from air, water vapour and hydrogen together with trace gas components.

The application has been accompanied by an ES which references a Land Fill Gas Risk Assessment (LFGRA) undertaken in 2005; this information was reviewed and updated in 2010 following ground intrusive site investigations and meteorological data recorded at the site. The most recent LFGRA submitted to NRW was produced in 2014 and has been submitted with this application.

The risk assessment is based on source pathway and receptor methodology. The source term is the biodegradable waste deposited in the landfill which produces landfill gas. The pathways for gas migration comprise natural pathways through permeable rock strata and man-made pathways such as drains or ducts. Receptors include people living and working in proximity to the landfill area together with property and vegetation. A significant risk is posed to a receptor only when there is a significant source of gas generation with a pathway linking the source to the receptor.

The 2005 LFGRA shows that the predicted peak bulk landfill gas generation rate attributable to the former landfill area occurred in 1992 followed by a declining landfill gas generation rate thereafter. The modelling was based on an assumption that 125,000 tonnes of waste were deposited between 1985 and 1991 inclusive at a rate of 17,857 tonnes per year. Later site investigations have, however, shown the waste volume to be 105,860 tonnes. As such the LFGRA presents a conservative estimate of gas production.

The ES reports that the gas data recorded during the site investigation are consistent with low volumes of landfill gas in the former landfill area. The highest gas flow rate recorded during site investigations was 7.1 litres/hour, which is reported to be low. Gas pressure is the primary motive force for the movement of gas laterally or through the landfill surface. The ES reports that as the former landfill is generating small quantities of gas, therefore there is a low potential for gas to accumulate in the waste under significant pressure. Currently landfill gas generated from the former landfill is vented passively through a series of gas venting wells. It is proposed that these will be maintained and or replaced if necessary, after the capping works are completed. This should ensure the potential for gas to accumulate under pressure in the waste is minimised.

The ES reports that as the gas generated is not accumulating under significant pressure, the conditions in the landfill site do not present a significant risk of gas migration beyond the boundaries of the former landfill area. The presence of a liner to the ground level around the boundary of the former landfill will impede lateral gas migration. Moreover, leachate will impede the movement of gas vertically downwards to the underlying bedrock. Finally ground water levels at the quarry are generally above the level of the base of the former landfill area as such the potential preferential gas migration pathways through sandstone will be through unsaturated fissures and fractures in the rock above the groundwater level.

Elevated levels of methane have been recorded in boreholes external to the waste. These higher levels, the ES reports, are unlikely to be as a result of gas migration from the landfill waste and are attributable to a different source, thought to be attributable to methane originating from coal deposits. However, in view of the low gas pressures the ES considers the risk posed to development at the locations of the boreholes in which high methane concentrations have been recorded may be low. Further monitoring and risk assessments will be undertaken to inform any requirements for gas control measures in these areas. Such measures can be secured via a planning condition.

In light of the above, the ES reports that the risk of gas migrating laterally from the former landfill area currently, or in the future after the area has been capped, towards buildings or structures around the quarry including the proposed development is negligible.

As development is proposed within Parcel D within close proximity to the landfill, it is recognised that it will be necessary to undertake further monitoring from new boreholes between the landfill area and the new development prior to the commencement of development to confirm the conclusions of the risk assessment and, if necessary, confirm gas control measures in the development in this area. The provision of this information and any associated mitigation measures can be secured by a planning condition.

In respect of the landfill gas information provided within the submission, NRW has confirmed that in the event of the permanent closure of the site and if the historic waste is left in situ (which is the applicant's intention as set out in the planning submission), the data provided suggests the current landfill gas generation is low, however, they have noted that until it can be demonstrated otherwise, gas protection measures in the new dwellings will need to be considered. As indicated above, this matter can be addressed by conditions.

Land Contamination

Based on the source, pathway and receptor principle described above the applicant has undertaken an assessment of the risks posed from waste, landfill gas and leachate to potential receptors i.e. people using the restored former landfill as an area of open space. Leachate is the liquid which collects at the base of the waste and contains soluble contaminants from the waste. It is produced by the infiltration of rainfall into the waste mass. Leachate is currently pumped into the DCWW sewer and under the current proposals will continue to do so.

As the landfill is proposed to be capped (as described above) including the provision of a drainage geocomposite layer, the ES reports that there is no pathway for the exposure of people using the site to contaminants in the waste or in the leachate present in the former landfill area. The ES concludes that as there will be no linkage between the source and the receptor, which will be the people using the open space, as such there will be no risk of exposure to contaminants in the waste. NRW recognise that capping the landfill will reduce the exposure pathway to historic wastes, but have highlighted key infrastructure and monitoring points would need to be protected and managed whilst the site is in the aftercare phase.

In the long term, in order to ensure the integrity of the cap is not compromised, which could potentially introduce a pathway between the source and receptor, it would need to be appropriately managed and maintained. The applicant intends for the management of the open space area to be undertaken by the Land Trust, an independent charitable trust that manages open spaces in England. Appropriate arrangements to ensure the long term management of this land can be secured through a Section 106 agreement.

Within the wider site the historic activities that have taken place including quarrying, concrete production and landfill operations may have left contamination within the ground. In order to ensure the risks posed by any residual contamination within the site are understood and mitigated, conditions are recommended for further investigative work to be undertaken and a scheme for remediation, should one be required.

Groundwater pumping

The ground water levels at the site are currently kept artificially low below the existing waste mass by a pumping regime which manages the ground water and dewatering of the quarry, which ensures the waste mass does not flood. NRW has highlighted that the potential environmental risk from leachate discharging to ground water beneath the historic waste deposit remains, should the suggested control mechanism of ground water pumping cease. NRW's letter of 10.12.14 also recalls an incident at the site in 1987 when a pump failed in heavy rain resulting in the water levels rising and coming into contact with the waste. This led to a large number of odour complaints from surrounding residents.

The maintenance of an effective groundwater pumping regime is therefore important in term of protecting the amenity of surrounding residents (existing and proposed) and in terms of preventing environmental pollution from leachate discharging to groundwater. The environmental permit has conditions that require groundwater pumping, however, NRW has highlighted that this cannot be relied upon in perpetuity to protect the development.

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In order to provide sufficient assurance that satisfactory measures are in place to maintain an effective pumping regime, it will be necessary for the developer to enter into a S106 planning obligation for the long term management and maintenance of the ground water pumps. The developer has indicated that the existing pump would likely be replaced with a new submersible pump and a back-up pump operated by a float switch and linked by a telemetry system in order to raise the alarm if the pump and or the back-up pump fail to operate. They have further indicated that the pump can be replaced within a few days, should they fail. Ultimately whatever groundwater pumping arrangements are in place for the purposes of the environmental permit must be replicated, in perpetuity, once the permit has been surrendered. The provision of satisfactory pumping arrangements together with their future management and maintenance can be secured by a S106 planning obligation.

### Odour

The provision of housing within and around the quarry basin does raise a concern that there could be an odour nuisance to the future occupiers of the development from the landfill, which is vented passively through 12 gas venting wells located in the former landfill area. The odour of landfill gas is imparted by some trace gas components which can be present in low concentrations. The odour is controlled by the rate of release to the atmosphere and the degree of dilution. Gas samples taken from the landfill show odorous trace gases are present including carbon disulphide, hydrogen sulphide, toluene and xylenes. The ES reports the concentrations of these gases are low, such that based on their assessment it is considered the potential for odour nuisance associated with landfill gas vented passively to air above the former landfill are is negligible. On the basis of this information and given that there have been no reported odour complaints from the site in recent years, it is considered, on the basis of this information, that the risks to the future occupiers of the development from an odour nuisance would be very low, as such the potential threat from an odour nuisance would not be a reason to withhold planning permission.

### Summary

In summary, the development of the site within and around the landfill will present a number of challenges to its development. The landfill is actively gassing, however, based on the information provided and having regard to the advice of NRW the level of gassing is low and subject to measures to afford protection to the future occupiers, it is considered that there would be very little residual risk to the occupiers of the development from landfill gas. An area of open space will be provided on the former landfill once capped and landscaped. The landfill gas will continue to be passively vented and in light of the information provided this will not present a health risk, safety risk or odour nuisance to the future occupiers of the development and those using the open space.

On the basis of the information provided within the submission and subject to standard conditions in relation to land contamination and the provision of a satisfactory scheme to address the long term requirement for ground water pumping, the Pollution Control division has raised no objection to this planning application. The development is therefore considered to accord with UDP Policy EV38.



### **Ecology and Trees**

Several objections have been received in regards to the impact of the proposal on wildlife. The site forms part of the Cwmrhydyceirw to Birchgrove Railway SINC. The site supports a broad range of habitats including woodland, scrub, semi-improved neutral grassland, marshy grassland, standing water and running water.

The construction phase will result in the loss of the marshy grassland fields to the north of the quarry, however, the majority of the woodland/scrub on the quarry slopes would be retained. On this basis, the ES reports a significant adverse impact on the SINC was considered unlikely, although the development would result in an adverse effect without appropriate mitigation for the loss of habitat.

The ES reports that several habitats would be adversely affected by the proposals, these include: woodland areas based on the loss of pioneering scrubby woodland located at the western and eastern extents of the site; hedgerows and trees, including the defunct conifer hedge and a section of older hedge in the north of the site; standing water, due to the loss of the concrete pond associated with the quarry buildings and; standing water, based on the loss/re-direction of smaller tributary streams.

The ES also reports that several habitats would be significantly adversely affected by the development, these include: scrub, located within the northern extent of the site (within marshy grassland fields) and; grassland, in the northern part of the site and located within the basin.

In terms of fauna, a total of four bat species were recorded foraging and commuting on and over the site. The loss of foraging habitat (pioneering scrubby woodland and species poor hedgerows) would have an adverse effect but this would not be significant given the retention of the majority of woodland and scrub communities across site features known to be used by foraging communities. There is also a potential for an adverse impact through increased noise and lighting. NRW has noted that further survey work is required prior to the commencement of development in relation to one of the quarry buildings. In line with the advice of NRW and the Council's planning ecologist, this further survey work can be required by a planning condition. NRW has further advised that a specific Mitigation & Management Plan for Bats should be provided and this could form part of the wider Construction and Environmental Management Plan for the site. Again, these requirements can be secured by planning conditions.

In terms of birds, site clearance would remove existing foraging and nesting habitat, however, it is considered unlikely to result in a significant adverse impact due to the availability of similar resources which will be retained within the site. An adverse impact is probable due to a combination of habitat loss and increased disturbance from construction activities.

Importantly, a nesting pair of Peregrine Falcon was identified on the northern face of the quarry. The highest ecological value of 'County' is assigned to breeding Peregrine Falcon. As the quarry face will be retained, together with screening vegetation, a significant adverse impact is unlikely, however, this could not be ruled out in the absence of appropriate mitigation measures. NRW has therefore advised that a specific strategy/mitigation plan for the Peregrines should be provided prior to the commencement of development.

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However, they have advised that locating any new housing, footpaths and public access areas in the vicinity of the nest should be avoided and existing screening between the nest site and human presence activity, should remain in situ and should be supplemented as necessary. A mitigation plan to address the residual matters relating to impacts on Peregrine falcon can be secured by a condition, in line with the advice of NRW.

Amphibians identified on the site include common toad, common frog and Palmate Newt, as such the site is considered to be of value to amphibians. The ES reports that the retention of the sump pond and terrestrial habitat to the south and east would mean that a significant adverse impact on amphibians was unlikely. Great Crested Newt surveys have been undertaken but did not identify the presence of this species as such they are not considered likely to be present on the site.

A good population of Common Lizard were identified within the site. Clearance works within the quarry basin and marginal grassland areas surrounding the quarry edge will affect the majority of the reptile habitat. In the absence of mitigation measures there would likely be a significant adverse impact on reptiles at the site. In line with the advice of NRW a mitigation plan to address the residual matters relating to impact on reptiles and amphibians can be secured by a planning condition. This mitigation should ensure the development would not have a significant adverse impact on reptiles.

In order to mitigate both the construction impacts of the development and the impacts associated with the use of the site for housing and open space, the ES contains a number of mitigation measures. These include, but are not limited to, the retention of woodland and hedgerows, where possible, the planting of native hedgerow and biodiversity rich planting for the open space, the retention of the sump pond with native wetland planting; clearance of vegetation outside of the bird nesting season, a clearance methodology with regard to reptile habitat and reptile capture and re-location scheme.

The Council's Planning Ecologist has raised no objection to the application subject to the submission of further information and detailed mitigation measures, which can be required by conditions.

In terms of trees, the site includes groups of trees around the perimeter of the fields to the north of the quarry and bordering the golf course along the western boundary. On the southern boundary there are mature trees again bordering the golf course and railway line. In the northernmost part of the site, at the rear of properties on Enfield Close, is a line of mature trees in an outgrown hedge (G13) which are subject to a tree preservation order (364) and a line of conifers (G10) which are also subject to a tree preservation order. Around the quarry basin and the face of the quarry there are several groups of mature trees, and along the eastern boundary are several separate groups of trees.

The masterplan generally indicates which trees are proposed to be retained within the development. The majority of trees along the southern and western boundaries would be retained together with those within and around the quarry basin, with the exception of G19a (C category) which is proposed to be removed to accommodate the dwellings within the quarry basin. Along the eastern boundary several tree groups are proposed to be removed (G4, G5, G7), these are lower quality C category trees, similarly there are several C category groups of trees (G14, G17 and G21) along the northern edge of the quarry which will be removed to facilitate the development and two B category groups (G20 and G8).

The loss of these tree groups would not, it is considered, result in any significant landscape impacts. The retention of the trees within the quarry basin, together with those on the southern and western boundaries and the retention of the majority of the TPO group along the northern boundary adjacent of properties on Enfield Close, save those required to be removed to form the access road, would ensure that the local landscape character would not be significantly adversely affected by the loss of trees. Moreover, the loss the B group trees will need to be mitigate through replacement planting within the site. There is a line of TPO protected conifers which bisects parcel B, this group of trees presents a significant constraint to this part of the site given their height and orientation. Moreover, they are considered to be category C trees of poor condition with gaps within the group, as such the loss of this tree group is considered to be acceptable and would not have a significant landscape impact.

The tree officer has noted that the indicative layout includes dwellings in close proximity to retained trees, as such the detailed layout and design of the development will need to have regard to this constraint. In addition, any reserved matters applications will need to be accompanied by an arboricultural impact assessment in order to demonstrate that the detailed layout is acceptable in terms of its impacts on trees, this information can be secured by conditions.

In light of the above, the development would accord with UDP Policies EV2, EV28 and EV30.

### **Drainage and Water Supply**

Concerns have been raised in letters of objection regarding the potential impact of the development on both surface water runoff and the capacity of the surrounding drainage system to cope with the additional foul flows from the development.

The application has been supported by a drainage statement which outlines the surface water drainage scheme for the site. It is proposed that all surface water drainage from developed areas will discharge at an attenuated rate to the Cwmrhydyceirw Stream along the southern boundary. The drainage statement confirms the surface water from the development will, as a minimum, be limited to existing greenfield runoff rates. Parts of the site will be drained to the sump lagoon before onward pumping to the stream.

The Council's drainage engineer has confirmed that the proposed drainage strategy demonstrates that an appropriately designed surface water drainage scheme can be achieved subject to the submission of further detailed design information, which can be required by a condition.

In terms of foul water drainage two options have been put forward by the developer, both of which would result in discharges to existing DCWW sewers within Chemical Road (option 1) or Heol Y Dyffan (Option 2). DCWW have raised no concerns regarding the capacity of foul sewers to receive the foul flows arising from the development.

In terms of water supply, DCWW had initially objected to the proposals on the grounds of water supply problems in the area. However, following the submission of a Hydraulic Modelling Assessment to DCWW, they have subsequently withdrawn their objection and requested standard drainage conditions 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.

In light of the above the development would accord with UDP Policies EV33, EV34 and EV35.

### **Planning Obligations**

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 Town and Country Planning Act 1990. The Council will expect developers 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.

Provisions should be fairly and reasonably related in scale and kind to individual development. The adopted SPG on Planning Obligations states that where developers contends that the Section 106 requirements are too onerous and will potentially make a scheme unviable, they will be expected to submit a development viability appraisal, and that the Council may seek independent verification of these details before considering whether to reduce the number and / or value of planning obligations sought.

A viability review has been undertaken and submitted as part of the application. The report concluded that the sites Existing Use Value is substantially higher than the value that could be achieved from the redevelopment scheme (this is called the site's residual value or RV). The RV is calculated for a scheme which includes planning obligation requests from Education, Housing, Highways and Parks. The report identifies significant abnormal costs associated with the development of the site, the vast majority of these costs are associated with remediating and managing the landfill. In total the abnormal costs would amount to approximately £3,000,000. The appraisal demonstrates that if the development were to provide all the requested Section 106 contributions (set out below) it would not be commercially viable and would not proceed.

The SPG highlights that any reduction in the requirements for Section 106 contributions is only likely to be justified where there is a planning merit and/or public interest in developing the site. In this respect the site benefits from planning permission and an environmental permit for landfilling operations. This development provides an opportunity to not only secure the permanent cessation of the landfilling operations and the potential amenity, traffic and environmental issues associated with such uses, but also provides an opportunity for the quarry to be opened to the public to provide a large and impressive area of open space for the benefit of the wider community. In conclusion, therefore, it is considered that there is the potential for substantial benefits to the local community if this development is approved.

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Therefore, it was considered justified in this instance to entertain a reduction in the Section 106 contribution requests, in line with the advice of the SPG. The contribution requests are set out below:

### Affordable Housing

The need for affordable housing is a material planning consideration and 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 Council's Planning Obligations Supplementary Planning Guidance (SPG) augments Policy HC3 and provides clarification on use, expectations and procedures and indicates that the Council will normally expect that 25 – 30% of all dwellings will be affordable housing. In this instance the Housing Department requested 30% affordable housing.

### 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 Morrision ward, there is a deficiency in open space provision in accordance with Fields in Trust guidelines. Morrision has an over provision of Outdoor Sport facilities (2.7ha) this makes up for the majority of the Wards Fields in Trust provision meaning a deficiency in Children's Playing Space and Equipped Playgrounds. Moreover, the assessment highlights that the Maes Y Gwernen area of Cwmrhydyceirw is almost entirely deficient in terms of access to open space/play provision. On this basis, and in accordance with the Council's Adopted 'Planning Obligations' SPG the Parks Department have requested the provision of a Local Equipped Area of Play (LEAP) for the site and a commuted sum of £75,000 for its on-going maintenance.

### Education

The catchment schools for the area are Cwmrhydyceirw Primary, Morrision Comprehensive, YGG Tan Y Lan and YGG Bryn Tawe. In accordance with the SPG calculations, and based on the development of 300 dwellings, the proposal would generate some 93 primary school pupils and some 66 secondary school pupils. On the basis of capacity issues at the local primary schools the Education Department initially requested a contribution request of £964,596 plus inflation required for Cwmrhydyceirw Primary School with a % split shared with YGG Tan y Lan. However, following a review of this request, in light of the viability information provided, a revised contribution request of £750,000 has been received for a three classroom extension to Cwmrhydyceirw Primary.

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### Highways

As described above, several highway safety improvement schemes have been identified to improve highway and pedestrian safety in the area around Cwmrhydyceirw Primary. The total cost of these schemes is estimated to be £146,000.

### Viability Appraisal

The viability appraisal accompanying the planning application demonstrates that the scheme would not be commercially viable if all the above requested contributions were required to be provided. The question therefore is whether, in the absence of the above contribution requests, the development would be acceptable in planning terms. In this respect the Community Infrastructure Levy Regulations (2010), requires that contributions must be necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related in scale and kind to the development.

In the planning balance, it is necessary to weigh up the positive aspects of bringing the development forward in terms of the permanent cessation of the quarry use, the provision of a large open space area and equipped play space within a community which is deficient in such provision. Moreover, it is acknowledged that the Council's housing land supply has dropped below the required 5 years, therefore, a development of this scale would make a positive and material contribution to addressing the current land supply deficiency in Swansea. Technical Advice Note 1: TAN1 (Joint Housing Land Availability Studies) advises that, where a housing land supply shortage exists, the need to increase supply should be given considerable weight when dealing with planning applications, provided that the development would otherwise comply with national planning policies. In this respect, the development is considered to be in broad compliance with the requirement of UDP Policies, therefore, significant weight should be afforded in favour of the development for this reason.

Aside from the broader planning balance arguments, ultimately a development must be able, where necessary, to satisfactorily mitigate any significant impacts which may arise as a result of the development, whether these relate to highway safety impacts or impacts on local services. The Council must therefore consider whether the contributions offered by the applicant would satisfactorily mitigate the developments impact on the local community.

In light of the viability assessment, the developer initially offered to provide some 5% affordable housing on the site together with a contribution of some £244,000 for highway safety improvements and measures to improve parking and drop off provision for Cwmrhydyceirw Primary. Following further negotiations, and a re-appraisal of the viability assessment, the developer has agreed to provide the following:

- Education contribution of £750,000 to provide 3 new classrooms for Cwmrhydyceirw Primary.
- Highways contribution of £146,000 for highway safety improvements as detailed above.
- The provision of a LEAP and its future maintenance through a management company.

The above offered contributions would accord with the requirements of the various departments with the exception of the request for the provision of 30% affordable housing within the site. The provision of affordable housing is a planning policy requirement under Policy HC3, where this is not ruled out by exceptional development costs. In this case the developer has provided robust viability information which rules out the provision of a policy compliant element of affordable housing. It is considered the contributions offered would mitigate the potential significant impacts of the development in terms of highway safety, capacity issues at Cwmrhydyceirw Primary and the need to provide outdoor play provision. In view of the positive impacts of the development described above it is therefore considered, on balance, that even in the absence of any affordable housing provision on site, the development would constitute a sustainable development that would be in accordance with development plan policies.

#### Safety Risk Posed by the Quarry Face

The planning inspector's appeal decision in 1985 justifies his decision to approve the broadening of the types of materials which could be landfilled at the site on the basis that the quarry face was a potential danger to the general public, and particularly to children in the locality. He considered it would be in the best interests of the local inhabitants for the quarry to be filled as quickly as possible to remove the danger to life and limb.

Whilst the inspector's comments are noted, the context in which this development is being considered is far different to that considered by the inspector. At the time of the inspector's decision the site was a permitted landfill with no immediate prospect of an alternative end use for the site, as such it was reasonable for the inspector to apply significant weight to potential safety issues at the site as justification for permitting the development. The context now is that whilst a permit exists for landfilling, no landfilling has taken place since the early 1990's and it is now proposed to develop the land within and around the basin for housing and open space. This planning application represents an opportunity to utilise this expansive and impressive landform, which is only likely to have been viewed by a limited number of people in the locality, into a unique open space area for the benefit of the wider community. In light of the opportunity presented by this planning application, the safety risks must be considered in the balancing exercise with the wider planning benefits associated with the development in terms of the cessation of the landfilling operations and providing a sustainable housing development which positively addresses the land supply deficit and addresses the lack of open space provision within the Maes Y Gwernen area. Moreover, it is considered that any safety risks posed by the quarry face can be reasonably addressed through the provision of adequate safety measures. This should ensure that any residual risk from accidents is minimised to an acceptable level of risk. Clearly there is also an element of personal responsibility involved and provided adequate safety measures are in place, for example, to protect young children from going near the quarry face, it is considered that the quarry basin would not represent an unacceptable risk to the public. It is therefore recommended that a condition is placed on any planning permission to require the submission of a health and safety risk assessment and the measures within the assessment to be incorporated within the detailed design of the scheme.

**Other Issues**

Concerns have been raised that doctor's surgeries in the area may be over capacity and the development would make the situation worse. There are several doctors' surgeries within Morriston, therefore, it is not considered a development of this scale would result in any significant impacts upon the capacity of existing surgeries.

Concerns have been raised that there is no demand for additional housing within this area. In response to this concern, there is a recognised need for more housing across the city. The Council is currently not able to demonstrate a five year housing land supply. This development, if approved, would make a positive and material impact upon the current housing land supply deficit. Moreover, the fact that the applicant has invested considerable resources to apply for planning permission for housing on this site suggested there may be considerable demand for new housing in this area.

Concerns have been raised that the chemicals used for the eradication of Japanese knotweed at the site may harm children and local wildlife. No details of a scheme to treat the Japanese knotweed at the site have been submitted. Notwithstanding this, the chemical treatment of Japanese knotweed is a well-established and effective method of eradication and if treated by a specialist contractor is unlikely to result in any significant health or environmental impacts. Details of a satisfactory method for its eradication at the site will be secured by a condition.

Concerns have also been raised in respect of the availability of mortgages on land that has Japanese knotweed. Whilst this is not considered to be a planning matter, long term guarantees are normally provided by eradication contractors which may serve to demonstrate to mortgage companies that this invasive plant has been treated with due diligence.

Concerns have been raised that the open space and additional public access lanes to the development may attract anti-social behaviour. The South Wales police design out crime officer has also commented that the development should not incorporate 'ratruns'. In response to this concern, clearly a balance must be struck between making a development safe and allowing permeability between the new development and its surroundings, which is desirable to encourage alternative modes of transportation and to provide a physical and social connection to the existing community. The layout and design of the development will need to actively address any potential antisocial behaviour issues by ensuring natural surveillance of any new connections with existing pathways. This matter can be dealt with at the reserved matters stage.

Concerns have been raised that the development would destroy the community spirit in the area. It is not considered there are any material reasons why the proposed development would impact on the community spirit which no doubt exists within the area. Indeed the development has the potential to improve community links through the provision of a large open space area within the development site.

Concerns have been raised that there may be injuries to the occupiers of the development from golf balls from the adjacent golf club. On the boundary with the golf course there are mature trees which should serve to screen the dwellings from the golf course. The retention of these trees, together with a suitable boundary treatment should serve reduce the risks to the future occupiers of the development from golf ball strikes.



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Concerns have been raised regarding whether a bus service would be provided within the development. At present the estate to the north of the site is served by a bus frequency of 2 hours whereas an hourly service serves Cwmrhydyceirw Road/Chemical Road. There may be scope to service the site using the existing bus provision, however, this would be at the discretion of the bus service operator. Notwithstanding this, access to the existing bus services in the area could be achieved by foot from the site.

Concerns have been raised that planning permission has previously been refused for dwellings at the rear of No. 53 Maes Y Gwernen Road. These applications are materially different to this current application, which has been considered on its merits having regard to development plan policies and all other material considerations. An assessment of the impact of the development on the occupiers either side of the proposed access on Maes Y Gwernen Road is described above. It is concluded, on balance, that the development would not result in any significant residential amenity impacts.

Concerns have been raised regarding the stability of the land adjacent to the new access at No. 57 Maes Y Gwernen Road. The land levels at No. 57 adjacent to the application site appear to be similar as such it is not considered that any significant retaining works would be required to facilitate the new access to the development.

Concerns have been raised regarding what controls will be in place to prevent the developer from leaving the landfill and/or housing incomplete and possibly in a dangerous condition. Any building site left in a dangerous condition may be subject to enforcement under health and safety legislation through the Health and Safety Executive. It would be unreasonable in planning terms to include a condition that the development must be completed within a specified timeframe, however, the phasing of the development will be agreed by a planning condition with trigger points for the provision of the open space and S106 contributions. The management of the landfill is subject to an environmental permit which will stay in place for enforcement purposes until the permit is surrendered, at which point the site will have been remediated in accordance with the requirements of NRW and the terms of any planning permission granted. In the long term, the open space, which includes the landfill, is intended to be managed by a charitable trust (Land Trust).

Concerns have been raised that the highway safety improvements should be undertaken prior to the commencement of development. This would be unreasonable in planning terms. The Head of Highways and Transportation has agreed phased payments for the highways improvement as set out within the recommendation. This will ensure an appropriate balance is struck in terms of the viability of the development and the requirements to provide highway safety improvements.

Concerns have been raised that the proposed development including the road layout and barriers will have an impact on customer parking for the corner shop, will impact on access to the hairdresser and will prevent daily deliveries of stock to the business. In response to this concern, there is considered to be ample on street parking provision to the front of the shop and within the pull-in at the roundabout.

Network Rail has issued a holding objection to the planning application on the basis that they require: drainage plans to ensure the Network Rail culvert isn't compromised; and details of the construction method in view of the proximity of housing to the railway tunnel. In response to these observations, the drainage options for the site have not yet been fully developed and may not include a foul connection via the railway bridge.

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The applicant has been made aware of Network Rails observations in order that the site drainage scheme can be drawn up having regard to these comments. If necessary, Network Rail can be consulted on the final drainage scheme which will be required by a condition. In terms of the method of construction in proximity to the railway tunnel, details of the method of construction can be approved by a planning condition, in consultation with Network Rail, as necessary. This is considered to be a technical detail and is not a valid reason to withhold planning permission.

### **Conclusion**

The proposed development will provide approximately 300 dwellings sited within and around the quarry basin. The illustrative masterplan demonstrates the design principles that will guide subsequent reserved matters applications; the design framework is considered to be acceptable and would accord with UDP design policies and SPG. On balance, it is considered the development would not result in any significant residential amenity impacts, subject to satisfactory mitigation measures. The development of this former landfill site for housing presents a number of challenges for the developer, however, based on the information provided it is considered the site can be developed for housing and open space without raising any significant environmental health or safety issues, subject to the conditions and Section 106 planning obligations required by this permission and subject to the successful closure of the landfill under the environmental permitting regulations administered by NRW.

The site is within a sustainable location close to existing services. It will result in additional traffic on the highway network, however, it is considered this traffic can be accommodated on the network without resulting in any significant highway safety impacts.

The developer has submitted viability information which demonstrates that the site cannot bear the full contribution requests from various departments described above. In order to make the development acceptable in planning terms and to mitigate the impacts of the development on infrastructure and services, S106 financial contributions have been negotiated and will be secured for highway safety improvements and extensions to Cwmrhydyceirw Primary. There is no provision for affordable housing.

Notwithstanding this, development has the potential to result in benefits to the local community in terms of the permanent cessation of the landfilling operations and the development of the quarry basin as an area of open space and play area, which is currently lacking in this part of Morriston. Moreover, the provision of some 300 dwellings would make a positive and material contribution to the housing land availability within Swansea.

Subject to the provision of further information, which can be secured by planning conditions, it is considered the proposal is capable of being developed without having significant impacts on drainage, ecology and trees.

In light of the above, the development is considered to accord with UDP Policies and approval is therefore recommended.

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**RECOMMENDATION**

**That the application be APPROVED, subject to the conditions indicated below and the applicant entering into a Section 106 Planning Obligation in respect of:**

**Education – a payment of £750,000 for the provision of three new classrooms at Cwmrhydyceirw Primary School. The payment to be made according to the following schedule: £247,500 before occupation of the 120<sup>th</sup> dwelling and a payment of £502,500 before occupation of the 150<sup>th</sup> dwelling.**

**Highways – a payment of £146,000 for highway safety improvements within the vicinity of the site comprising a toucan crossing and zebra crossing, guard railing, road markings and signage. The payment to be made according to the following schedule: £48666 to be paid before occupation of the 120<sup>th</sup> home, £48666 to be paid before occupation of the 195<sup>th</sup> home and £48668 to be paid before occupation of the 270<sup>th</sup> dwelling.**

**Landfill operations – no further landfilling operations pursuant to planning permissions: 81/0486/03, 84/0505/05 and 2015/2544 shall take place save for any works to remediate and definitively close the landfill site required by this planning permission or any works detailed within any Environmental Permit or other direction issued by NRW in order for the landfill to be definitively closed and to enter the aftercare phase.**

**The provision, management and future maintenance in perpetuity of ground water and surface water pumps at the site.**

**The provision, management and future maintenance in perpetuity of the landfill cap, LEAP, open space and woodland areas.**

**A management and monitoring fee as set out within the Council's SPG of 2% of the value of the obligations in the Section 106 Agreement - £17,920.**

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: The application, in outline form, does not give sufficient detail for consideration of these matters at this time.

2 Any application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 92 (2) of the Town and Country Planning Act 1990.

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- 3 The development shall begin either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.  
Reason: Required to be imposed pursuant to Section 92 (2) of the Town and Country Planning Act 1990.
- 4 The development shall be carried out in accordance with the following approved plans and documents: PA01 - Site Boundary, W131130/A/10 Proposed Site Access Locations, W131130/A/11 - Proposed Site Access Brodorion Drive and W131130/A/12 - Proposed Site Access Enfield Close, received 10th July 2014.  
Reason: To define the extent of the permission granted.
- 5 The reserved matters submitted in conjunction with condition 1 above shall be submitted substantially in accordance with the masterplan document entitled "Illustrative Masterplan" (Drawing No: 100MP Rev B ) and the Design and Access Statement, received on 1st April 2016.  
Reason: To ensure the development proceeds in accordance with the design principles agreed at outline stage.
- 6 A programme of phasing of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of works on the site. The development shall be completed and brought into beneficial use in accordance with the details approved under Condition 1, or required by the conditions of the permission and the approved phasing programme.  
Reason: To ensure that the development is completed in accordance with the plans and scheme of phasing approved by the City and County of Swansea, and so avoid any detriment to amenity or public safety by works remaining uncompleted.
- 7 Notwithstanding the details indicated in the application, all reserved matters applications shall be accompanied by details of existing and proposed levels for the development. The development shall be carried out in accordance with the approved details.  
Reason: To enable the reserved matters application to be properly assessed to ensure that the work is carried out at suitable levels in relation to the adjoining land having regard to visual impact, residential amenity impact, drainage and gradient of access.
- 8 Prior to the commencement of any development hereby approved a scheme to investigate and monitor the site for the presence of gases (see informative for description of 'Gases') being generated at the site or land adjoining thereto, including a plan of the area to be monitored, shall be submitted to and approved in writing by the local planning authority.

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- 8 The scheme shall be implemented in accordance with the approved scheme and in the event that gases are being generated the proposed details of appropriate gas protection measures to ensure the safe and inoffensive dispersal or management of gases and to prevent lateral migration of gases into or from land surrounding the application site shall be submitted to and approved in writing to the local planning authority.

All required gas protection measures shall be implemented as approved and appropriately verified before occupation of any part of the development which has been permitted and the approved protection measures shall be retained and maintained until such time as the local planning authority agrees in writing that the measures are no longer required. A copy of the verification certificate should be submitted to the local planning authority prior to the first beneficial use of the site.

Reason: In the interest of conserving public health, local amenity and to protect the environment.

- 9 Prior to the commencement of any development hereby approved, a strategic site wide foul, surface and land drainage strategy based on sustainable drainage principles shall be submitted to and approved in writing by the Local Planning Authority. The strategy should be based upon the SuDs hierarchy, as espoused by the CIRA publication 'The SuDs Manual, C697'. The strategy shall maximise the use of measures to control water at source as far as practicable, to limit the rate and quantity of run-off and improve the quality of any run-off before it leaves the site or joins any water body.

The strategy shall include details of all flow control systems and the design, location and capacity of all strategic SuDs features and shall include ownership, long-term adoption, management and maintenance scheme(s) and monitoring arrangements/ responsibilities, including detailed calculations to demonstrate the capacity of the measures to adequately manage surface water within the site without the risk of flooding to land or buildings. Details of phasing during drainage operations and construction shall also be included. The approved drainage works shall be carried out in their entirety, fully in accordance with the approved details, prior to the occupation of any building or alternatively in accordance with phased drainage operations agreed in writing by the Local Planning Authority..

Reason: To ensure a satisfactory and sustainable means of drainage, to prevent the increased risk of flooding, in the interests of protecting the environment and ensure future maintenance of the drainage infrastructure.

- 10 The highways and footpaths located within the development shall be laid out to an adoptable standard, including the provision of street lighting, in accordance with full engineering details which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The submitted details shall include details of the phasing of the highways and footpath construction.

Reason: In the interest of highway safety.

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- 11 Any reserved matters application shall include a detailed foul, surface and land water drainage strategy pursuant to the reserved matters site for which approval is sought. The strategy shall demonstrate how the management of water within the reserved matters application site for which approval is sought accords with the approved details for the strategic site wide surface water strategy. The strategy shall maximise the use of measures to control water at source as far as practicable, to limit the rate and quantity of runoff and improve the quality of any runoff before it leave the site or joins any water body.

The strategy shall include details of all flow control systems and the design, location and capacity of all such SUDS features and shall include ownership, long-term adoption, management and maintenance scheme(s) and monitoring arrangements/responsibilities, including detailed calculations to demonstrate the capacity of receiving on-site strategic water retention features without the risk of flooding to land or buildings.

Reason: To ensure that a satisfactory and sustainable means of drainage is available 'upfront' to serve development individual phases, to prevent the increased risk of flooding to third parties and to protect the environment.

- 12 Prior to the commencement of development an Environmental Management Plan (EMP) detailing site wide strategies for ecological mitigation, compensation and enhancement as summarised in Chapters 7 and 9 of the Environmental Statement have been submitted to and approved in writing by the local planning authority. These measures shall cover both construction and operational phases of the development. In addition to site wide mitigation measures the EMP shall include specific Mitigation and Management Plans for Bats, Peregrine Falcon, Amphibians and Reptiles. The development shall be implemented in accordance with the approved details and timescales set out within the approved EMP.

Reason: To ensure that the ecological impacts of the development are appropriately mitigated.

- 13 Prior to the demolition of the quarry building identified within Target Note 41 of Chapter 7 of the Environmental Statement, the building shall be surveyed for bats. The details of the survey and its findings together with any bat mitigation measures shall be submitted to and approved in writing by the local planning authority prior to its demolition. Any mitigation measures shall be carried out in accordance with the approved details and timescales.

Reason: To ensure there is satisfactory mitigation prior to its demolition, should this building be used by bats.

- 14 Prior to the commencement of development an application shall be submitted to Natural Resources Wales for the definitive closure of the landfill site. Written confirmation of the same from Natural Resources Wales shall be provided to the local planning authority by way of correspondence prior to the commencement of development. The application for definitive closure must not be withdrawn without first notifying the local planning authority.

Reason: In order to ensure that the cessation of the landfill use and its remediation are undertaken in a timely manner.

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- 15 No development approved by this permission shall be commenced until a Site Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
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.
- 16 No development approved by this permission shall be commenced until a Construction Pollution Management Plan (CPMP) detailing all necessary pollution prevention measures during the construction phase of the development is submitted to and approved in writing by the Local Planning Authority (see informatives for details of its contents). Development shall be carried out in accordance with the approved CPMP.  
Reason: In order to prevent pollution of the environment, protect the residential amenities of the area and to secure the satisfactory development of the site.
- 17 No development for the construction of any dwelling hereby approved shall take place within the Environmental Permit boundary as indicated on Plan No. EDE/CW/06-14/17856 (Figure 8.2 of the Environmental Statement) until such time that written confirmation has been provided to the local planning authority, by way of correspondence from Natural Resources Wales, that the landfill site has been definitively closed and has entered the aftercare phase.  
Reason: To ensure that there is no conflict between the development of the site for housing and the requirements imposed by the landfill environmental permit.
- 18 No development hereby approved shall commence until 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 details and timescales specified within the approved scheme.  
Reason: In the interests of the ecology and amenity of the area.
- 19 No development including site clearance, demolition, ground preparation, temporary access construction/widening, material storage or construction works shall commence until a scheme for tree protection has been submitted to and approved in writing by the Local Planning Authority. The tree protection scheme and method statement will address all the impacts raised in the arboricultural impact assessment. No development or other operations shall take place other than in complete accordance with the approved tree protection scheme. The tree protection scheme shall include the following information:  
  
(a) A tree protection plan comprising of a drawing at a scale of not less than 1:500 showing, with a solid line, all trees and other landscape features that are to be retained and, with a dashed or dotted line, those that are to be removed. This drawing shall also show the position of protection zones, fencing and ground protection measures to be established for retained trees. Where applicable, two lines shall be shown demonstrating the lines of temporary tree protective fencing during the demolition phase and during the construction phase.

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19 (b) A British Standard 5837 Tree Survey schedule with tree reference numbers corresponding with trees on the plan required by section a) of this condition.

(c) The specification for protective fencing and a timetable to show when fencing will be erected and dismantled in relation to the different phases of the development;

(d) Details of mitigation proposals to reduce negative impacts on trees including specifications and method statements for any special engineering solutions required and the provisions to be made for isolating such precautionary areas from general construction activities;

(e) Details of any levels changes within or adjacent to protection zones;

(f) Details of the surface treatment to be applied within protection zones, including a full specification and method statement;

(g) The routing of overhead and underground services and the location of any wayleaves along with provisions for reducing their impact on trees to an acceptable level;

(h) A specification and schedule of works for any vegetation management required, including pruning of trees and details of timing in relation to the construction programme;

(i) Provision for the prevention of soil compaction within planting areas;

(j) Provision for the prevention of damage to trees from soft landscape operations including details of the application of any herbicides;

(k) Provision for briefing construction personnel on compliance with the plan;

(l) Provision for signage of protection zones and precautionary areas;

(m) Details of contractor access during any demolition or building operations including haulage routes where soil is to be removed.

(n) A tree protection mitigation plan detailing emergency tree protection and remediation measures which shall be implemented in the event that the tree protection measures are contravened.

Reason: To ensure that reasonable measures are taken to safeguard trees in the interests of local amenity.

20 Details of the reserved matters set out in condition 1 shall be accompanied by an arboricultural impact assessment.

Reason: To ensure that reasonable measures are taken to safeguard trees in the interests of local amenity in accordance with Policy EV30.



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- 21 No retained trees shall be cut down, uprooted, destroyed, pruned, cut or damaged during the construction phase other than in accordance with the approved detailed plans and particulars, without the prior written approval of the Local Planning Authority. If any retained trees are cut down, uprooted, destroyed or die during the construction phase a replacement tree shall be planted at a similar location and that tree shall be of a size, species as specified in writing by the Local Planning Authority.

Reason: To ensure that reasonable measures are taken to safeguard trees in the interests of local amenity and accords to Policy EV30.

- 22 Prior to the commencement of development, full details of the proposed arrangements for future management and maintenance of the proposed streets within the development, shall be submitted to and approved in writing 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: In the interests of highway safety and to ensure that the highways within the development are provided at an appropriate time and maintained thereafter.

- 23 No development shall take place until the developer has displayed a site notice in accordance with the form set out in Schedule 5B of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 or any order revoking or re-enacting that order. The site notice shall be displayed at all times when development is being carried out.

Reason: To comply with the requirements of Section 71ZB(2) of the Town and Country Planning Act 1990 (as amended).

- 24 No development shall take place until the developer has notified the Local Planning Authority of the initiation of development. Such notification shall be in accordance with the form set out in Schedule 5A of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 or any order revoking or re-enacting that order.

Reason: To comply with the requirements of Section 71ZB(1) of the Town and Country Planning Act 1990 (as amended).

- 25 No development shall commence until an assessment of the nature and extent of contamination affecting the application site area, save for those areas which can be scoped out with the prior agreement of the local planning authority, has been submitted to and approved in writing by the local planning authority. This assessment must be carried out by or under the direction of a suitably qualified competent person \*in accordance with BS10175 (2011) Investigation of Potentially Contaminated Sites Code of Practice and shall assess any contamination on the site, whether or not it originates on the site. The report of the findings shall include:

- Continued -

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(i) a desk top study to identify all previous uses at the site and potential contaminants associated with those uses and the impacts from those contaminants on land and controlled waters. The desk study shall establish a 'conceptual site model' (CSM) which identifies and assesses all identified potential source, pathway, and receptor linkages;

(ii) an intrusive investigation to assess the extent, scale and nature of contamination which may be present, if identified as required by the desk top study;

(iii) an assessment of the potential risks to: human health, groundwater and surface waters, adjoining land, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, ecological systems, archaeological sites and ancient monuments; and any other receptors identified at (i)

(iv) an appraisal of remedial options, and justification for the preferred remedial option(s).

All work and submissions carried out for the purposes of this condition must be undertaken in accordance with the approved details and conducted in accordance with Welsh Local Government Association and the Environment Agency Wales' 'Development of Land Affected by Contamination: A guide for Developers' (2012).

Reason: In the interest of conserving public health, local amenity and to protect the environment.

26 Any aggregate (other than virgin quarry stone) or recycled aggregate material to be imported 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 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 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 interest of conserving public health, local amenity and to protect the environment.

27 Any topsoil (natural or manufactured), or subsoil, to be imported 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 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'.

Reason: In the interest of conserving public health, local amenity and to protect the environment.

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- 28 No more than 120 dwellings hereby approved shall be occupied until the capping, remediation and landscaping works have been completed and the open space area, including the LEAP, and pedestrian connections to this area within the quarry basin have been completed in accordance with details approved pursuant to the reserved matters under condition 1, and the open space is available to use by members of the public.

Reason: In order to ensure the timely provision of the open space for the benefit of the residents of the development and the surrounding community.

- 29 Prior to public access being provided to the areas of open space within the quarry basin, a scheme to restrict public access to essential infrastructure comprising gas monitoring equipment, gas venting equipment and lagoon pumping equipment, shall be submitted to and approved in writing by the local planning authority. The scheme shall be carried out and thereafter maintained in accordance with the approved details and timescales.

Reason: To ensure satisfactory long term protection for essential equipment at the site in association with the landfill legacy.

- 30 Prior to the occupation of any dwelling hereby approved, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented in accordance with the approved details and timescales.

Reason: To promote sustainable transport modes and reduce the reliance on private motor vehicles.

- 31 All planting and grass seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: To safeguard landscape and amenity interests.

- 32 Each dwelling shall be provided with on-site parking in accordance with adopted parking standards which shall be laid out prior to the first beneficial use of the dwelling which it serves. The approved car parking shall be retained as such thereafter.

Reason: To ensure adequate parking provision is provided for future residents of the development.

- 33 The reserved matters pursuant to condition 1 shall include details for the provision of an emergency vehicular access as indicated on Key 8 of the illustrative masterplan. The emergency access shall be provided in accordance with the approved details prior to the occupation of any dwelling within Parcels C or D as indicated on page 25 of the design and access statement and shall thereafter be maintained as approved.

Reason: In order to provide an emergency access to the development.

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ITEM 1 (CONT'D)

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- 34 Prior to the occupation of any dwelling hereby approved, a health and safety risk assessment which assesses the risks posed by the quarry face to residents and visitors to the application site, together with mitigation measures, shall be submitted to and approved in writing by the local planning authority. The mitigation measures shall be implemented in accordance with the approved details and timescales for their provision and shall thereafter be retained and maintained as approved.

Reason: In order to reasonably mitigate the health and safety risks posed by the quarry face to members of the public.

- 35 The reserved matters details pursuant to condition 1 shall include details of the construction method for the dwellings within Parcels A, B and C sited within 30 metres of the railway tunnel to the south. The development shall be carried out in accordance with the approved construction method.

Reason: To ensure the construction of dwellings does not compromise the structural integrity of the railway tunnel.

### 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, EV28, EV30, EV33, EV34, EV35, EV36, EV38, EV39, EV40, HC2, HC3, HC17, HC24, AS1, AS2, AS4, AS6 and AS10.

- 2 **STANDING ADVICE - DEVELOPMENT LOW RISK AREA**

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

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

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

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

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

- 3 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).

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- 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 The Construction Pollution Management Plan (CPMP) shall include the following information:
- 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) Traffic scheme (access and egress) in respect of all construction related vehicles including the loading and unloading of plant and materials;
  - 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 regards to best practicable means (BPM) and avoidance of statutory nuisance impacts;
  - 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 crushing/ screening operations);
  - k) Identification of surrounding watercourses and potential pollution pathways from the construction site to those watercourses;
  - l) How each of these watercourses and pathways will be protected from site run off during construction;
  - m) How the water quality of the watercourses will be monitored and recorded.
  - n) How surface water runoff from the site during construction will be managed/discharged. Please note that it is not acceptable for ANY pollution (e.g. sediment/silt/oils/chemicals/cement etc.) to enter the surrounding watercourses.
  - o) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by Principle Contractor on the Local Authority.
- 6 'Gases' include landfill gases, vapours from contaminated land sites, and naturally occurring methane and carbon dioxide, but does not include radon gas. Gas monitoring programmes should be designed in line with current best practice as detailed in CIRIA 665 (Construction Industry Research and Information Association) and/or BS8485 2007 Code of Practice for the Characterization and Remediation from Ground Gas in Affected Developments.

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ITEM 1 (CONT'D)

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- 7 Prior to any works commencing on the site, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Highways Authority. The approved traffic management plan shall be implemented and adhered to at all times unless otherwise agreed by the Highways Authority.
- 8 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.
- 9 Smoke/ burning of materials. No burning of any materials 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.
- 10 Dust control. During construction work the developer shall operate 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.
- 11 The applicant is advised to consider the comments of the Police Design Prevention Officer in the preparation of the Reserved Matters scheme where appropriate.
- 12 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).

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ITEM 1 (CONT'D)

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- 12 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](http://www.dwrcymru.com)

Further information on the Welsh Ministers Standards can be found on the Welsh Government website - [www.wales.gov.uk](http://www.wales.gov.uk)

- 13 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.

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**PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016**

ITEM 2

APPLICATION NO.

2015/2223

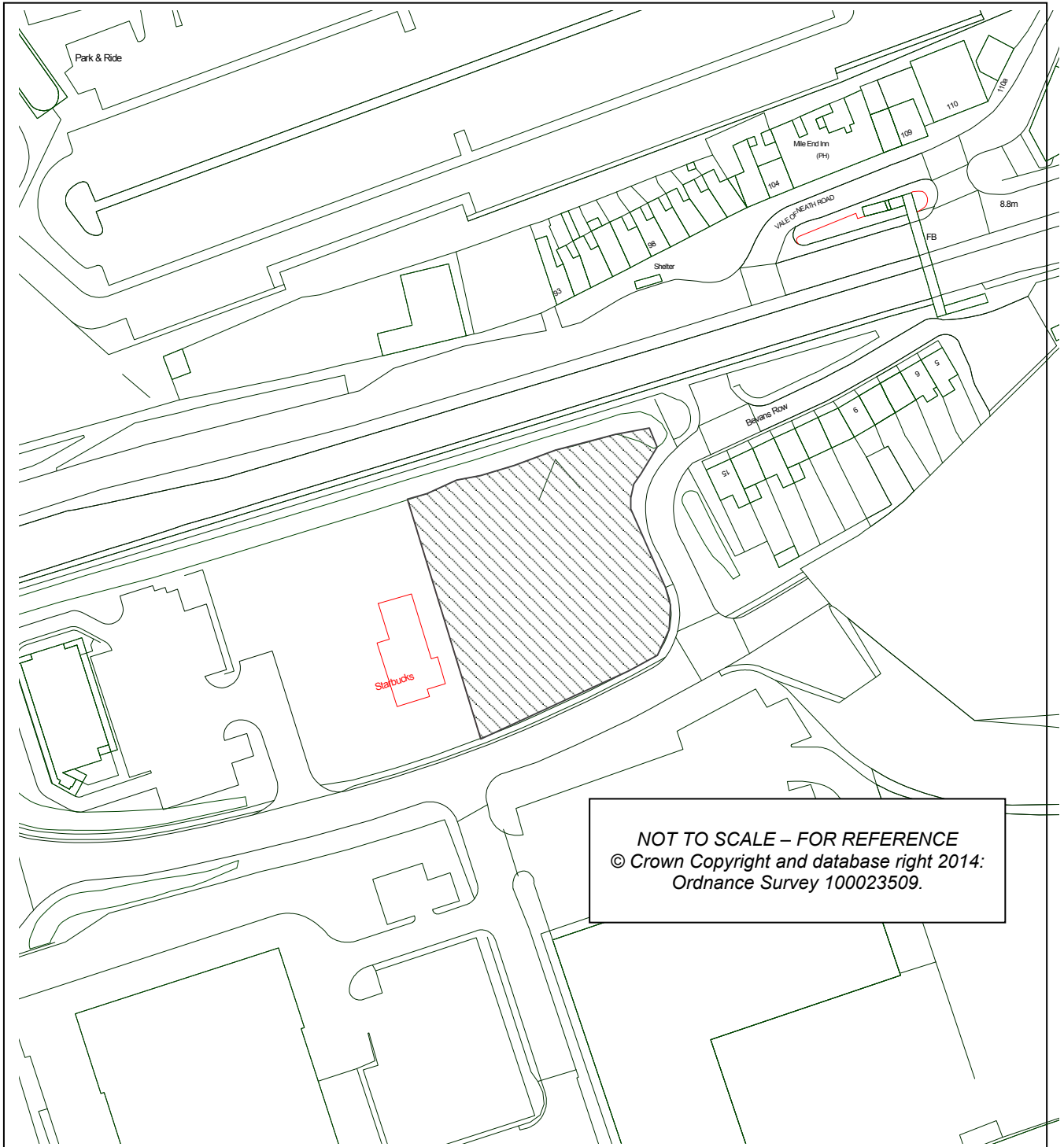
WARD:

St Thomas

**Location:** Land off Fabian Way Swansea SA1 8LD

**Proposal:** Erection of a detached tyre and auto-care centre and two detached units (Class A3)

**Applicant:** Mr James Marshall





## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 2 (CONT'D)

APPLICATION NO.

2015/2223

### **BACKGROUND INFORMATION**

#### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
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 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)

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ITEM 2 (CONT'D)

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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)

### SITE HISTORY

<b>App No.</b>	<b>Proposal</b>
99/1627	ERECTION OF A PUBLIC HOUSE (CLASS A3) (OUTLINE) - (AMENDED PROPOSAL) Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 08/05/2000
A01/0113	ERECTION OF 997 SQUARE METRE SINGLE STOREY FOOD RETAIL STORE (CLASS A1), FORMATION OF 73 SPACE CAR PARK TOGETHER WITH ASSOCIATED LANDSCAPING Decision: *HRP - REFUSE PERMISSION Decision Date: 06/03/2001
A00/6088	Erection of an internally illuminated fascia sign and 2 No. internally illuminated freestanding pole signs Decision: Withdrawn Decision Date: 23/10/2001
A00/1035	Erection of 997sqm single storey food retail store (Class A1) formation of 72 space car park together with associated landscaping Decision: Refuse Decision Date: 12/12/2000
2005/1528	Construction of single storey foodstore with associated car parking and landscaping Decision: Refuse Decision Date: 31/01/2006
2006/1710	Construction of single storey foodstore with associated car parking and landscaping Decision: Refuse Decision Date: 23/11/2006
2014/1729	Construction of drive through retail coffee house (Class A3) Decision: Perm Subj to S106 Agree Decision Date: 22/05/2015

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 2 (CONT'D)	APPLICATION NO.	2015/2223
2015/1102	Construction of drive through retail coffee house - Discharge of conditions 3 (samples), 4 (landscaping), 5 (car parking), 7 & 8 (drainage scheme) and 11 (Construction Pollution Management Plan) of planning permission 2014/1729 granted 22nd May 2015 Decision: Grant Permission Unconditional Decision Date: 03/08/2015	
2015/1264	1 no internally-illuminated totem sign, 1 non-illuminated height clearance bar, 7 internally-illuminated freestanding signs, including menu boards with canopies and customer order point, and 5 internally illuminated wall mounted signs Decision: Grant Advertisement Consent (C) Decision Date: 18/09/2015	
2015/1275	4 no. A/C Condenser Units and 3 no. Umbrellas Decision: Grant Permission Conditional Decision Date: 02/09/2015	

### RESPONSE TO CONSULTATIONS:

**Neighbours:** The application was advertised on site in the form of a site notice and all previous objectors to the adjacent development were individually consulted. 7 LETTERS OF OBJECTION were received which raised concerns relating to:

1. Fumes and smells.
2. Increase in traffic.
3. Vermin infestation.
4. Parking problems.
5. Loss of light.
6. Air pollution problems in the area.
7. Health issues.
8. Noise problems.
9. Unsightly proposal.

**Pollution Control:** No objection subject to conditions.

**Natural Resource Wales:** No objection.

**Highways:** Erection of a detached tyre and auto-care centre and two detached units (Class A3) Land off Fabian Way Swansea SA1 8LD.

A Transport Statement has been provided by Connect Consultants on behalf of Commercial Development Projects Limited to support the planning application for the construction of a detached tyre centre with two restaurants.

The adjacent site has previously had consent for a Costa Coffee drive through with associated parking (planning application 2014/1729).

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ITEM 2 (CONT'D)

APPLICATION NO.

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The application site is a parcel of brownfield land located off Bevans Row in the Port Tennant area of Swansea. The site is also occupied by a McDonalds restaurant with drive through element. The site is bounded by Fabian Way to the north, Bevans Row to the east, Langdon Road to the south and Costa Coffee to the west. The site is located approximately 1.5km from junction 42, linked to the site by the A4067 and A48. Many of the local junctions are designed for commercial HGV vehicles.

The layout that was originally submitted showed a shared access with the adjacent coffee shop site but due to concerns from Highways regarding access and egress a revised plan was submitted showing that access/egress to this site was self contained and was shown directly off Langdon Road.

National cycle network route 4 runs to the north of the site along Fabian Way, this predominantly traffic free route links to other segregated routes between Swansea and Ystradgynlais to the north. The site has access to frequent bus services running along Fabian Way which is located within the 400m recommended limit as set out in the Institution of Highways and Transportation (IHT) Document Public Transport in Development.

Access to the site is directly off Langdon Road and forms a priority junction with adequate visibility. Autotrack has been provided demonstrating that delivery vehicles can safely access and serve and leave the site in a forward gear utilizing a shared delivery area for the tyre development and the restaurants.

The floor plans indicate 186 square metres of A3 (restaurant use) plus 371 square metres for the autocare/tyre centre. In terms of layout the Parking is shown at 27 spaces including four that are designated for disabled use. These levels are in accordance with the CCS Parking standards. The layout is also acceptable. The application form details cycle parking as being proposed but the plans do not show any. This can be secured by condition.

On the revised layout plan which shows that access/egress can be gained off a dedicated priority junction an Autotrack has been submitted to show the track of a 10m rigid vehicle. A delivery management plan will be required by condition to ensure that the servicing/deliveries are appropriately managed.

In terms of trip generation the National Database TRICS has been used to assess likely trip numbers. The trip rate is derived per 100 square metres of floor space then apportioned to the new proposed floor space in this case 186 sq. m. In the morning peak 0800 to 0900 there are 5 arrivals and 2 departures, in the pm peak 1700 to 1800 this equates to 8 arrivals and 9 departures (17 movements) and in the development peak of 1200 to 1300 9 arrivals and 7 departures (16 movements) is expected. This still equates to less than one movement per minute. Due to the location of the site in close proximity to the other uses in the area it is likely that not all these trips will be new, and a certain percentage will be 'linked' trips, passby trips diverted and transferred trips. Thus the impact in terms of new trips will be reduced.

The personal injury accidents have not been assessed given the relatively low traffic movements expected. There are no recorded accidents in the area (Langdon Road) over the last three years but Fabian Way has a number of accidents recorded.

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ITEM 2 (CONT'D)

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In view of the expected low level of generated traffic, it is not considered that the proposed development will result in any detriment to highway safety.

The pedestrian facilities, cycle provision and proximity to bus services mean that the site is likely to appeal to visitors utilizing a number of different modes of transport and there are alternative forms of transport provision available apart from a car to visit the site.

Developments on Fabian way are contributing to the Fabian Way Corridor study programme of works that have been estimated at £25 million. The Transport statement clause 2.5.3 makes reference to this requirement although no figure is attributed to it. The contribution is based upon the total trips generated, in this case 91 for the Autocare centre and 138 for the A3 use. Making a total of 229 trips overall. Traffic on Fabian way is currently 33,000 vehicles per 24 hours. It is considered that there is a large element of passby visits to the A3 units likely but this is likely to be less with the tyre services/autocare. After negotiations regarding the percentage of new trips it was agreed that a contribution of £45,175 would be appropriate, the main bulk of which is required as a result of new trips generated by the Autocare centre.

There is no objection to the proposal subject to:-

- a) Development not being occupied until the Section 106 contribution of £45,175 to the Fabian Way Corridor works has been received.
- b) The development not coming into beneficial use until the car park has been completed in accordance with the approved Connect Consultant plan 15121-TR001A.
- c) The front boundary along the Langdon Road access to be kept below 1m in the interests of visibility.
- d) The disabled parking provision to be laid out to the current British Standard.
- e) The cycle parking shall be implemented in accordance with details to be submitted to the LPA prior to beneficial occupation of any of the units.
- f) The new site access junction to Langdon Road shall be constructed under a section 278 agreement with the Highway Authority, at the applicants' expense.
- g) The submission of a Delivery Management Plan to the LPA to ensure that the proposed site layout will not be compromised with deliveries resulting in overspill out onto the highway, to be implemented prior to beneficial occupation of any of the units.
- h) 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.

The Developer must contact the Highway Management Group , The City and County of Swansea , Guildhall Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Team Leader, e-mails to [mark.jones@swansea.gov.uk](mailto:mark.jones@swansea.gov.uk) , tel. no. 01792 636091

### **APPRAISAL:**

This application is reported to Committee for decision at the request of Councillor Clive Lloyd.

ITEM 2 (CONT'D)

APPLICATION NO.

2015/2223

Description

Full planning permission is sought for the erection of a detached tyre and auto-care centre and two detached units (Class A3) at Land off Fabian Way, Swansea. The site is situated adjacent to a recently constructed Starbucks Drive thru and the area comprises a mix of uses including residential properties along Bevans Row, Hancock and Brown – Builders Merchants, McDonalds, Audi, Mercedes and VW car dealerships, Hotel IBIS and a number of other mixed use uses which are housed within the large port industrial buildings to the east of the application site.

As stated above the proposal comprises two A3 units and a detached tyre and auto-care centre. The two A3 units are relatively small and internally measure approximately 93.1m<sup>2</sup> in footprint and 4m in height. These units incorporate a flat roof design and will be constructed from a mixture of facing brick, aluminium windows and aluminium clad roof. The tyre centre is approximately 371.7m<sup>2</sup> in footprint and a maximum of 6.4m in height. Internally it will provide 5 vehicle bays, office, reception, waiting room, staff facilities and toilets. The tyre centre will be constructed from similar materials and will be finished in brick and aluminium cladding.

Main Issues

The main issues for consideration during the determination of an application such as this relates to the principle of this form of development at this location and the resultant impact of the development upon visual amenity, residential amenity, land contamination, drainage, highway safety and any subsequent likely Section 106 Contributions having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards' and 'Planning Obligations'.

Principle of Development

The proposal will involve the erection of tyre and auto-care centre and two small A3 uses. Whilst it is acknowledged that there is a presumption in favour of trying to direct development towards local centres, district centres and the city centre, it is considered that the proposed uses will not it is considered compete with the functionality of these centres or affect their vitality and viability which planning policy is engineered to protect. Instead it is considered that these proposed uses will attract passing vehicular trade from Fabian Way or from footfall from the adjacent commercial mixed uses which are prevalent in the area.

The site is identified as unallocated white land under the provisions of the Swansea Unitary Development Plan 'Proposals Map' and as such the principle of development at this location is considered acceptable subject to compliance with the policies contained within the Swansea UDP.

Visual amenity

The proposal takes the form of two flat roofed A3 units and one larger shallow pitched building which will house the tyre service centre. The buildings incorporate a simple industrial style design which are common throughout Industrial Estates in the UK.

The supporting information states that the A3 units will be constructed from fair faced earthtone brickwork to eave height with self finished aluminium cladding fascia and canopy panels. The tyre building will be constructed from fair faced earthtone brickwork up to 2.4m in height and coloured aluminium cladding panels to eaves height. The proposed materials are considered to complement the surrounding built form and as such will respect the character and appearance of the area in compliance with the provisions of Policy EV1 and EV2 of the Swansea UDP.

#### Residential Amenity

Bevans Row is situated approximately 13m to the east of the application site. The A3 units will be located to the northern part of the application site and will be sited away from the rear garden areas of the properties along Bevans Row. The tyre centre will be sited approximately 30m from the side elevation and garden of No 15 Bevans Row. The buildings incorporate a design which ensures the units will retain relatively low lying heights. As such given the developments siting and orientation to the neighbouring properties, it is not considered the proposal will result in unacceptable overbearing or overshadowing which could warrant the refusal of this application. The proposal will raise no issues relating to overlooking.

Turning to any potential resultant noise and odours generated by the proposed development, following consideration of the proposal with the Councils Pollution Control Department, no objection has been raised with respect the proposed development subject to conditions requiring the erection of acoustic fencing around the site and the submission of further information with respect ventilation and condenser units proposed in order to mitigate any potential noise, disturbance and smells generated by the proposal. The applicant has indicated that the A3 units would be open between the hours of 6:30hrs and 23:00hrs Monday to Saturday and Sunday 09:00hrs and 22:00hrs and the tyre centre 08:30hrs and 18:00hrs Monday to Friday, 08:30hrs and 17:00hrs Saturdays and 10:00hrs and 16:00hrs Sunday and Bank Holidays. A brief assessment of the businesses in the area indicates that McDonalds and Starbucks have no opening hour restrictions, the VW Sinclair Car garage opening hours of 08:30hrs and 18:30hrs Mon-Fri, 08:30hrs and 17:00hrs Saturdays and 11:00hrs and 16:00hrs Sundays, Mercedes Sinclair Car Garage opening hours of 08:00hrs and 18:30hrs Mon-Fri, 08:00hrs and 17:00hrs Saturdays and 11:00hrs and 16:00hrs Sundays, Sinclair Audi Garage opening hours of 08:30hrs and 18:30hrs Mon-Fri, 09:00hrs and 17:00hrs Saturdays and 11:00hrs and 16:00hrs Sundays and Hancock and Brown Builders Merchants opening hours of 07:30hrs and 16:30hrs Monday-Fri and 07:30hrs and 12:00hrs Saturdays. As such the proposed hours of operation are not considered unreasonable in this instance. As such the development is considered to respect residential amenity in compliance with the provisions of Policies EV1 and EV40 of the Swansea UDP.

#### Drainage

Having consulted the Councils Drainage Officer, Natural Resource Wales and Dwr Cymru/Welsh Water in respect of the site drainage, there have been no objections raised to the positive determination of this application subject to approximately worded conditions. A condition is recommended requiring the submission of a comprehensive drainage strategy in order to properly demonstrate how foul and surface water will be dealt with. The condition requires the utilisation of Sustainable Drainage Systems where possible.

ITEM 2 (CONT'D)

APPLICATION NO.

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As such the development subject to conditions is considered to respect the sewer network in compliance with the provisions of Policies EV33 and EV35 of the Swansea UDP.

#### Contaminated Land

Policy EV38 prohibits development on land where there is risk of contamination such as this unless there is satisfactory mitigation to address the issues raised. Having consulted the Councils Pollution Control Department it is considered that the site is capable of being developed in a way which will respect the wider environment, however further details in the form of detailed Desk Top Studies and a ground investigation will be required which can be ensured via appropriately worded planning conditions. As such the development subject to sufficient detail being provided overcome any danger to life, health, property, controlled waters or the natural environment in compliance with the provisions of Policy EV38 of the Swansea UDP.

#### Highways

A Transport Statement has been provided by Connect Consultants on behalf of Commercial Development Projects Limited to support the planning application for the construction of a detached tyre centre with two restaurants. The adjacent site has previously had consent for a Coffee drive through with associated parking (planning application 2014/1729).

Following consideration of the application with the Head of Transportation and Engineering a revised layout plan was submitted showing that access/egress to the site as being self-contained and shown directly off Langdon Road which is now considered acceptable.

Access to the site is directly off Langdon Road and forms a priority junction with adequate visibility. Autotrack has been provided demonstrating that delivery vehicles can safely access and serve and leave the site in a forward gear utilizing a shared delivery area for the tyre development and the restaurants.

The floor plans indicate 186 square metres of A3 (restaurant use) plus 371 square metres for the autocare/tyre centre. The Highways Officer acknowledges the plan indicates 27 parking spaces including four that are designated for disabled use. These levels are in considered accordance with the Supplementary Planning Guidance Swansea Parking standards. The layout has been considered by the Highways Officer and is also felt this element of the scheme is acceptable. The application form details cycle parking as being proposed but the plans do not show any. This can be secured via an appropriately worded condition.

The revised layout plan confirms that access/egress can be gained off the junction via Autotrack. Whilst a delivery management plan has been requested by Highways in order to indicate how the servicing/deliveries will be managed, this is not considered to be a planning issue and as such has not been included as a condition.

In terms of trip generation the Highways Officer has confirmed that the National Database TRICS has been used to assess likely trip numbers. The trip rate is derived per 100 square metres of floor space then apportioned to the new proposed floor space in this case 186 sq. m.



## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 2 (CONT'D)

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In the morning peak 0800 to 0900 there are 5 arrivals and 2 departures, in the pm peak 1700 to 1800 this equates to 8 arrivals and 9 departures (17 movements) and in the development peak of 1200 to 1300 9 arrivals and 7 departures (16 movements) is expected. This still equates to less than one movement per minute. Due to the location of the site in close proximity to the other uses in the area it is likely that not all these trips will be new, and a certain percentage will be 'linked' trips, pass by trips diverted and transferred trips. Thus the impact in terms of new trips will be reduced.

The personal injury accidents have not been assessed given the relatively low traffic movements expected. Highways have confirmed that there are no recorded accidents in the area (Langdon Road) over the last three years, however, Fabian Way has a number of accidents recorded. In view of the expected low level of generated traffic, the Highways Officer does not consider that the proposed development will result in any detriment to highway safety.

The pedestrian facilities, cycle provision and proximity to bus services mean that the site is likely to appeal to visitors utilizing a number of different modes of transport and there are alternative forms of transport provision available apart from a car to visit the site.

Developments on Fabian Way are contributing to the Fabian Way Corridor study programme of works that have been estimated at £25 million. The Transport statement clause 2.5.3 makes reference to this requirement although no figure is attributed to it. The contribution is based upon the total trips generated, in this case 91 for the Autocare centre and 138 for the A3 use. Making a total of 229 trips overall. Traffic on Fabian way is currently 33,000 vehicles per 24 hours. It is considered that there is a large element of pass by visits to the A3 units likely but this is likely to be less with the tyre services/autocare. After negotiations regarding the percentage of new trips it was agreed that a contribution of £45,175 would be appropriate, the main bulk of which is required as a result of new trips generated by the Autocare centre.

As such the proposal is considered to respect highway safety, provide sufficient parking spaces for the public and subject to a Section 106 Financial contribution will mitigate the potential increase in capacity along Fabian Way in accordance with the provisions of Policies EV1, EV3, AS1, HC17 and AS6 of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

### Response to Consultations

Notwithstanding the above 7 letters of objection were received which raised concerns relating to fumes and smells, traffic, parking, residential amenity, air pollution and the design of the units. The issues pertaining to which have been addressed above.

Concern has been raised with respect vermin etc. This is an issue for Environmental Health which is covered under separate legislation and falls outside the remit of planning, however there is no reason to suggest that the approval of this application will result in an increase in the level of vermin if the premises is run properly.

ITEM 2 (CONT'D)

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Conclusion

In conclusion, the proposal would accord with the prevailing development plan in land use terms and in design terms the proposal is considered to complement the existing adjacent dealerships and would represent a satisfactory form of development which complies with the criteria of Policies EV1, EV2, EV3, EV33, EV35, AS1, HC17, EV38, EV40 and AS6 of the Swansea Unitary Development Plan and would have an acceptable impact on the residential and visual amenities of the area, highway safety, land contamination and land drainage. Approval is therefore recommended.

**RECOMMENDATION**

**It is recommended that planning permission be GRANTED subject to the conditions indicated below and the applicant entering into a Section 106 Planning Obligation in respect of:**

- **Payment of a financial contribution of £45,175 towards the Fabian Way Corridor Study measures to be paid prior to the beneficial occupation of the proposed development**
- **Section 106 Management & Monitoring fee (calculated as 2% value of the obligation) 2% of £45,175 = £903.50**

**If the Section 106 planning obligation is not completed within 3 months of the foregoing resolution then delegated powers be given to the Head of Economic Regeneration and Planning to exercise discretion to refuse the application on the grounds of non-compliance with policies AS1, EV1, HC17 and EV3 of the City and County of Swansea Unitary Development Plan (November 2008).**

- 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: (SK-) 13 E - Phase 2 Elevations Sheet 1, (SK-) 15B Phase 2 Elevations Sheet 2, (SK-) 17 - Phase 2 Site Plan and Boundary, (SK-) 18 - Phase 2 Elevations Sheet 4 received 4th November 2015 and 15121-TR001 A - Amended Swept Path Analysis received 1st March 2016.  
Reason: To define the extent of the permission granted.
- 3 The A3 units shall not be used before 06:30hrs nor after 23:00hrs Monday to Saturday and Sunday 09:00hrs and 22:00hrs. The approved tyre centre shall not be used before 08:30hrs nor after 18:00hrs Monday to Friday, 08:30hrs and 17:00hrs Saturdays and 10:00hrs and 16:00hrs Sunday and Bank Holidays.  
Reason: To safeguard the amenities of the occupiers of neighbouring properties.

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ITEM 2 (CONT'D)

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- 4 The development hereby approved shall not be brought into beneficial use until the car park has been completed in accordance with the approved Connect Consultant plan 15121-TR001A. The parking spaces shall be kept available for the parking of vehicles in perpetuity.  
Reason: In the interest of highway safety.
- 5 Prior to the development being brought into beneficial use further details of the proposed cycle parking shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be completed in strict accordance with the said detail and retained in perpetuity.  
Reason: In the interest of highway safety.
- 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 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. For the avoidance of doubt the eastern boundary of the site shall be finished in sound proof fencing and the front boundary along the Langdon Road access shall be kept below 1m.  
Reason: In the interests of visual and residential amenity and highway safety.
- 8 Prior to the commencement of work on site soakaway tests shall be carried out and submitted to the Local Planning Authority. The soakaway tests shall be carried out in strict accordance with BRE Digest 365 or the equivalent CIRIA document. Development shall thereafter take place in accordance with the approved details.  
Reason: To ensure that an appropriately designed surface water management system is implemented so as to avoid creating surface water flood risk to the development itself and adjacent third parties.
- 9 No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how surface water and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SuDS) for surface water drainage and/or details of any connections to a surface water drainage network.

- Continued -

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ITEM 2 (CONT'D)

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9 The development shall not be brought into beneficial use until the works have been completed in accordance with the approved drainage scheme, and this scheme shall be retained and maintained as approved unless otherwise agreed in writing by the Local Planning Authority.

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

10 A detailed scheme for the eradication of Japanese Knotweed shall be submitted to and approved in writing by the Local Planning Authority, and shall be implemented prior to the commencement of work on site.

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

11 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.

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:

- Continued -

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 2 (CONT'D)

APPLICATION NO.

2015/2223

11 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 Natural Resources Wales 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:

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.

12 If, during the course of development, contamination not previously identified is found to be present at the site no further development [unless previously 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, a detailed strategy for dealing with said contamination. The remediation of the land shall be completed in strict accordance with the agreed detail.

Reason: To ensure that the safety of future occupiers is not prejudiced.

13 The use hereby permitted shall not commence until a scheme of ventilation and fume extraction, including full details of the equipment to be installed for that purpose, including its location, has first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed prior to its use being commenced and retained in perpetuity.

Reason: To ensure that a statutory nuisance does not occur.

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 2 (CONT'D)

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- 14 The use hereby permitted shall not commence until a scheme, which specifies the provisions to be made for any condensing units relating to refrigeration and freezing of products has been submitted to and approved by the Local Planning Authority. Such works that form part of the approved scheme shall be completed before the premises are occupied and retained in perpetuity.

Reason: To ensure that a statutory nuisance does not occur.

- 15 Prior to the commencement of construction works on the application site a Construction Pollution Management Plan (CPMP) shall be submitted to and approved in writing by the LPA. The CPMP is to include the following:

- a) Construction programme and timetable
- b) Detailed plans of any piling operations to be carried out. Plans to contain vibration with regard to the neighbouring residential premises.
- c) Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas etc;
- d) Proposed working hours;
- e) Principal Contractor details, which will include a nominated contact for complaints;
- f) Details of all on site lighting (including mitigation measures) having regard to best practicable means (BPM);
- g) Details of on site dust mitigation measures having regard to BPM;
- h) Details of on site noise mitigation measures having regard to BPM;
- i) Details of waste management arrangements (including any proposed crushing/screening operations); and
- j) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by Principle Contractor on Local Authority.

Note: items f -i 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.

### 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, EV33, EV35, AS1 and AS6.

- 2 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 2 (CONT'D)

APPLICATION NO.

2015/2223

3 The Developer must contact the Highway Management Group , The City and County of Swansea , Guildhall Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Team Leader, e-mails to mark.jones@swansea.gov.uk , tel. no. 01792 636091

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 REPTILES

Reptiles may be present. All British reptiles are protected under Schedule 5 of the Wildlife and Countryside Act 1981 as amended. It makes it an offence to intentionally kill or injure adder, slow worm and common lizard. If the reptiles listed above are encountered work must cease immediately and the advice of Natural Resources Wales sought before continuing with any work (01792 634 960).

6 Advisory Notes

If the development will give rise to a new discharge (or alter an existing discharge) of trade effluent, directly or indirectly to the public sewerage system, then a Discharge Consent under Section 118 of the Water Industry Act 1991 is required from Dwr Cymru Welsh Water. Please note that the issuing of a Discharge Consent is independent of the planning process and a Consent may be refused although planning permission is granted. The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of [www.dwrcymru.com](http://www.dwrcymru.com) The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water on 0800 085 3968 to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

- Continued -

6 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.

7 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.

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](http://www.ile.org.uk)] recommendations

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**PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016**

ITEM 3

APPLICATION NO.

2015/2258

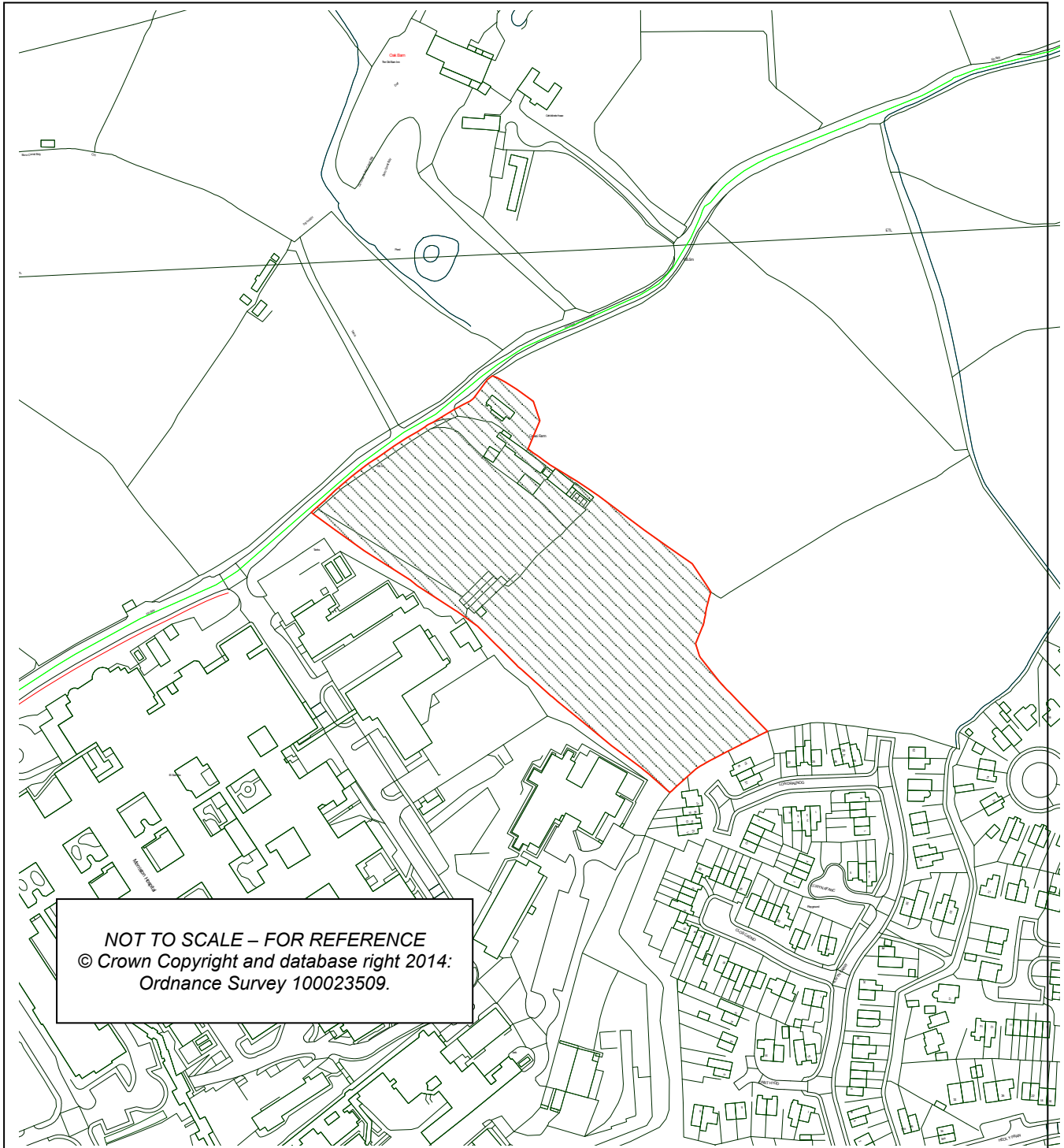
WARD:

Morrison

**Location:** Land at Cawsi Farm Mynydd Gelli Wastad Road Morrison Swansea SA6 6PX

**Proposal:** Care home facility incorporating elderly mentally infirm facility, special needs facility and private hospital (outline)

**Applicant:** Mr Des Davies



## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 3 (CONT'D)

APPLICATION NO.

2015/2258

### **BACKGROUND INFORMATION**

**This application is reported to Committee for decision as the scale parameters indicate the building will exceed the development threshold of 2000 square metres.**

### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
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 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 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 EV21	In the countryside non-residential development will only be permitted where it can be demonstrated that it is beneficial for the rural economy, or it meets overriding social or economic local needs, or it is appropriate development associated with farm diversification, sustainable tourism or nature conservation, or it provides an acceptable economic use for brown field land or existing buildings, or it is essential for communications, other utility services, minerals or renewable energy generation. (City & County of Swansea Unitary Development Plan 2008)

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 3 (CONT'D)

APPLICATION NO.

2015/2258

- Policy EV22 The countryside throughout the County will be conserved and enhanced for the sake of its natural heritage, natural resources, historic and cultural environment and agricultural and recreational value through:
- i) The control of development, and
  - ii) Practical management and improvement measures.
- (City & County of Swansea Unitary Development Plan 2008)
- Policy EV23 Within green wedges development will only be permitted if it maintains the openness and character of the green wedge and does not contribute to the coalescence of settlements or adversely affect the setting of the urban area. (City & County of Swansea Unitary Development Plan 2008)
- Policy 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.
- 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.

### SITE HISTORY

<b>App No.</b>	<b>Proposal</b>
2015/1542	Care home facility (outline) Decision: Withdrawn Decision Date: 06/10/2015
2006/0942	Erection of a replacement residential dwelling with detached double garage Decision: Refuse Decision Date: 19/06/2007
2007/2065	Detached replacement dwelling with detached double garage Decision: Grant Permission Conditional Decision Date: 10/07/2008
2014/1149	Replacement detached dwelling and detached garage Decision: Grant Permission Conditional Decision Date: 16/10/2014

## RESPONSE TO CONSULTATION

The application was advertised in the local press and on site as a Departure to the Development Plan. FIVE neighbouring properties were consulted. There was NO response. ONE LETTER OF OBJECTION (on behalf of Abertawe Bro Morgannwg Health Board) was received which is summarised as follows:

- Discrepancies with size of development provided on plans and within the Design and Access Statement;
- No transport assessment has been submitted;
- No drainage strategy has been submitted;
- The ecology report is outdated and should not be relied upon;
- No consideration has been given to ground conditions;
- The proposal does not accord with UDP Policies EV20, EV21, EV23. The UDP is still the relevant development plan and does not expire until end of 2016;
- There are no material considerations that outweigh the development plan, and the application could be refused on this ground alone;
- The extant planning permission for a replacement dwelling on the site (2014/1149) does not set a precedent for approving the current planning application which is for a development different in use and scale, and which should be considered on its own merits under the relevant development plan policies;
- The proposal is prejudicial to ABMUs proposals for future expansion of Morriston Hospital;
- The site falls within the proposed hospital expansion development area and separates it from adjoin land to the east (now owned by ABMU) which also forms part of ABMUs development proposal);
- The submitted DAS infers that there is a potential link between the proposed development and care provided at Morriston Hospital. Although representatives of ABMU have met the applicant, discussions have focused on land acquisition only;
- In contrast to ABMU's comprehensive proposal, the application represents a piecemeal form of development, which, if permitted, would compromise ABMU's proposals for the future planned expansion of Morriston Hospital;
- The proposal is premature and prejudicial to the emerging LDP;
- ABMU has been promoting the future expansion of Morriston Hospital in a comprehensive and responsible manner through the emerging Swansea LDP process. An LDP candidate site submission for Morriston Hospital was made in 2011; followed by comments on the LDP's vision and objective paper in 2012; and on the LDPs preferred strategy in 2014. Extensive survey work has been undertaken to date and further work is underway to support the proposal;
- The LDP preferred Strategy: Final Draft (July 2014) accepts the principle of hospital development in this location and states (para 6.38):  
*"There is also considered to be potential for development...near to Morriston Hospital. Development opportunities within the vicinity of the hospital are focussed upon those associated with additional healthcare provision and will involve a review of settlement limits at this location".*
- Given the scale and importance of ABMUs proposed development, and the location of the application site in relation to the existing and proposed hospital campus, this is a case where prematurity may properly be used as a refusal reason.

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**Council's Head of Highways and Transportation** – The application requires to be supported by a full Transport Assessment.

**Council's Drainage Section** - We have reviewed the submitted application and must recommend that it be **refused at this stage**.

No drainage strategy has been submitted to demonstrate how the proposed development will manage the 1% probability storm event including a 30% allowance for climate change.

An application for planning permission should include details of 1 workable solution for managing surface water this may indeed alter at the detailed application/discharge of conditions stage, however an acceptable workable method of drainage must accompany any application.

The following is a list of the information needed by the City and County of Swansea to recommend a surface water drainage condition. This is intended only as a starting point

- Demonstrate how SUDS options have been considered. Refer to the SUDS management train and hierarchy and justify the chosen method(s) of surface water disposal.
- Areas of permeable and impermeable land for both the existing site and the proposed development to be used to assess the change in surface water runoff. The site characteristics such as how surface water management is functioning on the site at present should be investigated.
- Consideration should be given to sub-catchments which may exist on the site. Calculations for greenfield runoff rates should be based on the proposed area of impermeable land.
- An assessment of the volume of attenuation storage that would be required on site. This should be based on the 100 year critical storm duration with climate change for the site and the allowable discharge rate. The method of attenuation should be identified and located on a plan of the site.

We recommend that the applicant engage an appropriately qualified body/person to undertake a drainage strategy appropriate to the scale and nature of the development.

#### Informatives

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.

**Council's Pollution Control Division** - Offer no objection but request conditions relating to: unforeseen land contamination, construction site management plan; lighting and noise are attached to any permission granted.

**Council's Planning Ecologist** – The main features of interest are the bordering hedges with trees and the remaining intact building. The hedges around the site are of significant ecological value and should be retained and where possible enhanced. The hedges will be used by foraging bats so any street lighting should be designed to prevent light spill on to them. There will be some ecological loss as a result of the development; any landscape planting should be wildlife friendly in order to compensate for this loss. Any scrub or trees on the site may contain nesting birds, please could we add a bird informative to any permission we give. The small slate roofed building on the site with a loft has bat potential; the building was not fully surveyed. Please request a full bat survey of this building, this will need to be carried out at a time of year when bats are active (May to August).

Additional comments following receipt of protected species survey (April 2016)

The first bat survey carried out in 2008 found a small roost of bats under a barge board. A later survey dated 2014 described the barge board roost as no longer suitable for bats. As a further year has passed the building will have deteriorated further and it is very unlikely that the site is still used by bats. No further survey is required and the developer won't need a protected species licence. As a precaution please include standard Bats and Birds informatives.

**Council's Tree Officer** – It is noted the applicant is keen to retain the existing trees and hedgerows around the site, however a tree survey with a tree protection plan will need to be submitted.

**Council's Environment Officer** – Conditions addressing Japanese Knotweed and invasive non-native species of flora must be attached to any permission granted.

**Natural Resources Wales** - We do not object to the above proposal, but wish to make the following comments.

Ecology and Protected Species

We welcome the submission of the document entitled; '*Cawsi Farm, Gelliwastad Road, Morriston, Swansea: Bat and Owl Survey (Report Ref: JAJ220914)*', dated 2014, by Greg Jones (Consultant Ecologist). A previous survey of the derelict farmhouse carried out in 2008, identified use of the structure by approximately three common pipistrelle under UPVC barge-boards on the north-west facing gable-end extension to the building.

However, the survey carried out in 2014, highlights a further deterioration in the condition of the structure and confirms that the roost identified in 2008 no longer exists and that the farmhouse no longer provides a bat roost function.

We also note the provision of the document entitled; '*Land to the East of Morriston Hospital, Swansea: Ecological Appraisal Report*', dated 3 August 2011, by Soltys Brewster Ltd. Although, the report is over 4 years old; in this instance, we are satisfied that the conclusion remain valid.

The site is composed of improved grassland, which can be considered to be of low ecological value. However, the boundary hedgerows and trees which surround the site can be thought of as being the main features of ecological value, and therefore should be retained, wherever possible along with an appropriate buffer zone between them and the development.

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Furthermore, we support the recommendation made in the report that lighting at the site is designed in such a way as to avoid illuminating the hedgerows and boundary features.

We also draw to your Authority's attention that the Ecological Appraisal also identifies a small number of trees, which have some potential to support roosting bats. Therefore, we advise that should the proposals require the felling of any trees at the site, then further survey work may be required. We recommend that you seek further advice from your Authority's Planning Ecologist, to determine if they consider this is necessary.

Please note that we have not considered possible effects on all species and habitats listed in section 42 of the Natural Environment and Rural Communities (NERC) Act 2006, or on the Local Biodiversity Action Plan or other local natural heritage interests. To comply with your Authority's duty under section 40 of the NERC Act, to have regard to conserving biodiversity, your decision should take account of possible adverse effects on such interests.

#### Foul Water Disposal

We acknowledge that this is an outline application and no details of foul drainage arrangements have been provided. Given the scale of the proposal, we would assume that connection would be to the mains sewer. However, we advise that your Authority seeks confirmation of this, prior to determination. In addition, we recommend that Dwr Cymru Welsh Water (DCWW) are consulted and asked to confirm that a connection is possible and that there is sufficient hydraulic capacity within the sewer network at this location to accommodate the flows generated without causing pollution.

We also recommend that you consult your Authority's own Public Health Team, along with your Drainage and Pollution Teams, for their comments.

#### Surface Water Disposal

Limited information has been provided in relation to surface water disposal. We recommend that where possible it should be managed by means of a sustainable drainage system (SUDS), as advocated by current planning guidance PPW and TAN15 (July 2004). Paragraph 8.2 of TAN15 states that 'SUDS can perform an important role in managing run-off from a site and should be implemented wherever they will be effective on all new development proposals irrespective of the zone in which they are located'.

SUDS are an approach to managing surface water run-off which seeks to mimic natural drainage systems, retaining water on or near the site as opposed to piping water off-site as quickly as possible. SUDS involve a variety of techniques, including soakaways, grassed swales, permeable paving, grey-water recycling and attenuation ponds.

The variety of techniques available means that virtually any development should be able to include a scheme based around these principles. The use of SUDS can also provide multiple benefits, reducing costs, water consumption and maintenance needs.

Ultimately the drainage system design is a matter for your Authority's Drainage Engineers and we would advise that they are also consulted in relation to this aspect.

**Dwr Cymru Welsh Water** – Recommend the inclusion of the following condition:

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No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment

### **APPRAISAL**

Outline planning permission is sought for the construction of a health care complex on land at Cawsi Farm, Mynydd Gelli Wastad Road, Morriston. All matters are reserved for future consideration. The site is located outside the defined urban area, on the northern edge of urban Swansea in an area designated as forming part of the Pant-Lasau Green Wedge. The application has accordingly been advertised as a Departure from the Development Plan. During the course of the processing of the planning application amended indicative drawings and a revised Design and Access Statement has been submitted following discussions with Officers although the principle of development remains the same.

The application site, which is situated adjacent to the eastern boundary of Morriston Hospital, extends to an area of approximately 1.9hectares. The site comprises a fire damaged farmhouse measuring approximately 14m in width, 5.5m in depth and a ridge height of 5.4m, and its itinerant outbuildings and an area of semi-improved grass farmland bounded by mature trees and shrubs. The site has been the subject of considerable fly tipping and is currently overgrown and untidy. Further to the south east lies the northern most part of the Parc Gwernfadog residential development.

The application site has an area of approximately 1.9ha. Therefore this proposal falls within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, as the application site area exceeds 0.5 hectares. A Screening Opinion was carried out in accordance with the above regulations. It was considered that this proposal, by virtue of its nature and location, would not have a significant environmental impact. It was therefore determined that an Environmental Impact Assessment was not required to be submitted with this application.

### **The Proposal**

The indicative details indicate a proposed development that will consist of:

- A 4 storey 150 bed care home. The ground floor area will incorporate the reception, kitchen, laundry, general office, meeting rooms, gymnasium, hair salon communal lounge together with 50 beds set aside for respite care to be made available for family carers
- A 4 storey 80 bed Elderly Mentally Infirm facility.
- A 2 storey 40 bed Special Needs facility.;



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- A 4 storey 36 bed private hospital facility with flat accommodation for family members.
- A nature lake, park and footpaths and secure garden area
- Road widening improvements to provide an upgraded carriageway.

It is proposed that the EMI facility, Special Needs facility and the private hospital will be designed by specialist designers.

The indicative scale parameters identified in the DAS and illustrated on the indicative plan drawings are:

- Care Home: Max Height -18.8m Min Height- 18.00m  
Max Width – 26.5m Min Width - 26.00m  
Max Length – 42.4m Min length - 42.00m  
Total Floor area: 8,500 sqm.
- EMI facility: Max Height -18.4m Min Height - 18.00m  
Max Width – 26.5m Min Width – 26.00m  
Max Length – 42.4m Min Length – 42.00m  
Total floor area: 1,800 sqm.
- Special Needs Facility: Max Height – 8.4m Min Height – 8.00m  
Max Width – 26.5m Min Width – 26.00m  
Max length – 42.4m Min length – 42.00m  
Total floor area: 900 sqm.
- Private Hospital: Max Height – 13.9m Min Height – 13.00m  
Max Width – 12.5m Min Width - 12.00m  
Max Length – 30.3m Min Length – 30.00m  
Total floor area 1575 sqm.

Total floor area: 12,775 sqm.

Although all matters (access, appearance, landscaping, layout and scale) are reserved for future consideration the accompanying DAS indicates that the heights of the proposed buildings have been designed to correspond with the height of buildings within the neighbouring Morrision Hospital complex. Elevations are indicated to be designed with dark brown finish to walls, brown UPVc windows and doors, and Marley modern roof tiles.

Access to the site will be via Mynydd Gelliwastad Road. It is indicated the existing lane will be upgraded along the frontage of the site. Parking areas are approximately 200 car spaces will be provided to include disabled parking, with space for a cycle park, deliveries and emergency vehicles.

### Site History

Planning permission was granted in October 2014 for a replacement detached dwelling and detached garage (application ref 2014/1149 refers) on the site.

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This proposal was considered and approved under UDP Policies including Policy EV19 which allows replacement dwellings in the countryside subject to: (i) the residential use not being 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 current proposal is materially different in both scale and use to the above approval and will therefore be considered on its own merits under relevant UDP policies.

### **Main Issues**

The main issues for consideration with regards to this application relate to the impact of the proposal on the character and appearance of the area, which is designated as a green wedge, as well as the impact on the amenities of neighbouring residents and highway safety, having regard to the prevailing development plan policies and national planning policy guidance. There are in this instance no additional overriding issues for consideration under the provisions of the Human Rights Act.

### **Policy Issues**

Under the provisions of Section 54A of the Town and Country Planning Act 1990 (as amended) planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is the City and County of Swansea Unitary Development Plan (UDP) which was adopted on 10<sup>th</sup> November 2008. The UDP policies considered relevant to this application are: EV1, EV2, EV3, EV21, EV22, EV23, EV30, EV33, EV35, HC15, AS1, AS2, and AS6.

Policy HC15 seeks to support proposals for new and improved local community and health facilities in appropriate locations to serve the local population subject to the compliance with a defined list of strict criteria including access, impact on amenity, effect on natural heritage and historic environment and impact on adjacent road network, which includes compliance with the other policies in the Development Plan.

The application site is located in the countryside outside the defined settlement limits, as identified on the UDP Proposals Map. Policy EV22 seeks to conserve and enhance the countryside for the sake of its landscape, nature conservation and recreational value. Additionally Policy EV21 seeks to ensure that non-residential development in the countryside is only permitted subject to specified criteria.

The site also lies within an area designated as forming part of the 'Pant-Lasau' Green Wedge (Policy EV23). Both national and local policy aims to safeguard the openness of green wedge land and UDP Policy EV23 states that development will only be permitted within a green wedge if it maintains the openness and character of the land and does not contribute to the coalescence of settlements or adversely affect the setting of the urban area.

Policy EV23 is based on national planning guidance principles as contained in Planning Policy Wales (2014). PPW reinforces the above development plan framework and advises that local planning authorities should attach substantial weight to any harmful impact which a development would have on a green wedge.

Inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the green wedge. The construction of new buildings in a locally designated green wedge is inappropriate development unless it is for the following purposes:

- justified rural enterprise needs;
- essential facilities for outdoor sport and outdoor recreation, cemeteries, and other uses of land which maintain the openness of the Green Belt or green wedge and which do not conflict with the purpose of including land within it;
- limited extension, alteration or replacement of existing dwellings;
- limited infilling (in those settlements and other development sites which have been identified for limited infilling in the development plan) and affordable housing for local needs under development plan policies; or
- small scale diversification within farm complexes where this is run as part of the farm business.

It is not considered that the current proposal meets any of the above permissible forms of development appropriate within a green wedge or open countryside location, as identified in the UDP or National Planning guidance, and that no alternative sites for this facility have been explored in the wider urban area. No direct evidence justifying the 'need' for this facility at this location has been provided. Therefore it is considered that the proposal, in principle, is considered unacceptable as it would result in an unjustified form of urbanising development that would have a harmful impact on the character and openness of the green wedge contrary to National and extant Local Planning Policies.

### **Visual Amenity**

Having regard to the impact on the character and appearance of the area, whilst details of the appearance, layout, scale and landscaping are not being considered at this stage the indicative drawings indicate a development in terms of its scale (up to 6 storey) and its design, which comprises bland utilitarian building blocks, that would have a harmful visual impact upon the character and appearance of this countryside location. The provision of a swathe of frontage parking which appears to have no regard to the existing hedge line and trees along Mynydd Gelliwastad Road would provide a striking urban contrast to the current open pastureland enclosed by field boundaries that characterises the site and which serves to maintain the openness in this important urban fringe location. For these reasons the proposed development would also have a significant detrimental impact upon the visual character and appearance of the area and would therefore be contrary to UDP Policies EV1, EV2, EV22 and EV23.

### **Residential Amenity**

Turning to impact on residential amenity, the nearest residential properties are located to the south east of the site on Lon Draenog within the Parc Gwernfadog residential estate. The nursing home would be sited at a distance of more than 40m from the common boundary, with these properties, which comprises of mature trees and shrubs which acts as a thick natural screen. It is however noted, that a row of car parking spaces is indicated to be sited tight along this common boundary. No tree survey has been submitted with the application, although the applicant has stated that it is their intention to retain the trees on the hedgerows as physical visual barriers.

However, in the absence of any supporting information demonstrating this, it is considered the proposal as submitted is unacceptable and would detract from the amenity of neighbouring dwellings through increased noise, disturbance and disruption. The development would therefore be contrary to Policies EV1, EV2 and HC15

### **Access and Highway Safety**

The Head of Highways and Transportation had requested the submission of a Transport Assessment. Whilst a statement has been submitted (dated September 2011) it is clear that it is for a different scheme in terms of scale (2,900 square metre private hospital/clinic and a 825square metre research and development building) of 3,725 sqm total floor space as opposed to 12,775 sq.m for the current application.

It is therefore recommended that the application be refused on the grounds that the applicant has not adequately shown that the proposed use will not have a detrimental impact on the adjacent Highway Network or that satisfactory access to and within the site for vehicles, cycles and pedestrians can be provided without resulting in significant impacts on highway safety. The development is therefore considered to be contrary to EV2, EV3, AS2 and AS6 of the City and County of Swansea Unitary Development Plan.

### **Other Constraints**

The application has been submitted in outline form and no details of foul drainage arrangements have been provided. Given the scale of the proposal, it is assumed that connection would be to the mains sewer. Only limited details of surface water drainage have also been submitted. Had the development been considered acceptable in planning policy terms the provision of an appropriately detailed drainage strategy for the site would have been required prior to determination. In the absence of this information, it cannot be reasonably concluded, given the scale of the development, that it would not result in any adverse impacts on the environment by way of increased surface water runoff or a reduction in the quality of surface water run-off. The proposal is therefore considered contrary to UDP Policy EV35.

It is noted the applicant is keen to retain the existing trees and hedgerows around the site, however a tree survey and an accompanying tree root protection plan has not been submitted in support of the planning application. Given the level of matures trees and hedges, particularly on the boundaries of the site, it is considered the proposal has failed to demonstrate that there would be no impact on these and any associated ecological features of interest.

A protected species survey has been submitted. The Council's Planning Ecologist has advised that the first bat survey carried out in 2008 found a small roost of bats under a barge board. A later survey dated 2014 described the barge board roost as no longer suitable for bats. As a further year has passed the building will have deteriorated further and it is very unlikely that the site is still used by bats. No further survey work is required and the developer won't need a protected species licence. As a precaution standard bat and bird informatives would have been proposed the application had been recommended for approval.

### **Responses to Consultations**

The letter of objection on behalf of ABMU is noted, as are their submissions via the LDP process. It is considered the matters raised, in respect of the UDP, have been addressed in the body of the report above. Any reference to the LDP can be given little weight at this stage of the LDP process.

### **Conclusions**

In conclusion, therefore, and having regard to all material considerations including the Human Rights Act, the proposal is considered to be an inappropriate, unjustified and visually intrusive form of development that would have an unacceptable detrimental impact on the character and appearance of the open countryside and green wedge at this location. Moreover, insufficient information has been submitted to demonstrate that that the development would not result in any significant access and highway safety issues; any significant adverse impacts on the water environment by way of increased surface water runoff or a reduction in the quality of surface water runoff; and any significant adverse effect on existing trees and ecological interests. It is also considered the proposal, by virtue of the proximity of the car parking area to properties on the south eastern boundary of the site, would give rise to significant noise, and associated disturbance to the residents of those properties on Lon Draenog. In view of the above the proposal is considered to be contrary to national planning policy guidance and Policies EV1, EV2, EV21, EV22, EV23, EV30, EV35, HC15, AS2 and AS6 of the City and County of Swansea Unitary Development Plan. Refusal is therefore recommended.

### **RECOMMENDATION**

#### **REFUSE, for the following reasons;**

- 1 The proposal represents an inappropriate, unjustified and visually intrusive form of development that would have an unacceptable detrimental impact on the character, appearance and openness of the countryside and Green Wedge. As such the proposal would be contrary to Policies EV1, EV2, EV21, EV22, EV23 and HC15 of the City and County of Swansea Unitary Development Plan (2008).
- 2 The applicant has failed to provide sufficient information in the form of a drainage strategy to demonstrate the development would not have an adverse impact on the water environment by way of increased surface water run-off or a reduction in the quality of surface water runoff. The development is therefore contrary to Policy EV2 and EV35 of the City and County of Swansea Unitary Development Plan (2008).
- 3 The applicant has failed to demonstrate that traffic flows arising from the development can be satisfactorily accommodated on the highway network and that satisfactory access to and within the site for vehicles, cycles and pedestrians can be provided without resulting in significant impacts on highway safety. The development would therefore be contrary to Policies EV2, HC15, AS2 and AS6 of the City and County of Swansea Unitary Development Plan (2008).

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 3 (CONT'D)

APPLICATION NO.

2015/2258

- 4 The applicant has failed to provide sufficient information in the form of a tree survey to demonstrate the proposal would not have an adverse impact on existing trees and hedges at the site contrary to Policies EV2 and EV30 of the City and County of Swansea Unitary Development Plan (2008).
- 5 The proposal by virtue of the proximity of the car parking area to properties on the south eastern boundary of the site would give rise to significant noise, and associated disturbance to the residents of those properties on Lon Draenog, contrary to Policies EV1, EV2, and HC15 of the City and County of Swansea Unitary Development Plan (2008).

### 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, EV21, EV22, EV23, EV30, EV33, EV35, HC15, AS1, AS2, AS6).

### PLANS

Site location plan; NH3 second, third & forth plans (nursing home); NH4 attic storage area (nursing home); SN1 ground floor plan (special needs unit); SN2 first floor plan (special needs unit) received 9th November 2015.

EMI (A) ground floor plan (EMI unit); NH2(A) first floor plan (nursing home); SN3(A) elevations front & side (special needs unit); SN4 (A) elevations rear & side (special needs unit); received 24th November 2015.

EMI2 upper floor plans (EMI unit); ENI3 elevations - front & side (EMI unit); ENI4 rear elevation (EMI unit); EMI5 elevations side (two number thus (EMI unit); NH1 ground floor plan (nursing home); NH5 elevations 1 (nursing home); NH6 elevations 2 (nursing home); PH1 ground floor plan (private hospital); PH2 first floor plan (private hospital); PH3 second & third floor plan (private hospital); PH4 front elevation (private hospital); PH5 rear elevation (private hospital); PH6 end elevation 1(private hospital); PH7 end elevation 2 (private hospital); SP1 site plan received 4th March 2016.

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**PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016**

ITEM 4

APPLICATION NO.

2016/0086

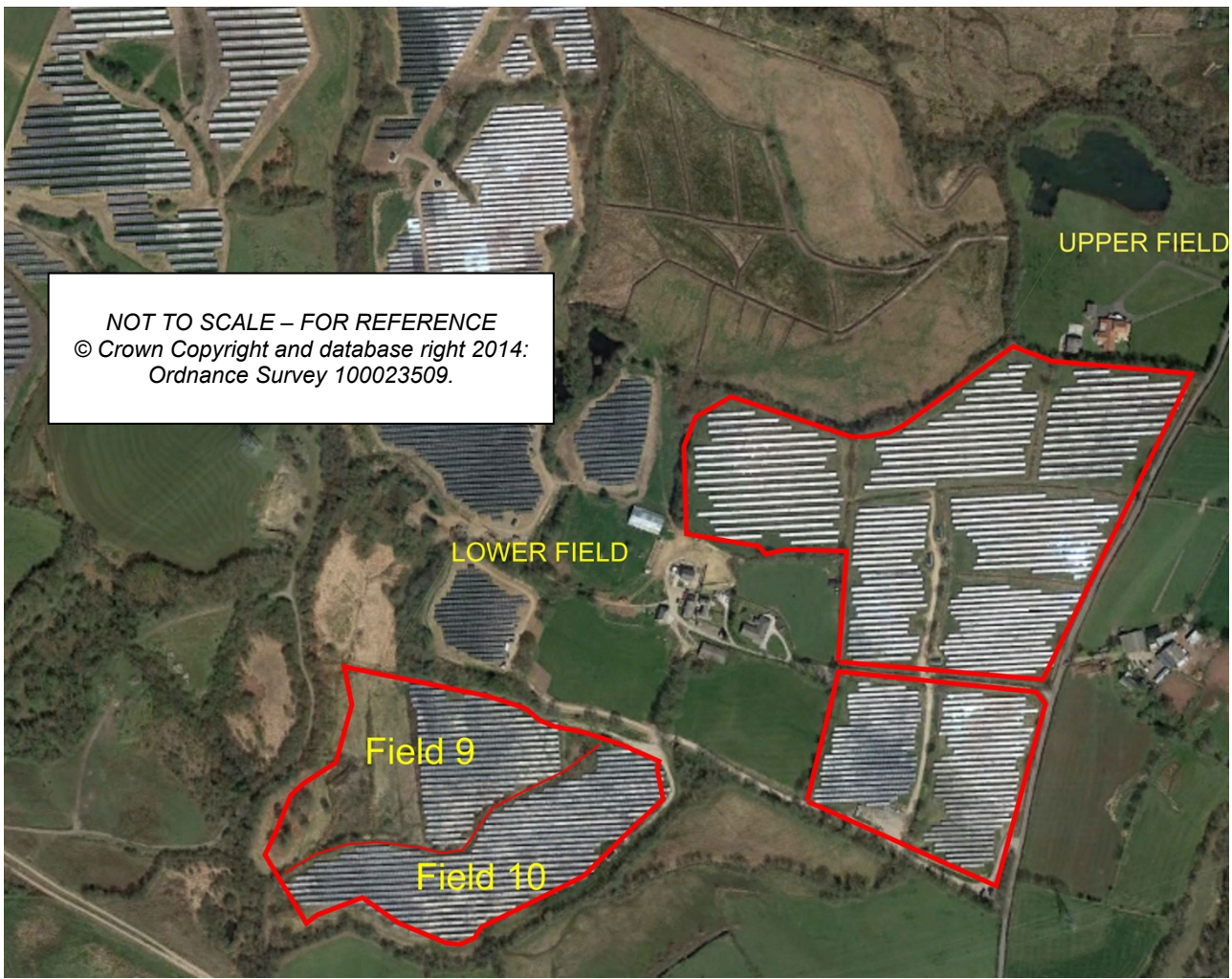
WARD:

Mawr

**Location:** Land at Cefn Betingau Farm, Morriston, Swansea, SA6 6NX

**Proposal:** Removal of condition 8 of planning permission 2013/0865 granted 28th August 2013 to remove the need for hedge planting

**Applicant:** Mr Fernando Lloret



## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 4 (CONT'D)

APPLICATION NO.

2016/0086

### **BACKGROUND INFORMATION**

**This application is reported to Committee for decision as the site area exceeds the development threshold set out in the Council Constitution.**

### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
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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 EV21	In the countryside non-residential development will only be permitted where it can be demonstrated that it is beneficial for the rural economy, or it meets overriding social or economic local needs, or it is appropriate development associated with farm diversification, sustainable tourism or nature conservation, or it provides an acceptable economic use for brown field land or existing buildings, or it is essential for communications, other utility services, minerals or renewable energy generation. (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 R11	Proposals for the provision of renewable energy resources, including ancillary infrastructure and buildings, will be permitted provided:  (i) The social, economic or environmental benefits of the scheme in meeting local, and national energy targets outweigh any adverse impacts,  (ii) The scale, form, design, appearance and cumulative impacts of proposals can be satisfactorily incorporated into the landscape, seascape or built environment and would not significantly adversely affect the visual amenity, local environment or recreational/tourist use of these areas,

- Continued -



## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 4 (CONT'D) APPLICATION NO. 2016/0086

- Policy R11
- (iii) There would be no significant adverse effect on local amenity, highways, aircraft operations or telecommunications,
  - (iv) There would be no significant adverse effect on natural heritage and the historic environment,
  - (v) The development would preserve or enhance any conservation areas and not adversely affect listed buildings or their settings,
  - (vi) The development is accompanied by adequate information to indicate the extent of possible environmental effects and how they can be satisfactorily contained and/or mitigated,
  - (vii) The development includes measures to secure the satisfactory removal of structures/related infrastructure and an acceptable after use which brings about a net gain where practically feasible for biodiversity following cessation of operation of the installation.

Proposals for large-scale (over 25MW) onshore wind developments shall be directed to within the Strategic Search Area defined on the Proposals Map subject to consideration of the above criteria. (City & County of Swansea Unitary Development Plan 2008)

### SITE HISTORY

<b>App No.</b>	<b>Proposal</b>
2015/0480	Non Material Amendment to planning permission 2013/0865 granted 28th August 2013 to include a CCTV system Decision: Refuse Decision Date: 30/04/2015
2013/0865	Construction of 9 megawatt solar park consisting of installation of upto 135,000 pv panels and 9 inverter/transformer cabins and a single control building Decision: Grant Permission Conditional Decision Date: 28/08/2013
2013/1639	Construction of 7 megawatt solar park consisting of installation of up to 28,250 pv panels and up to 6 inverter/transformer cabins, a single control building and provision of security fencing Decision: Grant Permission Conditional Decision Date: 20/02/2014
2013/1739	Discharge of conditions 2, 4, 5, 6, 7 and 10 of Planning Permission 2013/0865 granted 28th August 2013 Decision: No Objection Decision Date: 24/01/2014

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 4 (CONT'D)	APPLICATION NO.	2016/0086
2014/1055/ DOC	Discharge of condition 9 of planning permission 2013/1639 granted 20th February 2014 (details of Japanese Knotweed management plan) Decision: No Objection Decision Date: 08/10/2014	
2014/1218	Discharge of conditions 2, 4, 5, 6, 7, 8, & 10 of planning permission 2013/1639 granted 20th February 2014 Decision: No Objection Decision Date: 10/12/2014	
2015/0480	Non Material Amendment to planning permission 2013/0865 granted 28th August 2013 to include a CCTV system Decision: Refuse Decision Date: 30/04/2015	
2015/0617	Discharge of condition 3 of planning permission 2013/0865 granted 28th August 2013 Decision: No Objection Decision Date: 21/04/2015	
2015/0807	Discharge of condition 8 of planning permission 2013/0865 granted 28th August 2013 (hedge planting) Decision: Officer Consideration Decision Date: 14/08/2015	
2015/1079	Installation of a surveillance system based on a CCTV system and fencing sensor cable Decision: Grant Permission Conditional Decision Date: 02/09/2015	
2015/1331	Non Material Amendment to planning permission 2013/1639 granted 20th February 2014 to alter the design and location of ancillary buildings, aerial on substation, satellite dish on control room, spare parts container and ir/cctv cameras mounted on 2.4m high wooden posts Decision: Grant Permission Unconditional Decision Date: 08/09/2015	
2015/1713	Non Material Amendment to planning permission 2013/0865 granted 28th August 2013 to replace the fencing Decision: Grant Permission Unconditional Decision Date: 17/09/2015	
2015/2406	Discharge of condition 3 of planning permission 2013/1639 granted 20th February 2014 (decommissioning method statement) Decision: No Objection Decision Date: 20/01/2016	

ITEM 4 (CONT'D)

APPLICATION NO.

2016/0086

## RESPONSE TO CONSULTATIONS

The proposal was advertised on site and in the local press. TWO LETTERS OF OBJECTION were received both stating that the hedge should be planted.

**The Gower Society** – The original reason for requesting the condition should still stand. Anything intended to reduce the impact in the landscape must be supported. There is insufficient evidence to justify the removal of the condition.

**Ecology** – Whilst the council's ecologist was consulted and concerns were raised as to the impact upon habitat, the condition was attached for visual reasons rather than ecological. The comments have therefore been updated accordingly and no objection is raised.

**Highway Observations** - There are no highway implications associated with this application.

## APPRAISAL

Planning permission was granted on the 28<sup>th</sup> August 2013 for the construction of a 9 MW solar park consisting of up to 135,000 pv panels and associated buildings (application 2013/0865 refers. This application seeks the removal of condition 8 of planning permission 2013/0865 granted to allow development to be implemented without the need to plant a hedge to sub divide fields 9 and 10 of the application site..

Condition 8 states:

*'Notwithstanding the details hereby approved, the lower site (fields 9 and 10) shall be subdivided by hedgerows in accordance with details to be submitted to and approved in writing by the Local Planning Authority.*

*Reason: In the interest of visual amenity.'*

The hedge location was to be sited towards the centre of the solar park, running east to west and its intention was to install a visual break between the expanses of the solar panels.

The solar park (granted under 2013/0865) is complete and fully operational with all dischargeable conditions discharged.

The main issues for consideration with regard to this application relate to the acceptability of the proposal in terms of the impact upon visual amenity, having regard to prevailing planning policies EV1, EV2, EV3, EV21, EV22 and R11 of the UDP. There are in this case considered to be no additional overriding considerations arising from the provisions of the Human Rights Act.

In support of the application, the applicant has stated:

*The lower site has a different character, field size, topography and soil conditions to the upper site and consists of damp, boggy pasture with extensive stands of Juncus reed bisected by ditches. This can be clearly seen on Google Earth and was shown on the ecological survey also. This area is well enclosed by existing trees which makes it less visible than the upper site and there are no existing hedge banks which are characteristic of the upper site. Due to these ground conditions it is neither safe nor practical to subdivide the site by a hedgerow as required by condition 8 and most hedgerow species would be unlikely to establish along the ditch edge. There are several small trees mainly some Birch and Willow growing to the ditch edge which help break up the site and these are to be coppiced as part of the ongoing management. On the area of higher ground near the inverter / transformer cabin an area of existing trees has been retained and it is proposed to plant a hedgerow edge supplemented by shrub and trees planting to create a small copse in lieu of a longer hedgerow. This will create a valuable landscape feature with significant wildlife and amenity value.*

In terms of visual amenity, fields 9 & 10, whilst providing a large, unbroken expanse of solar panels, occupies a relatively inconspicuous area which cannot be viewed from land neighbouring the solar park. Views of this section may be viewable from farther afield. Having regard to the constraints as to the land quality and topography stipulated by the applicant in the supporting information, it is considered that the visual benefit of providing a hedgerow at this location would be minimal and, having visited the site and viewed the presence of larger mature trees in the lower site, it is considered that the omission of planted vegetation at this location would not render the scheme visually unacceptable.

With regard to residential amenity, there are no residential amenity issues arising as a result of this application due to the vast separation distances involved and the nature of the proposal.

With regard to the point raised in the letters of objection, the impact of not planting the hedge has been addressed above and the visual impact is considered minimal.

In conclusion, it is considered that the proposed removal of condition 08 of planning permission 2013/0865 to allow the development to be implemented without the need to plant a hedge is an acceptable form of development having particular regard to Policy EV1 of the City and County of Swansea Unitary Development Plan 2008. Accordingly, approval is recommended.

**RECOMMENDATION:**

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

- 1 The development shall be carried out in accordance with the following approved plans and documents: Site location plan received 2nd February 2016.  
Reason: To define the extent of the permission granted.
- 2 The development hereby permitted shall be for a limited period being the period of 24 years from the date of this planning permission when the use shall cease and all apparatus/equipment shall be removed from the site in their entirety and the land restored in accordance with the details of condition 3 of this consent.  
Reason: To ensure the landscape impact of the development exists only for the lifetime of the development.

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 4 (CONT'D)

APPLICATION NO.

2016/0086

- 3 The site shall be decommissioned and restored in accordance with the document 'Decommissioning Plan - 24/3/2015' that was approved to discharge conditions 3 of planning permission 2013/0865 on the 20th April 2015, within 12 months from the date of the last electricity generated should the site no longer be utilised for the permission hereby granted.

Reason: In the interest of visual amenity and to ensure the land is restored in an acceptable manner.

- 4 The sustainable drainage system (SUDS) and environmental mitigation measures outlined in section 6.5 + 6.8 of the Environmental Report (Wessex Solar Energy, May 2013) shall be implemented/maintained in accordance with the document 'Code of Construction Practice' that was approved to discharge conditions 4 and 7 of planning permission 2013/0865 on the 23rd January 2014.

Reason: To ensure the SUDS system is maintained in accordance with the approved details and the programme of indigenous planting is undertaken in accordance with the approved details.

- 5 The Mitigation Measures outlined in Sections 6.5 and 6.8 of the Environmental Report (Wessex Solar Energy, May 2013), submitted with application 2013/0865 shall be undertaken in accordance with the details approved in respect of condition 4 of planning permission 2013/0865 by this Local Planning Authority on 10th December 2014 (application 2014/1218 refers).

Reason: In the interests of visual amenity and biodiversity.

### INFORMATIVES

- 1 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
- 2 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV3, EV21, EV22, R11.
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PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 5

APPLICATION NO.

2016/0605

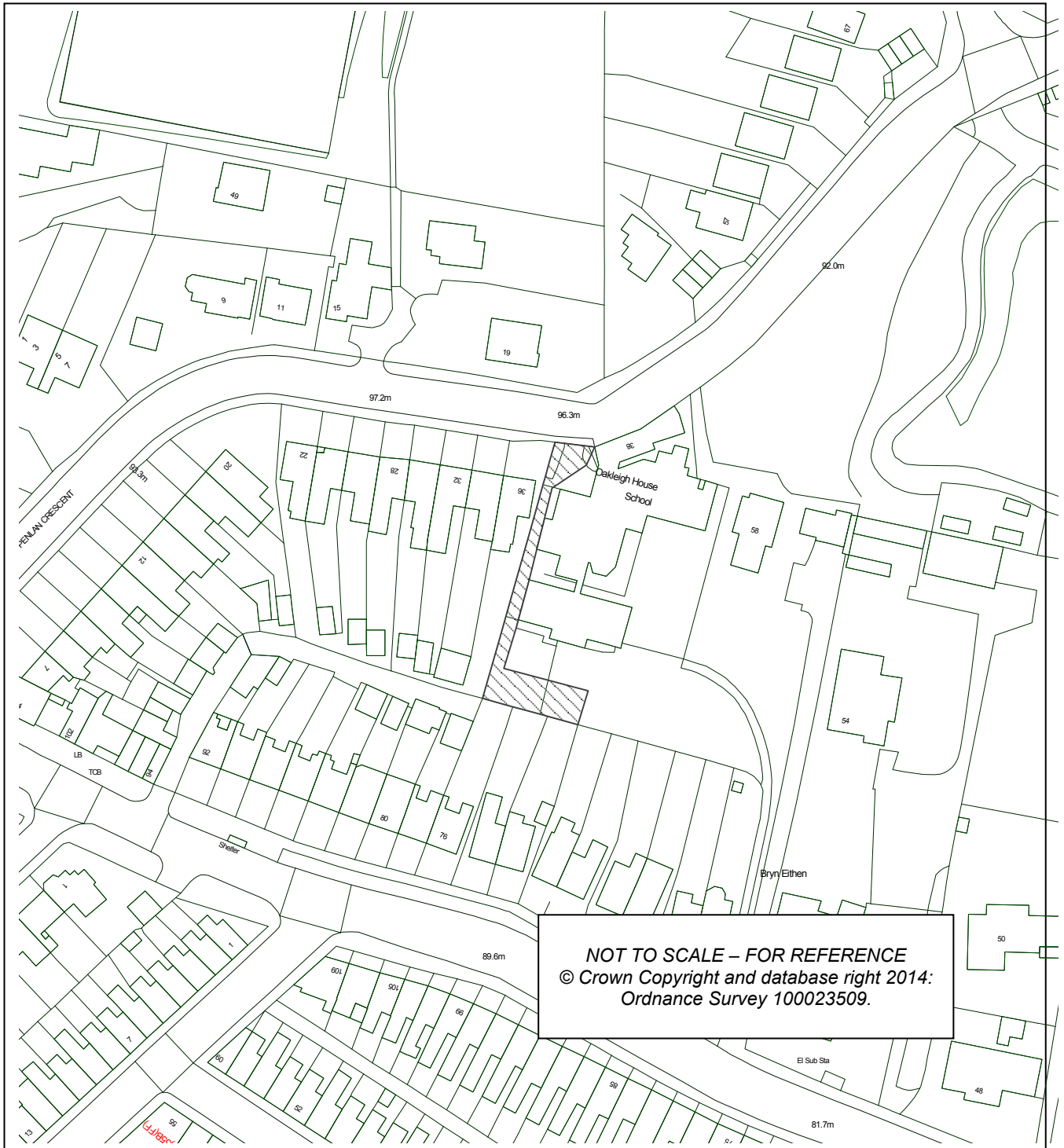
WARD:

Uplands

**Location:** 38 Oakleigh House School Penlan Crescent Uplands Swansea SA2 0RL

**Proposal:** Detached outbuilding to facilitate two extra classrooms

**Applicant:** Cognita Schools Ltd



## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 5 (CONT'D)

APPLICATION NO.

2016/0605

### **BACKGROUND INFORMATION**

**This application is being reported to Committee as the objection threshold has been met and a call-in request from the Local Ward Member, Councillor Nick Davies, has been received**

### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
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Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
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### **SITE HISTORY**

<b>App No.</b>	<b>Proposal</b>
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89/0714/03	REPLACEMENT OF FIRE DAMAGED CLASSROOMS. Decision: *HPS106 - PERMISSION SUBJ - S106 AGREEM. Decision Date: 24/07/1989
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2005/2044	Rear conservatory Decision: Grant Permission Conditional Decision Date: 17/11/2005
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2012/1474	External staircase Decision: Grant Permission Conditional Decision Date: 07/01/2013
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### **Introduction**

The application site comprises of Oakleigh House School, which is situated along Penlan Crescent within the local ward of Uplands. The current school buildings comprise the main school housed in traditional white rendered buildings fronting onto Penlan Crescent. To the side is a two storey flat roofed brick and render extension, which encloses the front of the site. To the rear is a single storey flat roof extension of white render. These two extensions are set round an all-weather multi use sports pitch.

### **Description**

Full planning permission is sought for the construction of a detached outbuilding at the rear (south western corner) of the site measuring 18.8m wide by 7m deep with a shallow monopitched roof at a height of 3.1m.

The proposed materials comprise vertical cedar cladding, stained timber fascias and soffits and stained timber windows and doors.

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The Design and Access Statement (DAS) submitted with the application state that the school is in breach of the recent requirement to statutorily provide space standards for nursery pupils and cannot provide nursery education without addressing and providing the requisite space. The proposed extension would therefore house two year groups displaced from the main school (approximately 30 pupils) on the former pond area at the rear of the site. The DAS states that as part of this proposal and to ensure the school role can be met, the classrooms have been designed to accommodate 18 pupils in each, giving a potential increase if the school was entirely full of an additional 6 pupils on the current role of 215.

### **Responses to Consultations**

The Highways Officer has commented as follows:

“The design and access statement states that there are no new staff envisaged as being required and the need for the additional classrooms has come about by a change in space standards for nursery pupils. As such the nursery expansion will push other age groups out of their existing accommodation, hence the need for new rooms.

Parking is unaffected by the proposed works and servicing/deliveries will remain as is the current situation.

The school currently has 215 children on its books and with the expanded facilities an additional 6 pupils could be taken on, making a maximum of 221 pupils. I do not consider that there are any highway safety issues arising from this minor increase.

Notwithstanding the fact that the impact of this application will be negligible I have spoken to both our safe routes in the community officer and the residents parking officer to discuss the existing situation and problems being experienced. In terms of ‘residents parking’ this could not be implemented due to the fact that most properties on Penlan Crescent have rear parking access and as such the site would never qualify for residents permits parking implementation. It would be possible to bring in a school time restricted waiting Traffic Regulation Order TRO (say from 8-9am and 3-4pm) but this would apply equally to the residents and as such may not be supported if the residents have no alternative off street parking provision.”

No highways objections are raised to the proposal.

As well as the responses that are addressed in the Other Constraints section below, 26 LETTERS OF OBJECTION have been received, from 23 individual properties. The points raised in the objections are summarised as follows:

- Volume of traffic on Penlan Crescent and Notts Gardens has increased significantly in recent years and the proposal would add to this, to the detriment of local residents.
- Off road parking being taken up by staff throughout the day, ensuring that either end of the school day parents park on double yellow lines and across residents drive ways, giving rise to significant health and safety concerns with regards to the way some parents park.



## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

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- The increased traffic and parking on Penlan Crescent and Notts Gardens has had a significant detrimental impact on the lives of many of the residents during term time. Resident's garages and driveways are regularly blocked, and existing traffic problems would be exacerbated should the school expand further.
- Residents have difficulty accessing the park and crossing the road as a result of the illegally parked cars and vehicles carrying out 'U Turns' in Notts Gardens.
- Parking across the 'dropped curb' entrance to the park impacting on disabled persons trying to access the park.
- Impact on the health and safety of children attending the school given the current hazardous traffic movements outside the site, which would increase as a result of this proposal.
- Council officers should visit the site at the start and end of the day to witness the health and safety issues resulting from the overcapacity school.
- Suggest utilizing the Townhill Campus of the old institute as a prospective site for Oakleigh House School, which provides parking within its grounds. Also suggest Sancta Maria Hospital when available.
- Present traffic/parking problem making it impossible for ambulance and assisted transport to access properties in the vicinity during term time.
- The proposed site of construction is adjacent to high historical trees sited at No.72 Glanmor Road and within the application site itself. The trees are presently well kept and healthy, at a height of approx. 15m. The amount of work and vicinity of construction of the outbuilding would risk damaging the trees and create a hazard for the children within the school as well as nearby residents.
- The site is already crowded and further buildings would exacerbate this.
- The lack of designated parking facilities at the site and potential increase in children attending the school as a result of this proposal would increase the chance of traffic collisions.
- The local road network is not capable of accommodating additional traffic during construction and after.
- Potential entrance from Glanmor Road to the site should be used to alleviate safety concerns on Penlan Crescent.
- Since absorbing the displaced pupils from Craig y Nos, the school is far too big for its environment and has for some years had a negative effect on the area. Even during school holidays there is no respite from the building noise and holiday clubs.
- Teachers should park on the road alongside Cwmdonkin Park to free up spaces for parents to drop off and collect children.
- Disingenuous of the applicant to cite Government space regulations as the reason for the new buildings and to suggest the increase will be only six pupils, when a quick Estyn search that they have already expanded.
- The school roll has increased from 150 pupils in 2014 (Estyn Report) to 215 at present but residents have never been advised of this expansion. I wonder if the need for two extra classrooms is a result of the increase of the school roll since 2014.
- Pupils of Oakleigh House School come from a wide area and we realise that this necessitates the need for transport. However no alternative arrangements seem to have been considered.
- Parking attendant/officer ineffective in managing the area.
- Object to the size of the building and potential increase in pupil numbers. Scale down the building to ensure no possibility of an increase in pupil numbers.

- The recent history of the school suggests that there is every likelihood that the building of two further classrooms will, in reality, result in another increase (possibly thirty -forty pupils) attending this school adding to the already dangerous and often intolerable attendant traffic and parking issues for the residents of Penlan Crescent and Notts Gardens.
- Additional danger of two large, 50+ seater coaches that regularly park directly on the bend and double yellow and zig-zag (no Stopping) area at the school gate. This does not occur at the busiest time of the day but these coaches pose a significant danger as they remain parked there for extended periods.
- This school has grown by stealth and continues to have a significant and negative impact on local residents. I doubt very much whether plans for a new school of this size, and on this site with its limitations for car parking would ever be given approval.
- Impact of the extra traffic and extra pollution on the local residents.
- If this application is approved there will be no stopping the school extending at will. Thereby causing even more problems with the residents.
- Incredible that a private business is allowed to operate from, what was, a residential property.

### **Policy Issues**

The primary issues in the consideration of this application relate to the impact of the proposed development upon the character and appearance of the host building and the visual amenities of the surrounding area having regard to the provisions of Policy EV1 of the City and County of Swansea Unitary Development Plan (UDP). Policy EV1 also decrees that new development shall not result in a significant detrimental impact on local amenity in terms of visual impact, loss of light or privacy, disturbance and traffic movements.

### **Other Constraints**

The Council's Ecologist, Dwr Cymru/Welsh Water and the Council's Drainage Officer have commented on the application and the relevant advice notes and conditions would be attached to any consent that may be granted.

Sited adjacent to the Ffynone Conservation Area, the Design and Conservation Team were also consulted on the proposal and have offered no objection to the proposal.

### **Visual Amenity**

As highlighted by the Design and Conservation officer comments, the proposal is considered to have a low visual impact, is of modest height with a shallow monopitched roof and would not be visible in the public domain, being sited at the rear of the application site which is adjoined by the rear garden/parking areas of Penlan Crescent and the rear garden areas of Glanmor Road. Furthermore, the proposed timber external finishes are considered to relate satisfactorily to the site and as such, the proposal is not considered to give rise to an adverse impact on visual amenity.

**Residential Amenity**

The proposed extension would be located on a screened boundary between the terraced properties rear garden/parking areas of Penlan Crescent and the rear garden areas of Glanmor Road. Given the scale and siting of the development and the distance and relationship of neighbours to the application site, there is considered to be no detrimental impact upon neighbouring amenity by virtue of any potential overlooking, overshadowing or overbearing impact.

**Access and Highway Safety**

Given the majority of objections to this application relate to the current parking/traffic issues presently experienced by local residents, the Highways Officer has submitted further comments, having originally offered no objection to the application. As highlighted by the officer, the application states that no additional staff are to be employed and the number of additional children that could be taken on by the school is minimal. As such, the proposal is not considered to give rise to a significant increase, if any, in access and highway safety issues over and above that which is presently experienced at Penlan Crescent and Notts Gardens. As such, the proposal is considered to be in accordance with the criteria in Policy EV1 of the UDP in terms of not resulting in a significant detrimental impact on local amenity in relation to disturbance and traffic movements.

Notwithstanding the information provided by the Highways Officer in relation to residents parking permits and Traffic Regulation Orders, these are in relation to the existing parking/traffic issues and are not pertaining to the application itself.

**Conclusions**

In conclusion, it is considered that the proposal represents an acceptable form of development. The objections from local residents are noted but these objections in the main relate to the existing situation on site. In determining this application, consideration has to be given to any impacts from the proposed development over and above the existing situation. The proposed detached outbuilding to house two classrooms would bear no detrimental impact upon the character and appearance of the host building or the visual amenities of the surrounding area. Furthermore, the proposal would not result in a significant detrimental impact on local amenity in terms of visual impact, loss of light or privacy, disturbance and traffic movements. Therefore, the development complies with Policy EV1 of the City and County of Swansea's UDP. 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.

## PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016

ITEM 5 (CONT'D)

APPLICATION NO.

2016/0605

- 2 External finishes shall be applied in accordance with the approved plans and shall be completed prior to the first beneficial use of the extension hereby approved.  
Reason: In the interests of visual amenity.
- 3 The development shall be carried out in accordance with the following approved plans and documents: 21:16:LOCO1 (site location plan), 21:16:02 (block plan), 21:16:03 (proposed floor plans and elevations), received 31st March 2016.  
Reason: To define the extent of the permission granted.
- 4 No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how surface water and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SuDS) for surface water drainage and/or details of any connections to a surface water drainage network. The results of soakaway tests carried out in strict accordance with BRE Digest 365 2016 or the equivalent CIRIA document must be submitted. 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.  
Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment and to minimise surface water run-off.

### 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: Policy EV1 of the City and County of Swansea Unitary Development Plan 2008.

#### 2 STANDING ADVICE - DEVELOPMENT LOW RISK AREA

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

Further information is also available on The Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

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

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

**PLANNING COMMITTEE – 10<sup>TH</sup> MAY 2016**

ITEM 5 (CONT'D)

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- 3 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.
- 4 The developer is advised that some public sewers and lateral drains may not be recorded on Dwr Cymru Welsh Water's (DCWW) maps or 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. DCWW advise that the applicant contacts their Operations Contact Centre on 0800 085 3968 to establish the location and status of the sewer. Under the Water Industry Act 1991 DCWW has rights of access to its apparatus at all times.
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# Agenda Item 9

## Report of the Head of Economic Regeneration and Planning

Planning Committee - 8 May 2016

### DRAFT PLANNING COMMITTEE PROTOCOL

**To consider the response to the WLGA consultation on the Draft Planning Committee Protocol.**

**For Decision**

#### **1. Introduction**

- 1.1 A recent study by the Royal Town Planning Institute into the operation of planning committees in Wales concluded that there is currently a wide variety of practice in the operation of planning committees in Wales and recommended that a national planning protocol be prepared.
- 1.2 Accordingly Welsh Government, as part of their change agenda associated with the Wales Planning Act, have invited local authorities in Wales to draft a voluntary planning committee protocol which has now been prepared by the WLGA for consultation.
- 1.3 A copy of draft planning committee protocol together with the Authority's draft response is reproduced at Appendix 1 for Member consideration.

#### **2. Background**

2.1 The draft planning committee protocol covers the following areas:

- Relationship to the Members' Code of Conduct,
- Development Proposals and Personal and Prejudicial Interests,
- Fettering Discretion in the Planning Process,
- Member Involvement at the pre-application stage,
- Contact with Applicants, Developers and Objectors,
- Lobbying of Councillors,
- Lobbying by Councillors,
- Site Visits/Inspections,
- Public Speaking at Meetings,
- Public Speaking Procedures,
- Role of Officers,
- Decision Making,

- Cooling Off Period,
- Duties of the Chair,
- Role of Members at a Planning Appeal,
- Training,
- Customer Care,
- Advice for the public on attending and speaking at the Planning Committee.

### **3 Appraisal**

- 3.1 In general the provisions of the draft planning committee protocol broadly reflect those currently adopted by the Authority and the benefits of developing a national protocol to ensure consistency of decision making within Wales is welcomed.
- 3.2 It is recognised that the proposed protocol will be voluntary which is also welcomed. It is considered that a degree of flexibility will be required to take account of local circumstances and to allow the Chairperson the discretion to manage meetings effectively and to respond to individual circumstances and issues as they arise. A requirement to slavishly adhere to the protocol in all circumstances could expose Authorities to unnecessary challenge or criticism and this should be avoided.
- 3.3 The protocol at Section 4.1 on “Fettering Discretion in the Planning Process” provides, it is considered, an unnecessary process for Members to declare whether they wish to act for their electoral ward or as a Member of the Planning Committee. Currently where a Member wishes to declare a personal and/or prejudicial interest they do so at the start of the meeting and act accordingly i.e. either: speak and vote, speak and leave the meeting or leave the meeting during the item. This process appears to work effectively and any change would appear unnecessary.
- 3.4 On the issue of Member involvement in pre-application discussions it is recognised that Members of the Planning Committee can be exposed to challenge if they are perceived by the public as being unable to act impartially. The requirement for developers to carry out pre-application consultation for major applications submitted from 1<sup>st</sup> August 2016 will provide both Ward and Committee Members with a much bigger role in pre-application discussions and on this basis proposals for Member involvement at this stage of the process therefore require very careful consideration. In this respect the Authority has been invited by POSW to participate in a pilot scheme on pre-application member involvement which is welcomed.
- 3.5 The Authority’s current approach to requesting and carrying out Committee Site Visits in advance of meetings is considered to provide an efficient mechanism which reduces delay in the Committee decision making process. Whilst the principles set out in Section 8.1 are welcomed the Authority would not wish to entertain any revised process which would undermine its current approach.
- 3.6 The draft proposals at Section 10.1 are also broadly similar to the Authority’s current approach on public speaking, however, the Authority accepts requests to speak up to 24 hours before the relevant Planning Committee and use of visual aids is not prohibited. With regard the order of public speaking it is considered that the objector should speak first to avoid the need for a further response by the applicant as recommended in the draft protocol. The discretion of the Chairperson over public speaking should also be retained as per the Authority’s current procedures.

- 3.7 Whilst the requirement for a cooling off period at Section 13.1 is welcomed this could prove inflexible if applied in all circumstances. Again the Authority's current "Two Stage Voting Process" provides a degree of flexibility which, it is considered, the Authority should seek to retain.
- 3.8 With regard the role of Members at appeal in respect of an application refused contrary to recommendation, at present such an appeal is defended by different officer within the Authority to that of the original case officer. A greater role of Members in this process is, however, to be welcomed although this must be supported by appropriate training.

#### **4. Recommendation**

It is recommended that the response detailed at Appendix 1 be approved as the Authority's response to the WLGA consultation on the Draft Planning Committee Protocol.

**Contact Officer:** Ryan Thomas  
**Extension No:** 5731  
**Date of Production:** 3<sup>rd</sup> May 2016



# Draft Planning Committee Protocol

## 1. Introduction

- 1.1 The Planning (Wales) Act which received Royal Assent in 2015 will result in many changes to the planning system in Wales. In addition to legislative change the Minister is strongly advocating culture change; part of which is a more consistent approach to planning across Wales including greater consistency in the operation of planning committees.
- 1.2 A recent study by the Royal Town Planning Institute into the “Study into the Operation of Planning Committees in Wales” concluded that there is a wide variety of practice in the operation of planning committees across Wales and recommended that a national planning committee protocol be prepared.
- 1.3 As a result of this study, Welsh Government invited local authorities to draft a voluntary planning committee protocol. Through the WLGA a drafting group was established with representatives from the Planning Officers Society Wales and Lawyers in Local Government. The members of this group are:
  - Sioned Wyn Davies, Legal, Democratic and Registration Services Manager, Wrexham CBC
  - Simon Gale, Service Director Planning, RCT CBC
  - Simon Humphreys, Head of Legal Planning & Environment, RCT CBC
  - Roderic Jones, Senior Lawyer, Bridgend CBC
  - Jane Lee, Policy Officer, WLGA
  - Paul Lucas, Director Legal and Democratic Services, RCT CBC
- 1.4 Following a series of meetings, the drafting group has prepared a draft protocol for consultation. The draft protocol is based on the published LLG Planning Code or Protocol 2014.

## 2.0 The Protocol

- 2.1 The primary aim of the protocol is to improve consistency across the 25 LPAs while ensuring a level of local flexibility through discretion of the Chair and locally determined procedures such as the committee meeting running order. Planning Committees have different names in different local planning authorities therefore where the term “planning committee” appears in the text this has been inserted in brackets.
- 2.2 It is intended that the protocol will complement any national and local codes on Councillor Conduct and the general arrangements

regarding the running of meetings. This protocol is specific to Planning and covers the following areas:

- Relationship to the Members' Code of Conduct
- Development Proposals and Personal and Prejudicial Interests
- Fettering Discretion in the Planning Process
- Member Involvement at the pre-application stage
- Contact with Applicants, Developers and Objectors
- Lobbying of Councillors
- Lobbying by Councillors
- Site Visits/Inspections
- Public Speaking at Meetings
- Public Speaking Procedures
- Role of Officers
- Decision Making
- Cooling Off Period
- Duties of the Chair
- Role of Members at a Planning Appeal
- Training
- Customer Care
- Advice for the public on attending and speaking at the Planning Committee

### **3.0 How to respond**

3.1 The WLGA welcomes comments on the protocol and has inserted questions in the consultation draft of the protocol to prompt responses. The closing date for comments is Friday 20<sup>th</sup> May 2016. Please send comments to Jane Lee by email [jane.lee@wlga.gov.uk](mailto:jane.lee@wlga.gov.uk) or by post to WLGA, Local Government House, Drake Walk, Cardiff, CF10 4LG.

3.2 The drafting group will review these comments and make changes to the protocol where appropriate. It is anticipated that the final protocol will be available in June for consideration by each local authority at the appropriate Council meeting.

## **Draft Planning Committee Protocol**

### **1.0 Introduction**

1.1 **The aim of this Protocol** is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

1.2 One of the key purposes of the planning system is to regulate the development and use of land in the public interest. Your role as a Member of the Planning Authority is to make planning decisions

openly, impartially, with sound judgement and for justifiable reasons.

- 1.3 You are also a democratically accountable decision-taker who has been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.
- 1.4 **When the Protocol applies:** this protocol applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.5 If you have any doubts about the application of this protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.

#### **Q1. Do you agree with having a national planning protocol?**

- 3.1 Yes, the Local Planning Authority can see the benefits for having a national protocol to ensure consistency of decision making within Wales, subject to the comments incorporated below in the relevant sections. It is acknowledged that this would be a voluntary protocol and a degree of flexibility is required to take account of local circumstances and to allow the Chairperson to manage meetings effectively in response to unforeseen circumstances. A requirement to slavishly adhere to the protocol in all circumstances could expose Authorities to unnecessary challenge or criticism and this should be avoided.

#### 2. Relationship to the Code of Conduct

**Do** apply the rules in the Code of Conduct first, which must always be complied with.

**Do then** apply the rules in this Members' Planning Committee Protocol, which seek to explain and supplement the Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this protocol, you may put:

- the Council at risk of proceedings on the legality of the related decision or maladministration; and
- yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the Code of Conduct, in a complaint being made to the Ombudsman.

#### 3. Development Proposals and Personal and Prejudicial Interests

## Conduct of All Members

**Do** disclose the existence and nature of your interest as required by the Code of Conduct.

**Do** then act in accordance with the Code of Conduct. Where your interest is a personal and also a prejudicial interest:

- Don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the [planning committee]
- Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.

**Do** note that you will be able to speak at a [planning committee] where you have a prejudicial interest if and only to the same extent that a member of the public would have a right to speak on that item but remember that you must withdraw from the meeting as soon as you have finished speaking.

**Do** notify the Monitoring Officer in writing of your own planning applications and note that:

- you should send the notification no later than submission of that application;
- the proposal will always be reported to the [planning committee] as a main item and not dealt with by officers under delegated powers;
- you must not get involved in the processing of the application; and
- it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

**Q2. Do these proposals differ from the protocol you have in place? Do you see any difficulties with adopting these proposals?**

These proposals reflect the current situation – no difficulties are foreseen.

4. Fettering Discretion in the Planning Process (natural justice, predisposition and predetermination)

4.1 Members of the Planning Committee

**Don't** fetter your discretion by approaching the decision with a closed mind.

**Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

**Do** keep at the front of your mind that, when you come to make the decision, you

- are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence, arguments and other material considerations;
- must keep an open mind and hear all of the evidence before you, including the written report, the officers' presentation of the facts and their advice, any oral or written representations received and the arguments from all sides together with all relevant legislation/ planning policy;
- are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
- are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- are to come to a decision after giving what you feel is the right weight to those material considerations.

**Do** be aware that you can be found to be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits – refer to Section 25 of the Localism Act 2011.)

**Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the community council, for example, or both a unitary authority councillor), provided:

- the proposal does not substantially effect the wellbeing or financial standing of the consultee body;
- you make it clear to the consultee body that:
- your views are expressed on the limited information before you only;

- you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or community, as and when it comes before the Committee and you hear all of the relevant information; and
- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.

**Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (Use the disclosure form provided for disclosing interests.)

**Do** remember that as a Member of the [planning committee] subject to the provisions of the Code of Conduct (especially with regard to personal and prejudicial interests) and provided that you have not pre-determined the application you can speak and vote on any application which comes before the Committee.

Where an application comes before the [planning committee] which falls within the electoral area of a Member that Member can: -

- act as a Member for their electoral ward in dealing with the application; or
- act as a Member of the [planning committee] in relation to the application.

**Where a Member acts as a Member for their electoral ward:**

- they will be able to speak on an application but not vote on that application
- they must notify the Chair when that item has been called as the next business to be considered by the [planning committee] that they intend to act as a Member for their electoral ward
- the Chair shall invite the Member to speak following any public speakers but before any debate starts. If the Member decides not to speak on the Application they shall not be given a further opportunity to speak.
- once the Member has exercised their right to speak or indicated that they do not wish to speak they shall leave the [planning committee] area until the item is dealt with.

**Where a Member acts as a Member of the [planning committee] for an application in their electoral ward:**

- they must notify the Chair when that item has been called as the next business to be considered by the [planning committee] that they intend to act as a Member of the [planning committee]
- the Chair shall explain to all present that the Member will not be acting as a local member for that application and may speak in the debate and vote.

**Do** seek advice from the [Monitoring Officer] before the meeting of the [planning committee] where you have an interest under the Code of Conduct in an item in your electoral ward {NB the Code of Conduct is due to be amended and para 10(2)(b) is likely to disappear}

**Q3. Does the proposal regarding voting differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?**

The proposals regarding voting differ from the current arrangements that the Council have in place as currently it is assumed that a Member is acting as a Member of Planning Committee unless otherwise declared. Currently, some Members declare an interest at the start of meeting of applications within their ward but this would not appear to be standard practice.

A process for Members to declare whether they wish to act for their electoral ward or as a Member of the Planning Committee appears unnecessary. Currently where a Member wishes to declare a personal and/or prejudicial interest they do so at the start of the meeting and act accordingly i.e. either: speak and vote, speak and leave the meeting or leave the meeting during the item. This process appears to work effectively and any change would appear unnecessary. The proposed changes would require a change to the Council's Constitution. This provision would therefore not be supported.

#### 4.2. Member involvement at the pre-application stage

**Do** be aware that in your role as an elected member, you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.

**Do** be aware that you can through personal significant involvement in preparing or advocating a proposal be, or be perceived by the public as being, no longer able to act impartially.

**Do** consider yourself able to take part in a consultation on a proposal and, if you are a member of the [planning committee], the subsequent determination of the application provided that: -

- You do not in any way commit yourself as to how you may vote when the proposal comes before the [planning committee] for determination;

- You focus only on site factors and site issues;
- You do not lobby fellow councillors regarding your concerns or views, nor attempt to persuade them how to vote in advance of the meeting at which the planning decision is taken;
- You are not involved in negotiations regarding the application. These should be conducted by officers separately from any pre-application discussions members have been involved in.

At a pre-application consultation: -

- **Do** ask relevant questions for the purpose of clarifying your understanding of the proposal;
- **Do** remember that the presentation is not part of the formal process of debate and determination of any application.

<p><b>Q4. Are members currently involved in pre-application discussions? Do you see any difficulties with adopting these proposals?</b></p>
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Members are not currently involved in the formal pre-application discussions / process undertaken by the Local Planning Authority and are not consulted on pre-application enquiries by the LPA. However, Members have been invited to attend public meetings and consultation events on strategic schemes that are coming forward as part of the LDP process for input/ information but these have been organised independently by applicants.

With the introduction of new legislation for major applications, Members will be consulted directly by applicants and will have a significantly larger role to play in commenting on applications at pre-application stage. Members should be aware that these comments will subsequently be incorporated into a Pre-App Consultation Report and Members comments will be included within document which would be in the public domain, would form part of the application submission and could be a material consideration in the determination of the application.

Proposals for Member involvement at this stage of the process therefore require very careful consideration. In this respect the Authority has been invited by POSW to participate in a pilot scheme on pre-application member involvement which is welcomed.

#### 5. Contact with Applicants, Developers and Objectors

**Do** refer those who approach you for planning, procedural or technical advice to officers.

**Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that



meeting yourself through a request to the [Development Control Manager] to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

**Do** otherwise:

- follow the Authority's rules on lobbying;
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the [Development Control Manager] any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

**Don't** attend a planning presentation without requesting an officer to be present.

**Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.

**Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.

**Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

**Q5. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?**

Currently the Council do not encourage general meetings with Planning Committee Members and objectors/ applicants present. Members will often discuss applications with the case officer and raise issues/ query through them if further information/ clarification is required and has not been provided by the applicant. Where such meetings do take place it is recommended that an officer be present.

As such, the draft meeting protocol is not currently adopted by the Authority with such meetings being carried out on a sporadic, ad hoc basis which are unlikely to be explicitly disclosed at Planning Committee and/ or formally noted on the application file. However, these arrangements would be relatively simple to adopt if required.

When public presentations are held by the applicant/ developer Planning Committee Members are not normally encouraged to attend as this is the role of Ward Members (i.e. non Committee Members), particularly in multi Member Wards.

This section is unclear as to whether it refers solely to submitted planning applications or pre-application enquiries.

## 6. Lobbying of Councillors

**Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or offer a firm point of view that it amounts to the same thing.

**Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

**Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal.

**Do** copy or pass on any lobbying correspondence you receive to the [Development Control Manager] at the earliest opportunity.

**Do** promptly refer to the [Development Control Manager] any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

**Do** inform the [Monitoring Officer] where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

**Do** note that, unless you have a personal interest which is also a prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:

- Listening to or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion of others in your role as a [Ward][Division] Member.

**Q6. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?**

In practice no, although it is unclear whether the reporting structure regarding lobbying correspondence and/ or offers of S106 negotiations are formally adopted/ agreed.

## 7. Lobbying by Councillors

**Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make its decision.

**Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRW, Ramblers Association or a local civic society), but you should disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.

**Don't** lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

**Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

**Q7. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?**

These proposals reflect the current situation – no difficulties are foreseen.

## 8. Site Visits/Inspections

8.1 Site visits are fact-finding exercises, the sole purpose of which is to allow the [planning committee] to look at the site and its surroundings and shall only be held when the [planning committee] are unable to reach an informed decision without seeing the site for themselves and an inspections would have substantial benefit.

Examples where a site visit would NOT be appropriate include: -

- Where purely policy matters or issues of principle are at issue;
- A Member wishes to consider boundary or neighbour disputes;
- To consider issues of competition;
- To consider loss of property values;
- Simply at the invitation or request of the local Member;
- Where you disagree with the conclusion reached in the Officer's report;
- To consider issues which are not material planning considerations;

- Where Members have already visited the site in the last 12 months, other than in exceptional circumstances, details of which shall be minuted.

8.2 In all cases where a decision is made to conduct a site visit the full planning reasons and details of the issues to be inspected during the site visit shall be minuted.

If a site visited is conducted as a member of the [planning committee]:

- **Do** try to attend site visits organised by the Council where possible.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the [planning committee]
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the [Ward] [local] Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the [Development Control Manager] about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

**Q8. Do you see any difficulties with adopting these proposals?**

Currently Members request that an application is subject to a site visit, in writing in advance of the relevant Planning Committee meeting.

Please note that the wording of Paragraph 8.1 can be interpreted either as Members have to make a request to visit the site **at** Planning Committee (which would add to delays as a site visit would then have to be arranged and the application reported back to Committee) or where a Member considers beforehand that Planning Committee would be unable to reach an informed decision without seeing the site themselves. It is assumed that the latter is intended but this should be clarified in the final protocol.

The Authority's current approach to requesting and carrying out Committee Site Visits in advance of meetings is considered to provide an efficient mechanism which reduces delay in the Committee decision making process. Whilst the principles set out in Section 8.1 are welcomed the Authority would not wish to entertain any revised process which would undermine this approach.

## 9. Public Speaking at Meetings

**Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.

**Do** ensure that you comply with the Council's procedures in respect of public speaking.

**Q9. Does your authority allow public speaking? If not are there any reasons why public speaking cannot be allowed?**

Yes. The Council currently allow the objector(s) and the applicant each a total of 5 minutes to address the planning committee.

## 10. Public Speaking Procedures

10.1 Public speaking shall be permitted at a [planning committee] in accordance with the following procedures: -

- A member of the public who wishes to speak at the [planning committee] must notify the [Development Control Manager] in writing at least 2 working days prior to the date of the [planning committee] where the planning application will be considered. In exceptional circumstances, the Chair may agree to hear late requests.
- Where an application is deferred (following an application where Members have indicated that they are minded to either grant or refuse contrary to officer recommendation) then public speakers will not be heard on the second occasion that the application is before Members subject to the Chairman's discretion, in exceptional circumstances, to allow such speakers.

- Each side will have no more than 5 minutes to address the meeting although, in exceptional circumstances, the Chairman may extend this time. Where there is more than one speaker objecting to the application then the five minutes is a total for all objectors.
- Visual aids and other supporting evidence will not be permitted.
- A member of the public addressing the [planning committee] is not permitted to put questions to Members or Officers but this will not prevent Members asking the public speaker questions through the Chairman.
- The order for public speaking shall be:
  - The applicant/professional adviser of the objector
  - Supporters of the applicant
  - Objector/ professional advisers of the objectors
  - Response by the applicant
  - Community Councillor
  - Local Member or adjoining Ward Member
- Consideration of an application will not be delayed simply because an objector, the applicant, Community Councillor or Ward Member is not present providing that they have been appropriately informed of the date of the meeting and of their right to speak at the meeting.

**Q10. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?**

The proposals are broadly similar to the Authority's current approach to public speaking, however, the Authority accepts requests to speak up to 24 hours before the relevant Planning Committee and use of visual aids is not prohibited provided that these are also submitted 24 hours in advance. With regard the order of public speaking it is considered that the objector should speak first to avoid the need for a further response by the applicant as recommended in the draft protocol. The Chairperson currently has discretion over public speaking i.e. whether to hear late requests, times and order and this discretion should also be retained.

11. Role of Officers

**Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the [Development Control Manager], which may be incorporated into any committee report).

**Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of

Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 12. Decision Making

**Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.

**Do** come to meetings with an open mind and demonstrate that you are open-minded.

**Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

**Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information, if it is reasonable to do so and is required for planning purposes. If necessary, defer or refuse.

**Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

**Do** have recorded the reasons for Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].

**Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

**Q11. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?**

No, Members do not put pressure on Officers to make a particular recommendation and respect Officers professional opinion, even if they do not agree with it. When Members request a proposal is reported to Planning Committee, these requests are recorded in the Officers report.

## 13 .Cooling Off Period

13.1 Where Members of the [planning committee] are minded to take a decision against Officers recommendation, Members should defer consideration of that matter to the next meeting of the Committee in order to receive a further report from [Development Control

Manager], if necessary, in consultation with the [Legal and Democratic Services Officer], upon the strengths and weaknesses of any proposed or possible planning reasons for such a decision.

**Q12. What are your views on having a cooling off period?**

Whilst the requirement for a “cooling off” period is welcomed this could provide inflexible if applied in all circumstances. The Authority’s current “Two Stage Voting Process” provides a degree of flexibility which, it is considered, the Authority should seek to retain.

As part of the “Two Stage Voting Process” officers will recommend that an application be deferred for a further report on the merits of reasons of refusal or conditions if the Authority could be at risk of challenge or costs at appeal. Whilst Members do have the discretion to ignore this advice in practice this has rarely been an issue and this process has proven to work effectively.

14. Duties of the Chair

14.1 The Chair shall make clear to everyone present the capacity in which a Member is speaking on a specific application unless that Member is a Member of the [planning committee] and taking part in the debate.

14.2 The Chair shall make clear to everyone present when the [planning committee] is moving to the debate stage on any application.

14.3 The Chair shall make clear to everyone present at the [planning committee] that a debate or speech must relate to planning issues relevant to the application.

14.4 The Chair shall ensure that all Members of the [planning committee] who are entitled to vote on any particular application understand what they are voting for and whether the vote is on an amendment or on a recommendation.

14.5 The Chair will be responsible for making clear to everyone present at a meeting what the decision is on an application

**Q13. Are these duties different from current duties? Do you consider that training for Chair of Planning Committee would be required?**

Currently, the responsibility is on individual Members to declare the capacity in which they are speaking and this should remain. Given what is mentioned above in this protocol, it should remain the case that the relevant Members declares on what behalf they are speaking and therefore the Chair should not be required to reiterate this stance providing it is clear to all.



A national programme of training for Committee Members including specific training for the Chairperson would be welcomed.

## 15. Role of Members at a Planning Appeal

- 15.1 Where a [planning committee] refuse an application contrary to officers' recommendation the planning officers' professional code will prevent them from supporting the committee decision at appeal.
- 15.2 It is acceptable for a member of the [planning committee] to advocate the decision made by the [planning committee] but it is recommended that an officer provides technical support to the Member at the appeal and deals with any technical or process issues raised by the Inspector or other participants.
- 15.3 A Ward Member or Non-Committee Member is entitled to make representations at the appeal but they should offer local views and not the views of the [planning committee]
- 15.4 A Member who disagrees with the [planning committee] should not make opposing representations at an appeal and should accept the decision of the [planning committee] as being fair, open and democratic. Where a Member wishes to make representations at an appeal that are contrary to the decision of the [planning committee] they should first inform the [Development Control Manager] of their decision so that the Planning Inspectorate can be informed. Members in these circumstances must understand that the views that they put forward do not represent the views of the Council or the [planning committee].

**Q14. Do these proposals differ from the arrangements you have in place? Do you see any difficulties with adopting these proposals?**

Yes – currently Members overturns that result in appeal are defended by a different Officer within the Planning Authority.

A greater role of Members in this process is, however, to be welcomed although this must be supported by appropriate training.

## 16. Training

- 16.1 All Members of the [planning committee] must undertake training in accordance with the relevant training scheme (local or national) before participating in any decision making at meetings.
- 16.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

**Q15. Do you currently require planning committee members to undertake training before participating in any decision making? Would you support a national approach to provision of training resources?**

Yes – Members of the Planning committee undertake training. It would be useful to have a national approach to training provision to enable Members to learn from and share experiences as well as ensuring that training is fit for purpose to meeting Welsh Government’s agenda for cultural change.

## 17. Customer Care

17.1 The Planning Authority will adopt a procedure which sets out the way in which each application will be dealt with. This procedure should cover cut off time for representations and how late representations to the report are managed, how members’ questions will be dealt with, moving and seconding of recommendations from officers and how amendments will be dealt with.

17.2 Local Planning Authorities are not obliged to notify objectors that the application is going to committee. It is however advised that interested parties are made aware that information regarding committee agendas is available on the Council website and therefore they are advised to regularly check the Council website.

17.3 As part of the proper administration of the meeting any members of the public who attend shall be shown to the public gallery and provided with sufficient copies of the Agenda for the meeting. In addition copies of the procedure adopted by the Council for the conduct of the meeting should be made available.

17.4 Members of the public who have requested an opportunity to speak on an application shall be shown the location where they will be able to address the [planning committee] and when their opportunity to address the [planning committee] will arise.

17.5 The Chairman shall make clear to everyone present which Agenda item the [planning committee] is considering at any specific time and shall identify the application number and page number on the Agenda and the site address.

17.6 The Chairman will confirm the order of speaking on an application. The Chairman shall identify to the [planning committee] the public speaker and the capacity in which they address the [planning committee]. The Chairman will confirm to the public speakers the time permitted to address the [planning committee]. If Member who is speaking has a right to speak but not to vote the Chairman shall make clear the capacity of that Member at the meeting.

17.7 When a decision is taken on any application, the Chairman shall make clear to all present at the meeting the decision taken by the [planning committee] on that item.

**Q16. Do these proposals differ from the current customer care arrangements you have in place? Do you see any difficulties with preparing a local procedure as set out in paragraph 15.1?**

The Council will currently accept any representations received prior to 12pm on the day of Planning Committee (with the Chair's discretion) prior to a decision on a planning application being made. It is unclear what a cut off procedure would entail given that all representations submitted should be considered to ensure that all material considerations are taken into account, however, it is considered that a 24 hour deadline would enable most issues to be clarified prior to committee. It is possible that a cut off period could result in challenges to planning decisions and therefore the Chair's discretion should be retained.

Currently, late representations (received after the agenda is finalised a week before) are reported verbally in summary. The Council also write to notify all members of the public who have commented on an application that it is being reported to Planning Committee and how they can arrange to address planning committee directly.

Whilst LPAs may not be obliged to notify objectors that the application is going to be reported to Committee, in such circumstances it should be made clear on notification letters that they may be reported to Planning Committee and where further information can be found on committee dates, agendas and the procedure, otherwise members of the public may believe they are being omitted/ excluded from the process.

18. Advice on attending and speaking at the [Planning Committee]

18.1 The Council shall publish on its web site advice to the public on attending and speaking at the [planning committee].

Suggested provisions: -

**1. How do the Council decide planning applications?**

Over three-quarters of the planning applications submitted to the Council are decided by officers under delegated powers. The rest are decided by Elected Councillors at the [Planning Committee]. The full list of matters that should be considered by the Committee can be found in the scheme of delegation on the Council's website – [www.xxxxx.gov.uk/planning](http://www.xxxxx.gov.uk/planning)

The following procedures and guidance are designed to ensure fair play and the smooth conduct of the [Planning Committee] meeting.

**2. Can I speak at Committee?**

Yes - but there are some procedures that need to be followed and these are outlined below.

### **3. How do I get to speak at Committee?**

If you wish to speak at the Committee, you must notify the [Development Control Manager] in writing, at least 2 working days before the date of the Committee meeting at which the planning application will be considered. This will allow reasonable notice for the applicant to be contacted and make arrangements for them, or their agent, to speak and respond to you, should they so wish.

Notification of a written request to speak at the Committee which is received less than 2 days before the date of the meeting will not be accepted, unless there are exceptional circumstances. These will be determined by the Council Legal Officer, in consultation with the Chairman of the Committee.

### **4. What if a lot of people want to speak?**

If a number of people wish to speak either for, or against, a particular planning application on similar grounds, you should try to combine your representations with them and nominate one spokesperson to speak on your behalf. This will avoid unnecessary repetition at the Committee meeting.

### **5. What can I expect at Committee?**

As long as you have registered to speak there is nothing you need to do when you arrive at the Committee as the Chairman will let you know when it is your turn to speak.

First, the Chairman will open the meeting and ask the Members of the Committee to declare whether they have any personal and/or prejudicial interests in any of the applications that are to be discussed. If any Member does have a prejudicial interest you will see they leave the room when that application is being discussed. Further information on personal and prejudicial interests can be found on the Council's website – [www.xxxx.gov.uk](http://www.xxxx.gov.uk)

The Chairman will then introduce the application to be considered. Public speaking will normally come next. Consideration of an item will not be delayed if a person who has registered to speak is not present.

Example The order for public speaking is likely to be as follows:

1. The applicant
2. The applicant's professional advisers
3. Supporters of the applicant
4. Professional advisers of the objectors
5. Objectors
6. Response by the applicant

It is important to be aware that public speakers will be expected to sit at a microphone at the front of the meeting. If you think that this situation could make you nervous you may want to think about preparing some notes of what you want to say to help you on the night, or perhaps ask someone to speak on your behalf.

Each side will have no more than 5 minutes to address the meeting although, in exceptional circumstances, the Chairman may extend this time. All speakers must comply with the directions of the Chairman, should he/she interrupt them during their speech.

## **6. What are Site Visit Committees?**

Sometimes, even before the public speaking has started, a Member of the Committee may request that consideration of the application is deferred for a site visit. If the Committee agrees with this request then there will be no further discussion on the application at the meeting, and you will not be invited to speak.

Members of the Committee (not necessarily the whole Committee) will make a formal visit to the application site within a couple of weeks in order to assess the situation on site. You will not be able to make representations to the Members of the site visit Committee.

The application will then be reported back to the next available meeting of the Committee, along with an update from the site visit meeting. It is expected that you would still wish to address the Committee but if this is not the case then you should notify us of this change.

## **7. What happens after the public speaking?**

Once all of the people who have registered to speak on the application have spoken, the matter will then be considered and debated by Members. In some cases the Chairman may invite the Planning Officer to make a short presentation on the application to the Committee or update Members on any late representations that have been received.

Members will then 'vote' on the application through a show of hands, which will normally lead to one of three outcomes:

- they may vote to defer determination of the application to a later meeting if it is felt that further information or amendments are needed before a decision can be made;
- they may vote to agree with the Planning Officer's recommendation to approve or refuse the application; or
- they may vote to disagree with the Planning Officer's recommendation.

If the resolution is to go against the Planning Officer's recommendation then the application will not usually be determined

at that meeting. The application will be considered again at a further meeting of the Committee with an additional report looking at the implications of going against the Planning Officer's recommendation. You will not normally be able to speak when the application is reported back. Members are not bound by their original resolution and can, following consideration resolve to agree with the Planning Officer's recommendation.

### **General advice**

The law of defamation applies to any statement made in public. It is important, therefore, that you exercise extreme caution if you make personal comments about either applicants or objectors.

You should not enter into any dialogue with the Members of the Committee at the meeting.

Meetings of the Development Control Committee are normally held at am/pm in the Committee Chamber, Council Offices. General enquiries in respect of meetings should be made to the Council's Member Services Support Team, tel, email: If you want to know when, or if, a particular planning application is due to be considered by the Committee, please contact.

<b>Q17. Do you have any additional comments not covered in the questions above?</b>
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The protocol should include provisions on the voting procedure, for example, what happens and in what order following the debate.

It is important for all Members to be clear about what they are voting e.g. this may become unclear where a Member moves a recommendation contrary to Officer advice after their part of the debate and another Member subsequently speaks and moves the Officer's recommendation.

This also needs to be clear on the procedure so that members of the public can follow proceedings and are clear on the outcome. It is recommended that Members should vote in the same order on each application reported to Planning Committee:

- Chair queries whether anyone moves Officer's recommendation
- Chair queries whether anyone has any amendments to propose to the Officer's recommendation without changing the decision itself (for example to add/ amend conditions or add / amend reasons for refusal – full details of the changes required)
- Seek seconder for the amendment(s)
- If amendment(s) are tabled, vote on the amendments in the order that they were proposed
- If amendments are proposed but not resolved, Chair seeks seconder to move Officer's recommendation
- Planning Committee vote on Officer's recommendation.

- If Officer's recommendation is not ratified, Members propose new resolution (including full reasons for refusal or conditions to be attached).
- Chair queries whether anyone has any amendments to proposed new recommendation
- If amendment(s) are tabled, vote on the amendments in the order that they were proposed
- If not resolved, seconder for Members new resolution
- Vote on Members new resolution