

# CITY AND COUNTY OF SWANSEA

## NOTICE OF MEETING

You are invited to attend a Meeting of the

## PLANNING COMMITTEE

**At:** Council Chamber, Guildhall, Swansea

**On:** Tuesday, 7 June 2016

**Time:** 2.00 pm

**Chair:** Councillor Paul Lloyd

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### Membership:

Councillors: P M Black, A C S Colburn, D W Cole, A M Cook, M H Jones, E T Kirchner, I M Richard, P B Smith, M Thomas, D W W Thomas and T M White

The use of Welsh is welcomed. If you wish to use Welsh please inform us by noon on the working day before the meeting.

## AGENDA

	Page No.
<b>1 Apologies for Absence.</b>	
<b>2 Disclosures of Personal and Prejudicial Interests.</b> <a href="http://www.swansea.gov.uk/disclosuresofinterests">www.swansea.gov.uk/disclosuresofinterests</a>	
<b>3 Minutes.</b> To approve & sign the minutes of the previous meetings as a correct record.	1 - 5
<b>4 Items for Deferral / Withdrawal.</b>	
<b>5 Application to Register Land Known as the Recreation Ground or the "The Rec", Oystermouth Road, Swansea as a Town or Village Green -Application No.2733(S).</b>	6 - 80
<b>6 Planning Application 2014/0977 - Parc Ceirw, Cwmrhydyceirw Quarry - Proposed cessation of landfill and other operations enabled by residential development circa 300 dwellings, public open space, associated highway and ancillary work (outline).</b>	81 - 153
<b>7 Determination of Planning Applications under the Town &amp; Country Planning Act 1990.</b>	154 - 281

**Next Meeting:** Tuesday, 5 July 2016 at 2.00 pm



**Patrick Arran**  
**Head of Legal and Democratic Services**  
**Tuesday, 31 May 2016**

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**Contact: Democratic Services - 636923**

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE PLANNING COMMITTEE

HELD AT COMMITTEE ROOM 3A, GUILDHALL, SWANSEA ON  
TUESDAY, 10 MAY 2016 AT 2.00 PM

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

**Councillor(s)**

A C S Colburn

C L Philpott

M Thomas

**Councillor(s)**

M H Jones

I M Richard

D W W Thomas

**Councillor(s)**

E T Kirchner

P B Smith

T M White

**Also Present (Local Ward Members)**

Councillors J P Curtice, D S Lewis, C R Evans, R Francis-Davies, A S Lewis, R C Stewart, J A Hale, C E Lloyd & N J Davies

**Apologies for Absence**

Councillor(s): D W Cole and A M Cook

102 **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 I M Richard – Minute No.108 - Planning Application 2016/0086 (Item 4) – Predetermination. (did not leave meeting as item deferred for Site Visit)

Councillor T M White – Minute No.108 - Public Rights of Way - Definitive Map Anomaly in Relation to Footpath 35 - Communities of Penrice & Ilston Personal as I know the individual who has submitted evidence.

103 **MINUTES.**

**RESOLVED** that the Minutes of the Planning Committee meeting held on 12 April 2016 be approved as a correct record.

104 **ITEMS FOR DEFERRAL / WITHDRAWAL.**

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

Agenda Item 6 - Application to Register Land Known as Parc Y Werin, Gorseinon, Swansea, as a Town or Village Green - Application No.2734(S).

To allow the Inspector to consider further information submitted by the applicant.

105 **PUBLIC RIGHTS OF WAY - DEFINITIVE MAP ANOMALY IN RELATION TO FOOTPATH 35 - COMMUNITIES OF PENRICE & ILSTON.**

The Head of Legal & Democratic Services presented a report which sought to determine whether to make a public path diversion order to divert the current definitive line of footpath no.35.

It was reported that the Planning Committee had 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.

The consultation undertaken, the legal aspects of the matter, the current and proposed new route(A-F-G-H-I-J-K-E) were all outlined and detailed in the report.

**RESOLVED** that a public path diversion order be made to divert the current definitive line of footpath No.35 as set out in the report.

106 **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. Members had undertaken a site visit to the site following a deferment at the previous meeting.

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

107 **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 application **BE DEFERRED** under the **two stage voting process** for further officer advice on reasons for refusal relating to No Affordable Housing, Highway Concerns, Loss of Amenity for Schoolchildren at Cwmrhydyceirw Primary,

**#(Item 1) Planning Application.2014/0977 - Parc Ceirw, Cwmrhydyceirw Quarry and adjoining land, Cwmrhydyceirw, Swansea.**

Report updated as follows:

On Page 133, in the last paragraph pedestrian access points are proposed from Vicarage Road (not Maes-Y-Gwernan Road as stated), Cwmrhydyceirw Road and Railway Cottages.

Paragraph 3 on P148 should state in line 2 '...cessation of landfill use' and not 'cessation of quarry use'.

Condition 35 – Amend the wording to refer to parcels A, C and D (not A, B and C).

Add the following Section 106 Planning Obligation: Beyond Bricks and Mortar – the developer shall provide a commitment under the Council's Beyond Bricks and Mortar scheme to bring added social value to the development through training and supply side activities during the development of the site.

A visual presentation was provided.

Geraint John(agent) & Mr G Rees(objector) addressed the Committee.

Councillors R C Stewart, R Francis-Davies, C R Evans & A S Lewis (Local Members) addressed the Committee and spoke against the application.

**(2)** the undermentioned planning applications **BE DEFERRED** for **SITE VISITS** for the reasons outlined below:

**#(Item 2) Planning Application.2015/2223 - Land off Fabian Way, Swansea.**

Report updated as follows:

9<sup>th</sup> May 2016 – Additional letter of objection received. Makes reference to customers visiting the site making specific journeys and not just passing trade. Concerns include adding to pollution, highway safety and people avoiding travelling in to Swansea.

**#(Item 4) Planning Application.2016/0086 - Land at Cefn Betingau Farm, Morrison, Swansea.**

Report updated as follows:

For the avoidance of doubt as to the nature of the development, the proposal should read: Construction of solar farm without compliance with condition 8 of planning permission 2013/0865 requiring planting of hedgerow to sub-divide fields 9 & 10.

**(3)** the undermentioned planning application **BE REFUSED** for the reasons outline in the report and/or indicated below:

**#(Item 3) Planning Application.2015/2258 - Land at Cawsi Farm Mynydd Gelli Wastad Road, Morrison, Swansea.**

A visual presentation was provided.

Mr P Vining(objecting on behalf of ABMU) addressed the Committee.

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

**#(Item 5) Planning Application.2016/0605 - 38 Oakleigh House School Penlan, Crescent Uplands, Swansea.**

Report updated as follows:

9<sup>th</sup> May 2016 - Additional Information received from applicant– Planning Statement provides information on the proposed use.

9<sup>th</sup> May 2016 - Response from Cllr Peter May– Advises of acute parking problems and access issues over the years. States application is for 2 classrooms not 6 additional children and that legislation and guidance changes. Concerned that constituents could be left with a school which could increase capacity by upto 50 pupils resulting in 50 extra cars. Asks that committee requests a revised opinion from the statutory consultees based on an increase of 50 children (2 classrooms) and if the committee is minded to approve then insert a condition requesting that the applicant bear the cost of H bars for the residents of Penlan Crescent and Notts Gardens to attempt to protect access to their properties.

9<sup>th</sup> May 2016 - Email received from resident attaching 7 No. photographs to show parking within area.

7<sup>th</sup> May 2016 – Additional Objection. Raises concerns about the extra classrooms adversely affecting quality of life and house value due to disturbance created. Concerns that area cannot support the extra traffic.

108 **DRAFT PLANNING COMMITTEE PROTOCOL.**

The Head of Economic Regeneration and Planning presented a report which sought consideration of a response to the WLGA Draft Planning Committee Protocol.

The background areas covered by the new draft protocol, the officer's appraisal of these subject areas, and a draft response were outlined and detailed in the report.

Additional Training for Members would need to be arranged in the new Municipal Year should the Authority be chosen as a "trail" area.

**RESOLVED** that the response detailed at Appendix 1 to the report be approved as the Authority's response to the WLGA consultation on the draft Planning Consultation Protocol.

The meeting ended at 4.53 pm

**CHAIR**

**CITY AND COUNTY OF SWANSEA**

**MINUTES OF THE PLANNING COMMITTEE**

**HELD AT COUNCIL CHAMBER, GUILDHALL, SWANSEA ON  
THURSDAY, 19 MAY 2016 AT 5.52 PM**

**PRESENT:**

**Councillor(s)**

P M Black  
A M Cook  
P Lloyd  
D W W Thomas

**Councillor(s)**

A C S Colburn  
M H Jones  
I M Richard  
T M White

**Councillor(s)**

D W Cole  
E T Kirchner  
P B Smith

1 **SUSPENSION OF COUNCIL PROCEDURE RULE 12 "CHAIR OF MEETINGS" IN ORDER TO ALLOW THE PRESIDING MEMBER TO PRESIDE OVER THE UNDER MENTIONED AGENDA ITEMS.**

**RESOLVED** that Procedure Rule 12 be suspended in order to allow the Chair of Council to preside over this meeting.

**(COUNCILLOR D W W THOMAS PRESIDED)**

2 **ELECTION OF CHAIR FOR THE MUNICIPAL YEAR 2016 - 2017.**

**RESOLVED** that Councillor P Lloyd be elected Chair for the 2016-2017 Municipal Year.

**(COUNCILLOR P LLOYD PRESIDED)**

3 **ELECTION OF VICE CHAIR FOR THE MUNICIPAL YEAR 2016 - 2017.**

**RESOLVED** that Councillor A M Cook be elected Vice-Chair for the 2016-2017 Municipal Year.

4 **APOLOGIES FOR ABSENCE.**

An apology for absence was received from Councillor M Thomas.

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

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

The meeting ended at 5.53 pm

**CHAIR**

# Agenda Item 5

## Report of the Head of Legal and Democratic Services

Planning Committee – 7 June 2016

### APPLICATION TO REGISTER LAND KNOWN AS THE RECREATION GROUND OR 'THE REC', OYSTERMOUTH ROAD, SWANSEA AS A TOWN OR VILLAGE GREEN

#### APPLICATION NO. 2733(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 Ms Kathryn Ann Dodd on behalf of the "We Love the Rec" group. 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 further objection has also been received from a resident 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.
- 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.
- 3.3 A public inquiry took place over three days on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> March 2016 to consider the evidence.

## **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. He has also had the opportunity of listening to evidence presented on oath at the public inquiry. 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(3) of the Commons Act 2006. That section applies where:

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

and

b) *“they ceased to do so before the time of the application but after the commencement of this section; and*

c) *the application is made within the period of two years beginning with the cessation referred to in paragraph b).”*

5.4 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 application was dated, and received by the Commons Registration Authority, on 25<sup>th</sup> March 2014. That is therefore the 'time of the application'. The application suggests that use of the claimed land 'as of right' ceased on 30<sup>th</sup> March 2012, which was less than two years before the time of the application. On that basis 30<sup>th</sup> March 2012 would be the date from which the relevant 20 year period needs to be measured (backwards).

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

6.1 In order for an application to be successful each aspect of the requirements of Section 15(3) must be strictly proven and the burden of proof in this regard is firmly upon the Applicant. The standard of proof to be applied is 'on the balance of probabilities'. Therefore the Applicant must demonstrate that all the elements contained in the definition of a town or village green in section 15(3) of the Commons Act 2006 have been satisfied.

6.2 This Committee must be satisfied based on the evidence and the report 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 26<sup>th</sup> April 2016 (which is attached as Appendix 2) and these are set out below.

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

This is addressed in paragraphs 11.7 to 11.10 of the Inspector’s Advice and Recommendations. The application put forward the ‘Uplands Electoral Ward’ as being the relevant area to meet one or other of these criteria. During the course of the public inquiry it was established clearly at the Uplands Electoral Ward is co-terminous with the Community area of Uplands, which had been defined under a Statutory Interest of 1983, and had been in existence for a period well in excess of the relevant 20 year period. The Inspector concludes that the application therefore meets this aspect of the statutory criteria.

#### 7.5 **“A significant number of the inhabitants” “Lawful sports and pastimes on the land”**

These two criteria are addressed together in paragraphs 11.11 to 11.12 of the Inspector’s Advice and Recommendations. He concludes that the evidence presented both at the inquiry and in writing showed that the application site had been used by a significant number of the inhabitants of the Uplands Community or electoral ward for lawful sports and pastimes since the 1880s, and that such use has continued ever since subject to interruptions and implied permissions which are discussed in the following parts of the report. Consequently, the Inspector finds that in his judgment the application also meets these two aspects of the statutory criteria.

#### 7.6 **“for a period of at least 20 years”**

This criteria is addressed in paragraphs 11.13 to 11.24 of the Inspector’s report. Members will note in particular that the Principal Objector argued at the inquiry that the Application had made her application under the wrong subsection, it being suggested that she should have made it under subsection 15(2), based on the claimed use still continuing as at the time of the application. However, the Inspector concludes the application can appropriately be determined under subsection 15(3) and that it was in the interests of fairness and justice for the application to be considered under this subsection.

#### 7.7 **“As of right”**

The issue of whether the use of the land has been “as of right” is considered by the Inspector at paragraphs 11.25 to 11.79 of his Advice and Recommendations.

The Principal Objector conceded that the use which has been made by the local inhabitants of the Recreation Ground over the years has been without force, and without secrecy.

However, the issue of whether the use had been “without permission” was disputed by the Principal Objector.

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 (at paragraph 11.47 of the Inspector’s Advice and Recommendations) to the fact that the Recreation Ground, although part of the ancient corporate estate’ of the Council’s predecessors since 1762, has since the early 1880s been provided by those predecessors, and then the Council itself, as a ‘public walk or pleasure ground’ under Section 164 of the Public Health Act 1875. As such the public have a right to use the land for recreation, which cannot be removed or ‘withdrawn’ without following an appropriate statutory procedure.

A further argument was put forward by the Principal Objector based on the proposition that the public have been prevented from freely accessing parts or the whole of the application site on numerous occasions during the relevant 20 year period, because the land was being used for the purpose of holding events such as fairs and circuses or for car parking. The Inspector concludes (at paragraph 11.71) that some of these regular interferences with ‘lawful sports and pastimes’ uses were so significant and substantial that they must be taken to have shown that the landowner was asserting a ‘right’ to exclude local people from their own regular use of substantial parts of this land.

## **8.0 Formal Conclusion and Recommendation**

- 8.1 The Inspector concludes (at paragraph 11.80) that the Applicant has **not** succeeded in making out the case that the application site, or any part of it, should be registered pursuant to Section 15 of the Commons Act 2006 and that in particular she has failed to establish that the land, or any part of it, had been used “*as of right*” during the relevant period, within the legal meaning of that expression.
- 8.2 He recommends that no part of the application site at the Recreation Ground should be added to the statutory register of town or village greens.

## **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.

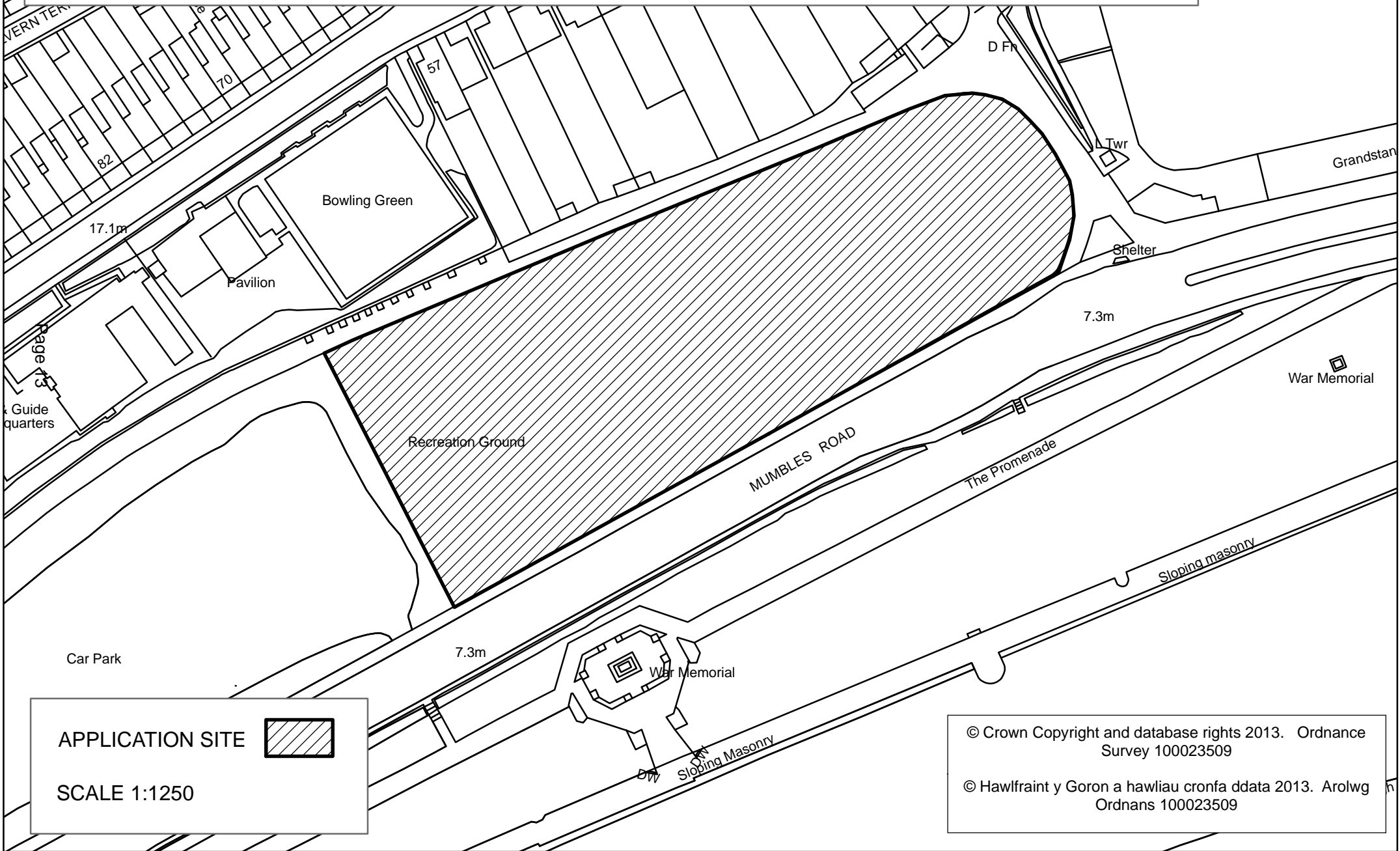
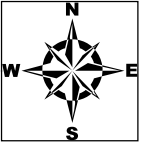
**Background papers:** Application file.

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

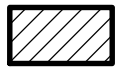
Appendix 2: Advice and Recommendations of the Inspector, Mr. Alun Alesbury, M.A., Barrister at Law, dated 26th April 2016

SECTION 15 COMMONS ACT 2006 - APPLICATION FOR TOWN OR VILLAGE GREEN

APPLICATION NO. 2733(S) - LAND KNOWN AS THE RECREATION GROUND OR "THE REC", OYSTERMOUTH ROAD, SWANSEA



APPLICATION SITE



SCALE 1:1250

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**COMMONS ACT 2006, Section 15**

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

**RE: LAND KNOWN AS THE RECREATION GROUND,  
OYSTERMOUTH ROAD,  
SWANSEA**

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

**into**

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

**as a**

**TOWN OR VILLAGE GREEN**



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9. THE CASE FOR THE PRINCIPAL OBJECTOR – Evidence
10. The Submissions for the Objector(s)
11. DISCUSSION AND RECOMMENDATION

Appendix I           Appearances at the Inquiry

Appendix II           List of new Documents produced in evidence

## 1. INTRODUCTION

- 1.1. I have been appointed by the Council of the City and County of Swansea (“the Council”), in its capacity as Registration Authority, to consider and report on an application, received by the Council on 25<sup>th</sup> March 2014, for the registration of an area of land known as the Recreation Ground (or just as ‘The Rec’), on the north side of the Oystermouth Road, Swansea, as a Town or Village Green under **Section 15** of the **Commons Act 2006**. [I note in passing that some maps suggest that the adjacent main road is actually called Mumbles Road, by the time it reaches the vicinity of the application site; however the identity and location of the site was not in any kind of doubt or dispute]. The site is within the administrative area for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.
- 1.2. The Council, in its capacity as owner of the site concerned, made an objection to the application in this case, as did one other person (see below). It is important to record at this point that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the Commons Act. I have had no involvement with the Council in relation to this matter in its capacity as landowner, other than by way of receiving evidence and submissions on its behalf as Objector to the application.
- 1.3. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider the evidence and submissions in support of it, and on behalf of the Objector(s). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections which had been made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

## 2. THE APPLICANT AND APPLICATION

- 2.1. The Application was dated 25<sup>th</sup> March 2014, and noted as received by the Council on that day; it was made by Ms Kathryn Ann Dodd, of Flat 2, 41 Bryn Road, Swansea, SA2 0AP. Ms Dodd is therefore “the Applicant” for the purposes of this Report. I note however, from wording within the application, and from some signed statements accompanying it, that it was stated that the “We love the Rec” group had authorised Ms Dodd to act as applicant on the group’s behalf.
- 2.2. The application form indicated that the application was based on **subsection (3)** of **Section 15** of the **Commons Act 2006**, and suggested that the date on which ‘as of right’ use of the land had ended was 30<sup>th</sup> March 2012, or a few days thereafter. The application was supported by a considerable number of completed ‘evidence questionnaires’, some other written statements, and other material such as photographs, photocopied newspaper articles, etc.

- 2.3. On the question of the relevant ‘neighbourhood’ and ‘locality’, the form as submitted referred to the Uplands Electoral Ward, and the completed evidence questionnaires were generally accompanied by map, ‘Map A’, showing the boundaries of that ward.
- 2.4. As far as the application site itself was concerned, its boundaries were clearly shown on a map which accompanied the application.
- 2.5. The site is currently (as I was able to see it) a reasonably well maintained area laid predominantly to grass, but with many well-established trees around its edges (except for its western edge). The site is generally surrounded by fairly low fencing, but with several ungated gaps through that fencing, so that it appeared to be permanently accessible to people on foot.
- 2.6. Immediately to the west of the application site lies a further area of predominantly open ground, also belonging to the Council, whose principal current use seemed to be as a rather informally laid out car parking area.
- 2.7. Both the application site and the ‘car parking’ area to its west consist essentially of flat land, although the ground begins to slope up significantly in the area to the north of the site.

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

- 3.1. I have already noted that the Council of the City and County of Swansea, in its capacity as the owner of the area of land covered by the application, registered an objection to the application.
- 3.2. A written objection to the application was also submitted by Mrs Joan Henry, of 40 Bellevue Road, West Cross, Swansea. Although she was given the opportunity to do so, Mrs Henry did not in fact participate in the Inquiry which I was appointed to hold, or submit any further representations. The Council, in its capacity as landowner, is therefore “*the principal Objector*” for the purposes of the remainder of this Report.

### 4. **DIRECTIONS**

- 4.1. Once the Council as Registration Authority had decided that a local Inquiry should be held into the application [and the objection(s) to it], it duly issued Directions to the parties, drafted by me, as to procedural matters. Matters raised in the Directions included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The spirit of these procedural Directions was broadly speaking observed by the parties, and no material issues arose from them, so it is unnecessary to comment on them any further.

- 4.2. I note briefly at this point that, as well as dealing with procedural matters, the Directions in this case also asked the parties to consider addressing certain specific questions which appeared likely to arise at the Inquiry (as well as presenting their own intended evidence and submissions in the normal way). I consider the parties' evidence and submissions in relation to these particular matters (along with all the other evidence and submissions) in the appropriate later sections of this Report.

## 5. **SITE VISITS**

- 5.1. As I informed parties at the Inquiry, I had the opportunity on the day before the Inquiry commenced to see the application site, unaccompanied. I also observed the surrounding area generally.
- 5.2. After all the evidence to the Inquiry had been heard (but before the Applicant's closing submissions), on 3<sup>rd</sup> March 2016, I made a formal site visit to the site, accompanied by representatives of both the Applicant and the Principal Objector. In the course of doing so, I was again able to observe at least some of the surrounding area more generally.

## 6. **THE INQUIRY**

- 6.1. The Inquiry was held at the Civic Centre, Oystermouth Road, Swansea, over three days, on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> March 2016.
- 6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Principal Objector, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.
- 6.3. As well as the oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the earlier stages of the process, some of which I have referred to already above. I report on the evidence given to the inquiry, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

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

### **Approach to the Evidence**

- 7.1. As I have noted above, the original Application in this case was supported and supplemented by a number of documents, mainly consisting of completed evidence questionnaires.

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

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

- 7.7. *Mr David Roger Brown* gave his address as 31 Westfield Road, Waunarlwydd, Swansea. Mr Brown had completed one of the evidence questionnaires lodged in support of the application.
- 7.8. He said that he had been a teacher at Brynmill Junior School (later to become Brynmill Primary) from 1970 to 2005, and for most of that period he was Head of Sport. The recreation ground (the application site) was used on numerous occasions for sporting activities, especially rugby lessons, for all junior classes in the school. In the early 1970s they had used Singleton Park but the extra space and the lack of trees at the Rec (the name it was better known by) meant that they soon changed venues. No permission had ever been required to use the Rec to his knowledge. He would use markers brought from the school to mark out the pitch, and every Tuesday and Wednesday afternoon they would walk the children there and back.

- 7.9. The visit of the circus every so often would restrict them slightly, but they still had plenty of room for their lessons, and the children enjoyed seeing the wild animals being fed and exercised on the other side of the temporary fence. Similarly when the fairground visited play continued uninterrupted because the fair itself would invariably take place in the Easter or Whitsun holidays.
- 7.10. During his time in Brynmill at a sports teacher, the Recreation Ground played an important part in all sports. They played rugby and soccer there, also athletics and novelty games. However their official sports day was held every year in Singleton Park, where the track was marked out by the Council, which was something they never did at the Rec to his knowledge, during his time in charge between 1976 and 2005.
- 7.11. Mr Brown reiterated that no permission had ever been sought to use the ground of the Rec. As for the circus, that was principally in what is now the car parking space next to the application site. It only just came slightly onto the greenspace of the application site.
- 7.12. *In cross-examination* Mr Brown agreed that his address was not in the claimed locality of the Uplands Electoral Ward. However he had lived in Marlborough Road, Brynmill for 2 or 3 years before he moved to his present address in Waunarlwydd.
- 7.13. He said that when completing his questionnaire he had been made aware of the boundary of the suggested locality that the application related to. He has a strong affinity to Brynmill and its residents, and feels part of the local community on that basis.
- 7.14. Although he had seen the boundary of the suggested locality on the map accompanying the form, that was not the particularly relevant thing he was concentrating on. He was giving evidence as to the use of the Rec. The map had seemed about right however. The combined area of Brynmill and Uplands seemed about right and more or less fitted with the catchment area of his school. It all appeared just common sense to him; he did not give it a lot of thought.
- 7.15. When shown a map of school catchment areas, he agreed that the catchment area shown for his school does not coincide with the electoral ward boundary of Uplands. However at the school they used to get children from much of the ward area.
- 7.16. Nevertheless it is true that when he completed his form he was mainly talking about the Brynmill area. The locality to him had represented the area where he had lived and carried on working at the relevant time. He had not been thinking about the Uplands electoral ward as such.

- 7.17. As for the visits of the circus, the Big Top was not really on the grassy area of the application site. As far as he could recall the Big Top was on what is the car parking area. It was the circus animals who used to graze on the grassy area.
- 7.18. He thought that the area used for car parking mainly to the west of the application site had expanded over the years. However the amount of space that they had to play games on was only decreased very slightly. He could remember when many years ago the whole ground including the present car parking area was completely grassed over.
- 7.19. *In re-examination* Mr Brown confirmed that the present car parking area used to be a grassed area.
- 7.20. **Mr Robin Wood** gave his address at 8 Lon Cwmgwyn, Sketty, Swansea. In spite of its postal address that address is within the Uplands ward. He had completed one of the evidence questionnaires originally lodged in support of the application.
- 7.21. He first came to the University of Swansea in October 1987, and has lived in Swansea ever since. Initially he stayed in Waunarlwydd for a few days before moving to the Uplands area. Uplands was and is the place to be in Swansea. Hanging out at the Rec was part of students' life in those days, as it is now. This would be with a bat, a ball, a Frisbee, or using jumpers for goal posts.
- 7.22. After three years in shared student accommodation he started his first job with Swansea Council in 1990, and moved to a flat on King Edward Road, Brynmill. Not long after that in February 1993 he bought his first house on Brynmill Terrace, on the winding Brynmill Lane, and he started a family. Both of those addresses had been in the Uplands ward.
- 7.23. His young son Barney and he may have resided at Brynmill Terrace until he was 8, but they lived outdoors and made full use of the more formal surroundings and playgrounds in Brynmill Park, or Singleton Park and the botanical gardens, as well as the open spaces of the beach, and the Rec. The grass in the Rec tended to be longer.
- 7.24. The Rec was where Barney learned to ride his bike, on flat grass. They also flew home-made kites, played cricket and sent Stomp rockets into the sky. It was and remains the connecting ground between Brynmill and the sea front.
- 7.25. They often had to share use of the Rec with other users: informal football practice matches, American football training, Swansea Rugby Club, bike riders, dog walkers, and more formal commercial events such as car shows, circuses and funfairs. But even when things like that were going on they played around the

edges or joined in with other families' games. However, the shows, circuses and funfairs had not been on the part that is now being claimed as the application site.

- 7.26. They had never asked for permission to use the Rec, and they never for a moment thought they had to. There were no signs or gates or barriers. If anyone else was in the field they often built them or their activity into their explorations and games, even if those other people were not usually aware of that. In June 1995, while he was working for Swansea Council, he was involved with a charity event to raise money and awareness of homelessness. He was part of a team which built a hut out of scavenged wood and other materials. At least four other teams took part. That event was moved to the Rec at the last minute. He had not been aware of any permission sought or granted for the event, it just happened. There are probably photos of that event. Singleton Park had been too wet for the event.
- 7.27. The Rec has continued to be frequently used by himself and his growing family, who are not untypical, over the years, even after they had moved to a larger house in the area known as The Lons, which is where Sketty meets Cockett and Townhill, at the northern edge of Uplands Ward. They moved there in February 2003. They still use the Rec, and still feel part of the Brynmill/Uplands community.
- 7.28. He still considers himself as much a part of the Brynmill community, even though they have moved to another part of Uplands Ward. It is hard to tell where Brynmill ends and Uplands starts, and many people, especially students who have remained in Swansea, feel a really close affinity with Brynmill's Victorian or Edwardian terraces long after they move into work and home ownership. The Rec is part of that community. With so much open space within and surrounding the terraces, it is a combination which makes the community what it is, both for those who remain there and for those who move on. Uplands is like a village surrounded by other parts of the city.
- 7.29. He firmly believes that development of this site would be detrimental to the balance of grass and tarmac within this lovely part of the world, and would remove a significant part of the connection between the community and the sea front.
- 7.30. When his younger children attended Little Acorns Day Nursery on Bryn Road, the Rec was effectively their extended garden. The Nursery staff would often take small groups out there for games, picnics or a calming walk into the trees to look for acorns, conkers or leaves. This continues for Nursery, school and play-scheme groups from most parts of Uplands Ward.
- 7.31. The Rec is thought of as common space, everybody's piece of grass to be used for whatever they want. This continues still to be the view of his family even though they have moved house. They have continued to use the area for games and playing as part of a route including the beach and parks. However activities such as learning to ride a bike on the Rec have become harder in recent years. Despite being on level ground, it is used by football, rugby and American football teams,



which means the turf is pretty bumpy. The lack of official maintenance by Council grounds staff is obvious.

- 7.32. As Chair of the Brynmill Lane History Society between 1999 and 2011, he was involved with a group of residents in trying to find out more about the organic and planned development of the area and the cultural changes which went with it. Their particular focus was on the period from 1860 to the centenary of the development of the houses on the Lane in 2007. They managed to find maps and records within the Council archives for the transfer of land and granting of permissions for development of roads and housing within the Brynmill and Uplands areas. In particular Council minutes had stated the regulations for road width and discussed the purchase of a triangle of land at the bottom of Brynmill Lane. However he believed that the Rec was not part of that transaction, and was never recorded as anything other than scrubland for general free use. Unfortunately many of the records they viewed around 2002 have since disappeared and were unavailable for reference in later legal disputes over the history and development of the area. He had understood that most of the open land around here had been owned by the Morgan family originally.
- 7.33. At no stage did they discover any evidence of the ownership of the Rec, and they assumed that it was part of Colonel Morgan's family estate along with the remainder of Brynmill. Alternatively it could just have been a commonly owned green belt for the unfettered use of everyone in the area, as it continues to be today. As such the Rec has immeasurable value to the local residents far exceeding the price which would be achieved by any sale for development. Regardless of what land records show, the people are the rightful owners of the Rec, and he wants it to be retained and passed on to his family and friends and the whole community of Brynmill and Uplands, for their continued enjoyment.
- 7.34. His own children did not attend Brynmill School. The reason was that it was very full. His younger children did attend Sketty School, which had large grounds.
- 7.35. He thought the issue raised about the catchment areas of schools was spurious. Brynmill is a really cohesive area. Ripples of that cohesion then extend through the whole Uplands area.
- 7.36. He had noticed that the Council does not list the Rec as a green area managed by it, even though lots of people use it. The Rec is a part of Uplands, which in his view is a cohesive community. Indeed the Council had put up signs saying "*Uplands*" with a reference to Dylan Thomas at places where roads enter the area.
- 7.37. *In cross-examination* Mr Wood said that those signs were on various of the more important roads coming into Uplands; they would not be on every street.
- 7.38. When he had referred to old Council minutes from the late 19<sup>th</sup> century, those were very old records, of which he imagined there would be copies in the Council's

archives. He was not sure he personally would have access to those archives however. He recalled seeing that there was a purchase of a triangle of land from Colonel Llewelyn Morgan in around 1880 – 1885. That triangle was at the bottom of Brynmill Lane where it joined Oystermouth Road. Its relevance is that the land was owned by Colonel Morgan, however he does not have a particularly clear recollection of this, until he is able to see those old minutes again.

- 7.39. Within the Uplands Electoral Ward there are various areas with different names. For example parts of the postal area of Sketty are in the Uplands Ward. Uplands is sometimes referred to as “*The Uplands*”. That is where most of the people would describe themselves as living. Some people would say “*Brynmill*”; however he cannot tell where the boundary is between Brynmill and Uplands. Most people would tend to use whatever name the Council or the Estate Agent tell them to use. He personally would say he lives in Uplands. People might then ask “*which bit of Uplands?*” The same goes for Sketty, which has various sub-parts to it. And of course his own postal address is Sketty.
- 7.40. As for his evidence questionnaire, he had signed the form and ticked various boxes showing what facilities were available in the Uplands Ward area. There is a Brynmill and Uplands Residents Association, which has its meetings in the Brynmill Community Centre. Those meetings he thought might influence people in the area. Undoubtedly there are tensions in the area between students and other residents. People in the Uplands and Brynmill area are more concerned about litter and student housing than anything else. There are significant local efforts to do something about those issues, and there is a shared community feeling, including the feeling that there is a threat from the influx of students.
- 7.41. *In re-examination* Mr Wood said that he could not recall having discovered the Act of Enclosure that had apparently existed in relation to the land including the application site.
- 7.42. **Mr Craig Lawton** lives at 22 Laburnum Place, Sketty, Swansea. That address is not within the Uplands Ward. Mr Lawton had completed one of the evidence questionnaires lodged in support of the application.
- 7.43. During his time at Swansea University from 2006 until 2010 he had used the Rec for a number of sports activities, namely American football and rugby sevens. That took place without seeking permission from Swansea Council or any other group or body. During that time there were no markings on the ground provided by the Council or any other body. Instead they provided their own marking, flags and other facilities, other than the use of the space itself. The same was the case when he trained on the pitch as part of a rugby sevens team. Although they used the space there were no lines or other facilities made available to use.
- 7.44. At times the group that he was part of used the space on their own, without any other groups or people being there. At other times there were other groups using

the space, including other students, and residents walking dogs or out with their children.

- 7.45. At some times of the year the Rec was used by Swansea Council for travelling circuses and other shows. During those times it was only some of the Rec that was used by those shows; a number of groups from the University, including American football, continued to use the rest of the space at the Rec at the same time.
- 7.46. That was also the case when Glamorgan County Cricket Club played matches at the St Helen's ground. The Rec was used as a car park in 2007, 2008, 2009 and 2010 for spectators of the cricket. That was around August in each of those years. However he recalled at that time the land still being used by other people. He recalled seeing children playing cricket and other ball games between and near the parked cars. He also recalled residents continuing to walk their dogs on the Rec while cars were parked there during those years.
- 7.47. When he attended the St Helen's stadium to watch Swansea RFC playing rugby, as he recalled, in 2006 and 2007, opposition teams used part of the Rec to warm up and prepare for matches prior to kick off. That was so that the pitch would not become cut up during poor weather. He recalled that happening while some people still parked on the Rec. At those times other people such as residents walking their dogs also continued to use the Rec as well. He had no knowledge as to whether those teams had permission to use the ground or not. He also recalled a number of occasions during 2006 and 2007 when opposition teams' buses would park on the grass of the Rec while they were playing rugby at St Helens.
- 7.48. When the Swansea 10k run takes place, cars park on the Rec. However he recalled times when the Rec was still used by local residents while the cars were parked there. This would sometimes be for walking dogs, while at other times it was to gain access to the road from the other side of the Rec, or vice versa. There are spaces to get through the fences, but people would also hop over the fences sometimes.
- 7.49. He acknowledged that he lives in Sketty, but would typically refer to a sub-area as being where he lives, for example he lives in the Sketty Park area of Sketty. Similarly in Uplands there are various sub-areas. The Uplands Ward has four Councillors on Swansea Council, because the size of the community requires it.
- 7.50. Apart from what he had described, he did not recall anything else taking place on the grassed area of the present application site. No permission was ever required to use that site. Singleton Park was typically much more bumpy and muddy than the application site at the Rec.
- 7.51. He had produced a number of photographs with his evidence questionnaire, which showed the American football pack.

- 7.52. *In cross-examination* Mr Lawton explained that he had been the community liaison officer for the local Welsh Assembly Member, and attended meetings in that capacity. Thus he had continued to stay in touch with the area. He had volunteered to take part in the campaign to save the Rec, and to sign one of the questionnaires. He believed he had been physically handed the document at a meeting in the area. The document would have had the plan attached. It had been a long meeting; he looked at the plan and he agreed that it was Uplands Ward that was a community in itself. He had agreed with the boundary shown; if the boundary had not been like that he might have had some input into the matter. However he had not really thought about where precisely the boundary should be drawn.
- 7.53. He is generally aware of boundaries within Swansea. The evidence questionnaire form did not actually mention the concept of a community. That was one of the things that had been discussed at a long meeting that he had attended.
- 7.54. He had not been educated at school level in Swansea. He knew however that there are a number of school catchment areas within Uplands Ward.
- 7.55. As for the travelling circuses and shows which he had seen, he could not speak as to exactly which piece was occupied by the circuses because he never went to them. He did recall circus vehicles being parked on the grass of the application site. He could not recall where the Big Top was placed.
- 7.56. The Rec was also used as a car park for cricket, and for many other activities. Having been to the cricket himself, he could not recall being specifically told where to park for it. Later on, he became aware that the Council did let people park there, in exchange for money. That was at the stadium end of the Rec area. That also was the area that travelling rugby teams would use to warm up.
- 7.57. There had been fences around the Rec for a number of years, to stop vehicles driving on there. He could not recall them being there in 2006/07, but was not sure on that matter either way. There are gates now which prevent car access onto the Rec.
- 7.58. *In re-examination* Mr Lawton said that he believed there was more than one community centre in the Uplands Ward. There is also a local police presence in the Uplands Ward.
- 7.59. He said there are many other issues and events which he could have given evidence about in relation to the Rec. For example last year he was spectating the 10k run from a position on the grass of the Rec, although he accepted that that was out of the period which the inquiry is most interested in. Things like that have happened from time to time over the years, but people still use the land for other things such

as to walk dogs, or carry on with their American football training. Undoubtedly there were instances when people parking on the Rec seemed to have been doing so with permission.

- 7.60. As for his observation that vehicles associated with the circus sometimes parked on the grass, he had seen no material change in the extent of the grassy area used for that purpose during his 10 years in Swansea.
- 7.61. **Mr Philip Andrew** said he lives at 7 Hazel Road, Uplands, Swansea. He has lived at that address for 30 years. It is within the Uplands Electoral Ward. He had completed one of the evidence questionnaires lodged in support of the application.
- 7.62. As a child he had lived at 28 Westbury Street until he was 17 years of age, and between then and moving to Hazel Road he had lived elsewhere in the Uplands, and nearby in Sketty.
- 7.63. As a child and teenager the Rec was an important part of his life. He regularly played with friends on the Rec between 1958 and 1966. He attended Brynmill Junior School until the age of 11 and while there they regularly had games lessons, rugby practice and rugby matches on the Rec. At weekends and in school holidays they played a variety of self-organised sports there, such as rugby, soccer, cricket, athletics and occasionally tree climbing. When he moved on to secondary school his friends and he continued to play exactly the same sports there, up to the age of about 16 or 17. They could arrive at any time, never having to ask anyone's permission. They would find room to play, and the ground was always flat and well drained.
- 7.64. Between 2001 and 2007 he was head teacher at Brynmill Primary School. The school was near to the Rec, and served a wide catchment area including Brynmill, Uplands and the Glanmor District, and extended eastwards to include the area north of St Helen's Road as far as Brunswick Street. Pupil numbers were a little under 400, and it was then one of the larger primary schools in Swansea.
- 7.65. The school occasionally used the Rec for sports and games, e.g. athletics and cross-country, and regularly for rugby. He had coached the school rugby team and they trained weekly on the Rec, and occasionally played matches against other schools there, marking out a suitably sized pitch with cones. The Rec was always available for use and they never had to seek permission to use it. They very occasionally had to move a little towards the eastern edge if the fairground or circus were present. The only regular deterrent would be dog walkers leaving dogs mess on the ground.
- 7.66. Having to move out of the way for the circus rarely happened, because it was unlikely that the circus would be there during the rugby season. However if that did happen, there would always still be room to the east for rugby practices, and enough room for a pitch to play on.

- 7.67. In his evidence questionnaire he had said that Swansea University used the land for sports and pastimes. However it would have been more accurate to say that it had been university *students*, and indeed a range of other local students, who had used the ground.
- 7.68. As for the fairground, his recollection was that it was on the gravelled area at the far end of the Rec that it was predominantly held. He still thought of the term ‘the Rec’ as covering the whole ground including the area now mostly used for car parking. The fairground was in that western part which is now gravelled for car parking.
- 7.69. The college students using the land to play or practice games on were in general living in the Uplands area, he thought.
- 7.70. *In cross-examination* Mr Andrew acknowledged that car parking use took place on the grassy area of the application site. However that had never impinged on activities during the school term, so he did not really remember it personally. He acknowledged that in months like September or May or June the school would have been active; those times are within the school terms. He understood that those were times when it was suggested that various activities had taken place on the ground. The rugby practice that he had been involved with would typically have been in the Autumn and Spring terms, on Wednesdays and with games on Fridays. However he personally had not noticed the parking on the land in connection with events. He would not have gone to the Rec on other days, other than in connection with rugby.
- 7.71. At the grassy end (the application site) he acknowledged that he had occasionally seen some overspill onto the grass for parking, but he had no clear recollection as to when that was. He would have seen it while driving past. It had not seemed to be ‘organised’ parking. He had very occasionally seen indiscriminate parking at the grassy end of the pitch. He could not say whether the grassy area of the Rec had ever been used for organised parking.
- 7.72. The circus he thought had occasionally had to move a little to the east from its normal position. He recalled that on one occasion the circus came, and they had to move their rugby pitch and their activities a little to the east. However even then he did not think the Big Top had been on the grass, but he could not remember clearly.
- 7.73. As for his evidence questionnaire, it was Dr Johns who had given him a copy and left it for him to fill in. It already had the map showing the Uplands Electoral Ward attached to it. He had agreed with that as a suggested locality. Both where he lives now, and where he lived in Westbury Street, he regarded as being in the Uplands; the Uplands is an area with various different parts to it. Brynmill is often

seen as part of the Uplands. Glanmor is part of the Uplands. The same would be said for the Ffynone area.

- 7.74. In his witness statement he had used typical local definitions or descriptions as to the bits of the Uplands. Using the term Uplands by itself could be a reference to the part where the shops are. But "*the Uplands*" might be a reference to the whole of the area.
- 7.75. *In re-examination* Mr Andrew said that, on further consideration, the expression "*the Uplands*" perhaps conveys more the area where the shops are, whereas simply "*Uplands*" might typically be used to refer to the wider area in general.
- 7.76. **Mr Peter May** lives at 41 Finsbury Terrace, Brynmill, Swansea. He has been a resident in the community of the Uplands Ward since 1993. He has been a Councillor for the locality since 2004, except for the period between May 2012 and November 2014.
- 7.77. During that period he has instigated various schemes to promote the cohesion of the locality. The first was safer routes for communities. The locality contains two primary schools. Many pupils walked to school, and in particular to Brynmill School. In 2010 after three years of local consultation, planning and going through a grant process, a scheme was delivered to enable pupils to walk to school more safely. A significant number of the pupils live in the north of the locality, over the busy Sketty Road. A pelican crossing across that road was provided and is now well used. There was also traffic calming on Bryn Road, so that pupils could be walked up from the southern part of the locality, including the Recreation ground itself. Also there was a 20 mile an hour zone created near the school.
- 7.78. Then there was the local bus service. Councillor May had initiated the No.19 bus service which serves the Brynmill and Uplands shopping areas of the locality. As well as considering the route, provision had to be made to ensure that the bus could safely negotiate that route without obstruction. That included initiating traffic orders for double yellow lines in various positions on junctions. Previous bus services had had to be aborted and subsequently withdrawn as those measures had not been put in place. The route has now been sustainable for the locality since 2009. Bus shelters had also been added in various places.
- 7.79. In 2007 the police closed their Uplands sub-station in Gwydr Crescent and were going to withdraw from the area completely. He had negotiated with the police and the council which resulted in a sub-station being created in the Brynmill community centre building. It is manned, and officers on the beat serve the whole locality; also recently a neighbourhood watch scheme has been set up in the northern part of the locality.

- 7.80. In 2011 the council had wanted to split the refuse collection days for the locality, the norm being on Wednesdays. There were protests from residents and Councillor May intervened and had the council's decision reversed. As a result the Wednesday collections continue.
- 7.81. He had taken other steps to respond to residents and maintain the identity of the locality. One feature deserving of comment was the high proliferation of student housing in the locality. After graduating a good number of students buy properties and raise families of their own within the locality. So those people are not transient for their three year stay, but integrate and sustain the locality themselves in later life. He had also seen former students carry on to become lecturers at the University.
- 7.82. The Uplands locality is a great place to live. It is close to the centre and quite a vibrant hub. A market has recently evolved there, and there are four parks and the shoreline area for recreation.
- 7.83. *In cross-examination* Councillor May said that there are two primary schools in the locality, Ysgol Bryn y Mor, and Brynmill. Brynmill is multilingual while Bryn y Mor is a Welsh medium school.
- 7.84. What he had said about the pedestrian crossings being put in demonstrates that despite the barrier of the main road through Uplands the parents in the northern part still send their children to Brynmill School. The children do not go over to Sketty, typically. He himself is a Governor of the school, and also runs a summer play scheme. The addresses of parents are predominantly from Uplands Ward.
- 7.85. Shown a plan of the school catchment areas within the Uplands area, Councillor May said that the catchment area for Brynmill School is by far the largest within the locality. The road crossing that was put in definitely enabled the people to the north of the busy main road to get to the school. The catchment area is a significant portion of the locality. The catchment area for Brynmill School is also significantly the more densely populated part; some of the other parts of the Uplands locality are wooded and much less densely built up.
- 7.86. The No.19 bus was initiated in about 2009. There had been predecessor services to it which had failed, which had different numbers. The No.19 route does not go to the north of the main route consisting of Walter Road and Sketty Road. However there are other bus routes in the Ward. The No.19 does go on parts of Sketty Road itself. That bus is just one element of community linkage. There are other bus routes within the locality, but the No.19 is a strong example. There are in fact a plethora of different busses serving different parts of the Ward.
- 7.87. As far as the police are concerned, the area which they used to cover from the Gwydr Crescent police station had been similar to the area of the Ward, but he did



not know if it had been exactly the same. Nevertheless the local police have seemed to be familiar with the whole area of the Ward, including the northern parts. The police have local meetings with the people of the community in relation to policing matters, under the name of Partnership and Communities Together, or PACT.

- 7.88. Police officers do serve the whole locality and go on the beat on foot. Also neighbourhood watch schemes had been set up in the area, with police presence from the local police station. Certainly the officers serve a significant proportion of the area of the Ward. As far as he is aware there is not a fixed route for the police beat on foot, nevertheless the police are very visible. They are always at hand and are very knowledgeable.
- 7.89. As for the question of refuse collection, all the local people like to have their refuse collected on Wednesdays. There had been a proposed split to different days, and Councillor May had concentrated on making sure that did not happen in his Ward. In fact the scheme started, but then reverted back after only one week.
- 7.90. There is a great deal of student housing in Uplands, not least because Swansea University is next door. However many former students have stayed on and lived in Uplands, as he had previously mentioned.
- 7.91. *Mrs Irene Mann* lives at 7 Richmond Terrace, Uplands, Swansea. Mrs Mann had completed one of the evidence questionnaires lodged in support of the application.
- 7.92. She had lived at her present address since 1994. Before that she had lived in Kensington Crescent, now known as St Helen's Avenue. That had been her birth home, and she lived there from her birth in 1950 until 1993 when she moved to her present address.
- 7.93. During her early formative years she and her friends played extensively on the Rec. They visited there after school (they all attended Brynmill School), with their Sunday school group, and latterly with the Youth Club. When they went with the Sunday school or Youth Club they played organised games like rounders or cricket. To her knowledge no adults organising the games, or any of the children present, ever had to seek permission from any council official or groundsman to use the Rec. Indeed there was no park keeper or groundsman to her knowledge. It was common practice that they all just used the land. That would have been between about 1955 and 1965.
- 7.94. After that she attended University, and then began a teaching career in Swansea which extended nearly 40 years. Her usage of the Rec was sparse during the early part of that time, but she did visit the Rec to collect specimens for nature and harvest tables for her class, because of the abundance of conkers on the Rec.

- 7.95. In 1993 when her daughter was born, the importance of the Rec resurfaced as it formed a pleasant and safe walk as part of a longer walk including Singleton Park and the boating lake. At that time her husband was working overseas in Botswana, so they would go walking as a family group which included her brother, the family dog, her mother, as well as her daughter in a pram. On those walks they accessed the Rec from the back of the St Helen's cricket ground, not from St Gabriel's Walk, as the steps coming down were not suitable for a pram. Also her mother was more comfortable walking on the flat. They then walked straight onto the green space of the Rec from the path at the back of it. Again there was no question of permission, or anyone there to ask. They left it at various places depending on where they wanted to go. While there they often saw other people playing football or walking dogs.
- 7.96. Sometimes when they went down at Easter or in the summer, the Fair was present. As far as she could recall the Fair was always on the hard standing to the west, that used to be cindery and is now a car park, not the current green space of the application site. If there were any caravans attached to the Fair they might be parked on the green space, but the family just walked past and around them. They were not in an enclave but just scattered and did not interfere with walking.
- 7.97. Very occasionally there would be a circus. There were a few occasions when part of the circus was present on some of the green area of the application site, but that was not a large proportion of the area, and did not interfere with their enjoyment of the green space. In fact it added to that enjoyment as sometimes one could see acrobats practising on the grass. There was no problem about just standing near them and watching. Again if there were any performers' caravans on the green area they did not form an enclave, and it was perfectly possible to walk around. No-one ever stopped you. Once they saw a lady carrying things out of her caravan with her acrobatic tights on.
- 7.98. During the summer months they often sat and collected daisies on the site and made daisy chains; that was not interfered with when the circus or the fair were there. She remembered seeing one Car Show on the land. She did not remember the exact date, but her daughter was in a pushchair not a pram, so she would be a toddler; the year must therefore have been about 1996/97. They went down with her by then elderly mother, and took her frame chair with them. They used to hang it off the pushchair. She sat on the chair on the green grass towards the back of the Rec and had a cup of tea. They had a wander round the cars. They then left the pushchair with her mother as they were encouraging their daughter to walk at the time. She did not remember any restriction on going into the Rec, and did not remember having to pay anything, they just walked on and off when they wanted.
- 7.99. After the death of her mother, her brother and their dog, and with her daughter growing up, her usage of the Rec became less again. Thus her regular period of use finished in about 1998/99, but her daughter carried on using it herself.

- 7.100. *In cross-examination* she said she had attended the event known as “Proms in the Park”, but she had never seen the grassy area used for a car park. When the 10k run was going on, she had certainly seen cars on the cindery part to the west of the application site, but not seen car parking on the grass. When shown an aerial photograph with cars parked on the grassy area of the application site, she said that she herself had never seen that sort of situation. Over the last few years she personally had not really used the Rec; clearly on one occasion it had been used for car parking. If vehicles were parked to the density shown in that aerial photograph, she accepted that that would impede use of the Rec to a degree, but it would not stop use with a pram, or walking a dog.
- 7.101. **Mrs Elizabeth Byatt** lives at 4 Westfa Road, Uplands, Swansea. She said that between April 1992 and March 2012 she had been a regular user of the recreation ground. In fact she had been a regular user for most of her life. From April 1992 onwards she used it several times a week for a variety of purposes, such as taking her son and his friends to play ball games, fly kites and general recreation. It has also been invaluable for dog walking, especially when parts of the beach are denied access to dog walkers. Even at times when the Fair and exhibitions have taken place on the recreation ground, it has still been accessible.
- 7.102. At no time has she ever been questioned or denied access to the facility of the recreation ground, and there have never been any signs prohibiting its use. The recreational area is a huge part of the local community’s environment and should remain so.
- 7.103. Prior to living at her present address, Mrs Byatt had lived at 68 Bryn Road, where her parents had lived, and still live. So she had grown up in Bryn Road.
- 7.104. She came back from a period overseas in 2003, and then from 2003 to 2005 lived in Bryn Road. Then she moved to St James’ Gardens and then back to Bryn Road until four years ago.
- 7.105. She uses the Rec basically for dog walking. Her own son was in the Bryn y Mor Welsh school.
- 7.106. Between 1<sup>st</sup> May and 30<sup>th</sup> September one is not allowed to use the beach with dogs. Also the prom is dangerous for people walking with a dog because of the busy bicycle lane there.
- 7.107. The land including the recreation ground used not in the past to have a big car park on it. In her recollection there used to be a little shop somewhere on what is now the car park. When there were fairs and exhibitions they used to be on the area now used for car parking.

- 7.108. She had never seen any signs prohibiting use of the Rec, or sought permission to use the land. As far as her own personal use was concerned, she had been away from Swansea for about 5 years; she thought that would probably have been from about 1998 to 2003.
- 7.109. **Mr Colin Williams** lives at 96 Bryn Road, Swansea. He has lived at that address continuously since 1980.
- 7.110. Since 1980 he and his family have used the recreation ground on practically a daily basis. That had been primarily for walking their dogs over the years. Their son also used to play football there, and now their grandchildren who are regular visitors, use the grassed area for walking, football and even picnics.
- 7.111. They have never had to ask permission to use the area. Mr Williams's father-in-law had purchased 94 Bryn Road in 1957, so his wife and her family have used the grounds for various activities since 1957. Since moving to Bryn Road in 1980, one of the more pleasing characteristics of the area had been the availability of the Rec. They still continued to use the grassed area on a daily basis for walking their dog, as access to it is over flat ground, which at their time of life is a necessity.
- 7.112. Since 1980 they have always had a dog, although not the same dog for that entire period. They typically walk down St Gabriel's Walk, which is quite a safe walk with a dog because there is no hassle from cyclists. They walk their dog there twice a day on most days. It is the best place for a short walk with a dog.
- 7.113. *To me* Mr Williams said that he had seen cars parked on the application site, but towards the car park end of that area. He had only seen the Fair in the vicinity on one occasion, and his understanding was that it was always held in the car parking area rather than the application site.
- 7.114. As for cars on the application site, that was not something which had happened often. When the Circus was there he had seen cars parked on the western part of the grassy area, but he only remembered that on one occasion.
- 7.115. *In re-examination* Mr Williams said that he thought that that parking on the grass had been just for visitors to the Circus. The Circus itself had been on the normal car parking area.
- 7.116. **Dr Sandy Reid Johns** lives at 61 Glanbrydan Avenue, Uplands, Swansea. She has lived there since 1985.
- 7.117. She had been born and brought up in Swansea, and her parents too were from Swansea. They were all well familiar with the Uplands/Brynmill area, and her mother used to work in a grocery store on Uplands Crescent, during the Second

World War. Although she herself (Dr Johns) was brought up in West Cross, she was familiar with Uplands, and the Uplands/Brynmill area, as her parents had so many fond memories of it.

- 7.118. Because she lived in West Cross her only usage of the Rec at that time was sometimes during the Fairs. She did however see it frequently on their weekly shopping trip into town. They would always go on the top deck of the double-decker bus from West Cross. When they passed the Rec there was almost always someone kicking a ball around or walking their dog, or just walking there.
- 7.119. She moved away in the early 1970s to study medicine in Cardiff. Having qualified she then worked away while continuing her training in her chosen speciality of psychiatry. That included one year working at Cefn Coed Hospital, Swansea. She returned to Swansea permanently in 1985 as a consultant psychiatrist, and deliberately chose to buy a house in the Brynmill/Uplands area because she felt it had such a strong identity. No-one seems very certain as to the distinction between Brynmill and Uplands. People's use of the two names varies according to who they are. She calls the area where she lives Uplands.
- 7.120. As she had no children or pets, and worked long hours, she had no time to use the Rec herself, but she travelled past it at least 3 times a week on work journeys between hospitals. That would have been between 1985 and her retirement in 2003. Those journeys would have been by car. While passing the Rec she always tried to look to see what was going on there. Sometimes the traffic was going slowly or she was caught in a jam and could take quite a long look. Those journeys would be at various times of day and also at weekends if she was on call. There was almost always somebody or other walking or playing ball or playing with dogs on the Rec. She used to look to see what was going on. On occasions she saw more organised groups of adult players. She did not recall ever seeing any form of pitch markings or anything formal.
- 7.121. When she used to go to the Fair as a child in the 1960s, it seemed to be on what was then the hard cindery part of the ground which is now the car park. She did not recall it being on the green grassy part, although there might have been a few caravans on it. She had never visited a Circus on the site as a child.
- 7.122. From 1985 onwards, when she used to see the Fairs while passing the ground, they always seemed to be on the area that is now the car park. There were sometimes a few scattered caravans on the green part which is the application site. She could also remember seeing the Circus tent, but her impression was that that was predominantly at the car park end. It may have sometimes gone slightly over onto the green space but not by much. There were also sometimes caravans or a trailer on the green part, but scattered.

- 7.123. As she would have been driving and having to keep her eyes on the road, she could not recall whether or not she saw other people using the Rec at the same time as the Fair or Circus were present.
- 7.124. As a resident since 1985 she had always appreciated the distinctive character of the Uplands/Brynmill area, including its variety and somewhat cosmopolitan and bohemian feel. She is interested in music and would often attend music sessions in local pubs. Those would not be just the closest ones to her, but she would go out with a friend to other music venues in the locality on a regular basis; they would often see people they knew doing the same thing. There was a thriving local music scene which attracted an audience from across the locality.
- 7.125. Since her retirement in 2003 up to the present she had had time to become more involved in voluntary groups such as the Friends of Brynmill Park. She attends regular meetings and participates in community events which are held three times a year. Their committee is made up of members spread across the locality, and the events attract people from across the locality. She is also a member of a voluntary community action group called Swansea Sustainable Community Initiative, which is a Brynmill/Uplands based group concerned with local issues. They get themselves involved with street clean-ups in liaison with Keep Wales Tidy and the Council. They also sometimes liaise with the Swansea Students' Union, local schools and other groups. She has participated in street clean-ups across the locality. They try to do a few of them each year. She has also been involved with planting projects in various parts of the locality.
- 7.126. They had also been vocal on the problems associated with the high density of houses in multiple-occupation in the locality. This is a problem throughout most of the locality, but can also be something of a unifying force, she said.
- 7.127. With regard to shopping, she uses the shopping areas of Uplands Crescent and Brynymor Road. They both have an unusual variety of independent traders. She also attends the Uplands street market which is held monthly in Gwydr Square. She has been a member of the Brynmill Community Centre, and helped to start a local library based there when the previous library closed down. She feels that there is a distinctive Uplands locality which extends throughout the area. The Rec is part of that. When she went and took peoples' memories of the Rec, it impressed her how important it had been to them, and made her realise its importance even more than she had done previously.
- 7.128. She recalled hearing when the permissive signs had gone up on the Rec. She had not been sure of the wording on them so she walked down to the Rec to investigate. She saw them and took a photo of one of them with her digital camera. She then downloaded it to her computer, which tells her that the photo was taken on 15<sup>th</sup> April 2012. She had not separately recorded a written copy of the date, as she had not then been aware of the significance of the date, or indeed the sign. Once she came to understand the significance of the signs and what they really meant she

became involved with the Town and Village Green application. She had been aware before that of concerns regarding the Rec, and there had been various petitions and campaigns to take it out of the ‘Swansea Bay Strategy’. However April 2012 was the first time she became actively involved in a specific village green application. At that time she tried to find out the exact date when the Council put up the signs, by contacting the Council, but despite repeated attempts she was totally unable to discover this.

- 7.129. Dr Johns also produced a considerable amount of interesting evidential material as to the appropriateness of the Uplands Electoral Ward area being regarded as a locality or neighbourhood for the purposes of the *Commons Act*. She established that the Uplands Electoral Ward appeared to have existed on its present boundaries for considerably longer than the 20 year period with which this present dispute is principally concerned. As part of her evidence she also identified a statutory instrument dating from 1983 which had produced the result that a defined “Community” of Uplands had been created, through the appropriate process at the time [by the *Swansea (Communities) Order 1983*].
- 7.130. It subsequently transpired, as will be seen later in this report, that in the light of this material produced by Dr Johns, the Council as principal objector conceded that the Uplands Electoral Ward was capable of being a locality or a neighbourhood for the purposes of the Commons Act legislation, not least because it is identical to the statutorily defined community area which has existed since the 1980s.
- 7.131. In the light of that concession by the principal objector it is not necessary or appropriate for me to take up more space in this report summarising in any further detail the material which Dr Johns produced on this topic.
- 7.132. *Ms Kathryn Dodd*, the Applicant, lives at Flat 2, 41 Bryn Road, Brynmill, Swansea. As well as completing the original application form and providing other supporting material, Ms Dodd had in fact also completed one of the original evidence questionnaires provided with the application.
- 7.133. She has lived in the Uplands area since 1987. She first moved to a flat in Bernard Street while an undergraduate in her final year. In 1992 she moved to 13 Brynmill Crescent, which had a garden. It was there that she first developed an interest in bird watching and began to make use of the grassy area that has become the present application site for that purpose, as it was easy to see birds on the grass and in the surrounding trees with an unobstructed view, using her binoculars. In 1997 she moved to a rear flat in Bryn Road, and it was here that she eventually learned that some of the neighbours called the grassy area of the application site “*the Rec*”.
- 7.134. It was in her new flat that she was able to develop her bird watching habit really well. The rear garden at her new premises already had a bird table which she used every day to feed wild birds. In addition she started using hanging bird feeders. She began to notice how many different species of birds were visiting the area, and

found that the Rec was even used by wading birds such as oystercatchers. By standing away from the trees in the middle of the grassed area and using her binoculars, she could see perched birds or those using the ground at a more distant point towards the edges of the grass, under the trees. Up to the early months of 2012 she had noted more than 30 species of birds using the area including the Rec. Nuthatches for example, not seen in her garden, she had seen in the Rec using notches in certain trees there. The last time she saw mistle thrushes was in the Rec, in January 2012. In September 2009 a ring-necked parakeet appeared in the area, and could be spotted quite easily from the southern end of the Rec. Its call was easily heard and sounded very exotic.

- 7.135. Winter migrants such as redwings can be both seen and heard on the Rec, and for the first time recently she saw a great spotted woodpecker on one of the trees at the northern end of the Rec. Flocks of long tailed tits prefer the trees at the eastern corner of the southern side. Early mornings are a good time to watch birds there, but one can get good sightings at any time, even when there is noise and human activity around.
- 7.136. While bird watching she also came to notice how many different forms of fungi can be found on the grass of the Rec, or growing on the trees at different times throughout the year, not just field mushrooms but others as well. No two years are ever exactly the same.
- 7.137. Living so close to the Rec she is aware of much of the activity on it. Often there is more than one game being played on it at the same time, and people seem to treat each other in a very civil manner when using it. Nobody minds the Circus events being there from time to time, since the entrance points are always open anyway.
- 7.138. There have never been signs prohibiting use to the casual user, or giving permission to use the ground, up to and including March 2012, but a sign went up in April 2012.
- 7.139. She explained the efforts she had made, partly through a Freedom of Information request, to find out more information about the basis on which the Council holds the land including the Rec. There appeared to have been some inconsistency in various responses from the Council, as to whether the land was held as 'public open space' or not.
- 7.140. There had also been a notice issued by the Council in March 2014 advertising the intention of the Council to appropriate the ground at the Rec (including some other land, it was understood) for the purposes of a public open space. A notice in respect of that appeared in the Evening Post three days after the application in present matter had been lodged. Yet by December 2014 the Council was claiming that the land at the Recreation ground was already held by the Council as public open space, and that therefore no appropriation was required.



- 7.141. Ms Dodd's researches had also unearthed a statutory declaration by a Mr Sims, the Senior Conveyancer of the Council, in 2001, asserting that the land including the Rec formed part of the Ancient Corporate Estate of the Council, granted to the former Borough of Swansea upon its having been enclosed in pursuance to the *Townhill and Burroughs Enclosure Act 1762*. The purpose of the statutory declaration of 2001 was understood to be in connection with the registering of the land as the property of the Council with the Land Registry.
- 7.142. An earlier statutory declaration of 1968 in relation to the land, made by an official of the then Council, was referred to.
- 7.143. Ms Dodd had made a Freedom of Information request in January 2016 of the Council, seeking information as regards the location of events which had been held on the recreation ground and the adjacent gravel hardstanding area used as a car park. Her request had asked whether various particular events had been held on the grassed area or on the gravelled car parking area. Four of those events were Showmen's Guild Fairs held between 2009 and 2012, and one of them was an event held in January 2010 by the BBC. The FOI request was answered to the effect that all of the events were held on the hard standing area [as opposed to the grassy area of the present application site].
- 7.144. She had made that FOI request having seen the original letter of objection to her application by the Council as landowner. She believed, from examining late 19<sup>th</sup> century Ordnance Survey maps and other documentation, that the application land was not in the area then known as St Helen's Fields. However she accepted that the ground was one of the areas covered by some Byelaws of 1918 in relation to pleasure grounds, made by the old Swansea Corporation.
- 7.145. Her researches had led her to believe that a lease and leaseback arrangement had existed in relation to the land including the Rec, which expired in 1920. She believed that arrangement expired naturally in 1920, and that there was no surrender of a lease before that.
- 7.146. She also produced information she had been provided with in relation to various events which had been held either on the hardstanding car park to the west, or on the grass of the application site area, during the period 2005 to 2013. That information had been provided by the Council pursuant to another Freedom of Information request. She also produced a photograph showing a Circus 'Big Top' erected on the car park area to the west of the application site.
- 7.147. She produced a letter dated 18<sup>th</sup> February 2006 from Mr Edward Harris, solicitor, in relation to the proper legal understanding of the history of the ground of the Rec. [Since the content of that letter goes more to the legal issues in the case than to the evidential basis for the decision I shall not summarise it at this point].

## 8. THE SUBMISSIONS FOR THE APPLICANT

- 8.1. In representations forming part of the application itself, the Applicant had asserted that a significant number of the qualifying inhabitants of the Uplands Electoral Ward had indulged as of right in lawful sports and pastimes on the application land for at least 20 years prior to 30<sup>th</sup> March 2012.
- 8.2. The use ‘as of right’ had not continued to the date of application, because some signs purporting to give permission for the use had been observed by local inhabitants in early April 2012, and had been photographed on 15<sup>th</sup> April 2012. However it had not been possible to discover from the Council the precise date on which those notices had been erected, so 30<sup>th</sup> March 2012 was included in the application as the date when it was believed that as of right use might have ceased. 30<sup>th</sup> March 2012 was the last working weekday of March 2012. It was accepted that in reality the notices might have been erected a number of days after that, i.e. some days into April 2012. The application was made under **sub-section 3** of **section 15** of the **Commons Act 2006** because of these circumstances. Assuming that those signs erected in 2012 were legal, the Applicants had realised that they only had a period of 2 years within which to make an application. The application was thus made under **Section 15(3)** on 25<sup>th</sup> March 2014, less than 2 years after the erection of the purportedly permissive signs.
- 8.3. In addition to the representations made before the inquiry by the Applicant herself, in a letter sent to the Registration Authority in November 2014, the Applicant’s solicitors, Capital Law, made a number of points of submission which it is appropriate for me to note.
- 8.4. [Some of these points related to the questions on which the Council as landowner subsequently made concessions at the inquiry, namely that the Uplands Electoral Ward can be regarded as a locality for the purposes of **Section 15** of the **Commons Act**; and that the evidence had shown that a significant number of inhabitants of that locality had indulged in lawful sports and pastimes on the application site for more than 20 years and continued to do so. In view of those concessions it is not necessary for me in this Report to summarise any submissions which went to those particular issues, because the position on those is now established in the Applicant’s favour].
- 8.5. The Applicant’s solicitors made the further point that the Council had made a series of assumptions as to the statutory power under which the recreation ground is held. The land was vested in the Council by virtue of the **Townhill and Burroughs Enclosure Act 1762**, the effect of which was to enclose the wasteland of the Manor. The land was registered in 2001 by the Land Registry. There is an entry on the Title which says “*The land tinted pink on the filed plan is subject to such restrictive covenants as may have been imposed thereon before 29<sup>th</sup> October 2001 and are still subsisting and capable of being enforced.*”

- 8.6. The solicitors continued that while they had received a copy of the application for registration from the Land Registry they had not yet received the supporting documents. The entry they had referred to was, they said, strong evidence that the Council relied on the statutory declaration supporting its use and occupation of the site, as opposed to relying on the statute which conferred ownership upon it.
- 8.7. The point is an important one if the Council was in occupation of the Rec as at the date of the application. This occupation would be to the exclusion of the public, and therefore use by the inhabitants was as of right not by right (*Lambeth Overseers v London County Council* [1897]). The fact is that the Council is not sure how it holds the Rec. On 28<sup>th</sup> March 2014 it advertised its intention to appropriate the land for the purpose of a public open space. In an email of 15<sup>th</sup> July 2014 the Council's senior lawyer had said that the Council's intention was to regularise the use and classification of this parcel of land as a recreation ground, as it is currently not formally appropriated for such use. It was further indicated that this parcel of land was a part of a programme of appropriations of vacant Council owned land which had been going on for some time.
- 8.8. The Rec therefore is just vacant land which has not been laid out for recreation. There are no facilities on it; it is a grassed area forming part of a larger parcel of land owned by the Council.
- 8.9. Since objection was made to the intention to appropriate, on behalf of the Applicant, the Council had now decided that it holds the land pursuant to **Section 164** of the **Public Health Act 1875**, although it actually has no evidence for this. The fact that there is a byelaw does not necessarily support the Council's contention, as Byelaws can (and could have been at the time) be made under general powers.
- 8.10. In April 2012 the Council erected a sign on the land as follows: "*The Public have permission to enter this land on foot for the purpose of recreation but this permission may be withdrawn at any time.*" Prior to the erection of this sign, the use of the Rec was as of right, not by right. In any event, even if that were not the case, and if (which is denied) the Rec was held pursuant to **Section 164** (or indeed the **Open Spaces Act**), the sign would have no effect because unless and until the statutory trusts are discharged, the Council could [not?] exclude the public from the land anyway.
- 8.11. In the *Barkas* case, their Lordships did consider that public land could be the subject of Village Green rights. In the "*Trap Grounds*" case, (*Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674), a village green was successfully registered even though the land was in public ownership. It had not been laid out or identified in any way for public recreational use. Until the sign was erected here in 2012, that was the case in relation to the Rec. The Council should be required to disclose evidence to support the assumptions it has made but not substantiated.

- 8.12. The Council had also objected on the grounds that it has maintained control over the use of the Rec, and has interrupted any use alleged to have been made over the 20 year qualifying period. The fact that the Council confirms that it has retained control over the land is further evidence to support its rateable occupation of it, and further enquiries need to be made of the Council as to this, and as to the rents and receipts it received from the occupations noted. Notwithstanding that, the examples of uses that it has permitted on the Rec, and for the periods shown, are insufficient to have interrupted user as of right. These temporal interruptions have continued for a *de minimis* period and are insufficient to disrupt the user. In any event they were insufficient to displace the use as of right, and the inhabitants did not defer to the uses described. It is well known that village green rights can accrue alongside temporary uses permitted by the landowner.
- 8.13. Some further pre-inquiry submissions by the Applicant herself (in response to the Council's objection) had mainly dealt with the subsequently non-controversial issue of use of the land by a significant number of local inhabitants. It was also accepted that public events had been held on part of the Rec, but argued that this had not caused significant interruption of usage. When events had been held, there was still no barrier to the public entering onto the Rec to wander round, or for normal casual use. Any charges levied would have been to purchase items, purchase a ride, or go into something specific, and would always be paid direct to the tradespeople concerned, not seen as being paid to the Council.
- 8.14. Anyway, by no means all the events identified by the Council had taken place on the Rec (i.e. the application site). For example, the fair took place on the hard-surfaced car parking area; the Air Show actually happens above the Marine Foreshore Parade, although people go on the Rec to watch it; the Gower bike ride does not actually take place on the Rec, which is merely an assembly point for it; and the circus has tended to keep to the area closest to the car park, leaving a large segment of the application site uncovered; any entrance fee was only to enter the performance tent.
- 8.15. In opening submissions at the Inquiry, Ms Dodd explained that the evidence being called (as well as the material already produced) in support of the application would show that all the statutory requirements of **subsection 15(3)** are met in this case. It was clear that, in erecting signs in early April 2012, the Council were trying to bring the situation in line with that which had been considered by the courts in the *Barkas* case, so that they could argue that any subsequent use was by permission, and not 'as of right'.
- 8.16. Against that background it had seemed illogical to the Applicant and her colleagues to apply for registration under **subsection 15(2)**, when at the time of the application the use of the land 'as of right' had not yet been proved by the Applicant to the Registration Authority. The purpose of this present inquiry is to determine if use has been made of the land 'as of right'. The wording of **Section**

*15(7)* that the Council seems to rely on appears to assume that use of the land has already been proven to have been ‘as of right’, and focuses on the time limit within which an application should be made, in a case where ‘as of right’ use has already been proven. For those reasons the application here was appropriately made under *section 15(3)* of the Act.

- 8.17. Notwithstanding those arguments, if the view is taken that the application should have been made under *section 15(2)*, then favourable consideration is invited under that heading, as it would have no material impact on the case from either party’s point of view. The House of Lords in the well-known ‘*Trap Grounds*’ case had held that registration authorities have a discretion to accept amendments to an application, or to register only part of the area originally claimed, if only that part meets the registration criteria.
- 8.18. In closing submissions Ms Dodd, the Applicant, said that it was very welcome that locality was no longer an issue. What now seemed to be the important points were that it should be seen that there was no express permission to people to use the land, no implied permission to them to do so, and no interrupted usage.
- 8.19. On the question of express permission, it was acknowledged that it had now been established how the land was acquired by the predecessor of the Council. The Freedom of Information request which Ms Dodd had submitted had led to it being shown that the land was acquired under an 18<sup>th</sup> Century Act of Parliament. Then in the 19<sup>th</sup> Century there had been a leasing arrangement in respect of the land, and it was clear that the sub-lease concerned was not under the *1875 Public Health Act*. Anything which went with the sub-lease which had been identified would have expired in due course, and Swansea Council as it then was would have been the unencumbered freeholder from 1920 onwards.
- 8.20. The 1918 Byelaws for pleasure grounds represented the first time that this recreation ground figured in such Byelaws. Ms Dodd accepted that the 1918 Byelaws were made under the *1875 Public Health Act*. However there was a question as to whether the land of the Rec was held under that power in 1918. It was only from 1920 that the Council was free to do what it liked with the land. There were then gaps in the evidence, particularly in relation to the early 1920s.
- 8.21. Since 1992 a good many different activities had taken place on the land; there clearly were lawful sports and pastimes indulged in by the inhabitants of the locality. It was entirely appropriate that specific cricket and football clubs might seek permission to use the land, but that would not be detrimental to the claim of the local inhabitants to have used the land as of right.
- 8.22. The Applicant disputes that the Council has been maintaining the land, either as a car park or as a statutory recreation ground, during the relevant period. It seems to the Applicant that the Objector has not provided a clear picture of use of the recreation ground for car parking. The Applicant disputes that the land was used to

the full extent that the Objector at the Inquiry sought to suggest. The Applicant also disputes the extent to which other licensed activities which took place there from time to time covered the ground of the site. Mr Hughes's evidence had mentioned the full extent of the circus's occupation when it was on the land; however quite a number of witnesses had said that the fairground until the last 2 years had been on the hardstanding, not on the application site. Therefore the Applicant does not agree with the extent of other uses as claimed by the Objector.

- 8.23. As to the suggestion that the public had been excluded from parts of the land, it was more appropriate to say that their inclusion had been made conditional, i.e. conditional on payment. The Applicant specifically disagrees that the overflow of parking onto the application land had been as extensive as had been claimed. If it had been it would have generated a lot of letters about parking on the grass.
- 8.24. The Applicant does not accept that the Parks Department of the Council maintain this land. There is no evidence that it is maintained as a recreation ground. The Applicant also disputes the number of events which the Objector claims take place there. The Applicant's witnesses suggest that those events were on the hardstanding area. Local people have never been excluded from the ground at the entrances to the application site, the points of access onto the application site through which the public can walk have always been open. It is accepted that there have been licensed uses on part of the land, and the Applicant accepts that the public could not get into the Big Top of the circus without paying. However that had always been on the car park area until 2012.
- 8.25. She noted that in September 2012 a Circus had been scheduled on the land, and had seen the photographs which Mr O'Brien had produced. The Applicant did not believe Mr Hughes's evidence that the land was so covered with cars at any stage that one could not indulge in recreational activities there. The Applicant likewise cannot see on what basis the Objector can claim that permission to use the land would have been implied. The Objector had not provided sufficient evidence that the land could not be accessed at any material time.
- 8.26. There was no evidence that a *Mann v Somerset* type situation existed on the land during the relevant 20 year period. The only cordon incident was post-2012. There had never been cordoning off of any part in order to park cars in the period relevant to the application. Nor had there been any instance cited in evidence showing that the application land had been full of cars or vehicles at any one time. Nor had it been shown that anyone was ever told to get off the land during events. It was still possible to play football there even between cars when they were parked there.
- 8.27. When the bicycle race was on in Swansea that was not by any means all on the application land; it was essentially on the promenade. Also cars, when they are parked there, are there for such a short while that they do not interfere materially with the use for lawful sports and pastimes. On University open day events the

cars were there just for an hour or two. Also it was noted that Mr Hughes had said that the grass area would not be used for the circus if the weather was poor. No staff kiosks had ever been erected on the grass part of the Council's land, only on the hardstanding. The Council has not come up with any evidence that people were ever excluded from the land at the entrances to it, or evidence of anything analogous to the *Mann* case.

- 8.28. There had been activities on the land which the 1918 Byelaws could not have envisaged, but that fact did not damage the Applicant's case.
- 8.29. The Applicant's submission is that such licensed activities as had taken place on the application land did not affect people's use for lawful sports and pastimes. There were no signs there before April 2012, either permitting or prohibiting use. There had been clear evidence of more than 20 years use during the relevant period. That is why the Applicant is cautious about 2012 being changed to 2014 as the end date [if it is argued that the application should have been made under *subsection 15(2)* of the Act, with the relevant 20 year period running up to the date of the application]. It was realised that the issue about the location of the Circus Big Top on the grass might be detrimental to the application here, in those circumstances, because of the *Mann* case.
- 8.30. Lawful sports and pastimes and licensed activities have happily co-existed on this land for longer than the relevant 20 year period. The land was not maintained as a recreation ground, despite having recreational activities taking place on it. The nature of the licensed events which had taken place, and the nature of the car parking which took place from time to time, and the lack of normal maintenance of this land meant that this could not be seen as a piece of land on which local members of the public had had permission, express or implied, to use it.

## 9. **THE CASE FOR THE PRINCIPAL OBJECTOR – Evidence**

- 9.1. *Mr David Deer* gave his address at the Guildhall, Swansea, and said that he had been employed by the City and County of Swansea and its predecessor Lliw Valley Council since 1992. Since 1999 he had been part of the Special Events Team, and his responsibilities included management and support of special events that take place within the city boundaries.
- 9.2. Between 1999 and 2015, he had been involved with several events that had taken place on the recreation ground. He produced a schedule of usage of the recreation ground taken from his files. This schedule showed a considerable number of occasions between 2005 and 2013 inclusive when use had been made of the land of the recreation ground for a variety of purposes. Many of those days or periods of use were for parking, in relation to a variety of special events or circumstances, but others related to actual activities of different kinds on the land.

- 9.3. He was aware that prior to 1999 a number of special events had been held annually on the recreation ground, dating back to at least 1985. The Council's Parks section had dealt with those bookings. The standard practice of formalising such a booking during the relevant period would have included various exchanges of documentation such as booking forms, legal indemnities, evidence of appropriate public liability insurance etc., and then a licence would be granted to allow the events to take place. He produced a number of examples of licences to use the land of this kind, generally granted to circuses or for the purpose of setting up fairgrounds on the land.
- 9.4. The number of participants at such events varied from year to year, with most events taking place at the weekend. The events take place on the recreation ground, and either occupy all or part of that ground. Access to the majority of those events he said is on payment of a fee.
- 9.5. He had produced the schedule showing usage of the recreation ground between 2005 and 2013, on the basis of having checked the relevant diaries and correspondence files. In relation to the sample licences provided for activities held on the recreation ground, the references in those licences to the recreation ground would he believed have been to the grassed area generally, leaving the hardstanding (off the application site) available for parking.
- 9.6. For example the Big Top of the circus was on the majority of occasions (albeit not all of them) set up on the grassed area, i.e. within the application site. He personally had seen the circus Big Top set up on that area. The circuses generally prefer to go on the grassed area, because it eases their erection of the Big Top. Having the car parking associated with it on the hard area (off the application site) assists the circus as well. Erecting the Big Top uses pegging into the ground, which is why using the grassed area is more convenient. Then the associated caravans etc. would be set up around the Big Top, which provides security for it. There would also be in such cases a barrier where the paying public have to pay if they wish to pass it.
- 9.7. In relation to the examples of days when the land was recorded as having been used for parking, for small events the parking would be on the hardstanding area (and therefore off the application site); however for larger events, especially events held in Singleton Park, the parking of vehicles often would extend onto the grassed area. The grassed area was used regularly as an overflow car park. As to how often that would be, it changes year by year. When there is a fireworks display in November, that always uses the grassed area as overflow parking. When concerts are held, which is about twice a year, they would use half the grassed area for parking. Also when cricket is being played at the adjacent St Helen's ground the parking is very busy on the grassed area. The University also uses that land (including the grassed area) on a regular basis as a car park.



- 9.8. In *cross-examination* Mr Deer confirmed that he has worked for the Council since 1999 and is based in the Guildhall.
- 9.9. His department have car park attendants whose regular job it is to be present at the Rec.
- 9.10. He acknowledged that the application site here relates to the grassed area, not the hardstanding area. His own personal involvement with the land had changed somewhat over the last six months as it happened, but he had been a senior member of staff in his department for the last 8 years. As for the actual lettings of the land for various purposes, a colleague in his team would oversee the administration of that. But Ms Johns, the Lettings Officer, would come to him for advice, and to avoid clashes etc.
- 9.11. Many of the events planned for the recreation ground area are kept quite secret at first; even within the team things are dealt with on a needs and risk basis. When he had given a list of occasions when the land was used for parking, it was a 'paid-for' parking service that was provided.
- 9.12. Looking at the variety of the uses made of the land as a whole, some things do not work on the grassy area, and other things do not work on the hardstanding area to the west of it. He acknowledged that the funfair had in fact used both areas, as had some of their vehicles. He was shown a picture of the Big Top of the Moscow State Circus, which appeared to show the it set up on the hardstanding area. However other circuses have predominantly been on the grass, and they are by no means always the Moscow State Circus. If there was a circus letting on the land, he himself would visit at the start to inspect the ground conditions. He would then visit during the presence of the circus, and then again after the circus had finished. How that was handled would depend on the nature of the event.
- 9.13. When the Air Show is held there, he or a colleague would be on the site throughout. Four of the recent Air Shows on the land had also had a funfair and exhibition on the grassed area of the land (the application site). However the very last Air Show had had its funfair in the civic centre car park. The majority of the 'normal' funfairs had been established on the hardstanding area, but with the grassed area then used for associated car parking. However he could produce a complaint letter about the fairground for the Air Show being set up on the grassed area.
- 9.14. As for the management of the events, the larger events would be managed in a slightly different way. Car park attendants would be provided if it was on a weekday. If it was a weekend they also might provide parking attendants, sometimes free and sometimes charged. And the Council's parking staff decide when to allow overflow onto the grass area.

- 9.15. He was shown a version of his schedule of usage of the recreation ground onto which, in answer to a Freedom of Information request, a member of the Council's staff had put handwritten annotations showing whether the event concerned took place on the hardstanding or the grass area of the 'recreation ground' as a whole. These annotations had been made by Mrs Christine Johns, who is the Parks Lettings person.
- 9.16. Bookings for parking would always be booked into the hardstanding area, but then may extend onto the grass area as an overflow.
- 9.17. He accepted that a photograph had been produced showing the Moscow State Circus established on the hardstanding. Between the hardstanding and the grass there is a removable barrier. They would usually have 4 – 6 staff there on such an occasion.
- 9.18. On a normal day from Monday to Friday inclusive there would be two staff employed on the hardstanding area in connection with the car parking there.
- 9.19. In respect of another photograph showing the presence of the Cottle and Austen Circus at the recreation ground, he could not say if that circus was on the hardstanding or the grass area.
- 9.20. With reference to a note that in 2010 the land was used twice as a 'BBC base', that could well have been for the purpose of filming the well-known 'Dr Who' programme. They get quite a lot of BBC bookings; 'Dr Who' seemed quite likely in this instance.
- 9.21. There is not a policy to put the fairground on the hardstanding, there is just a preference to use the hardstanding if possible.
- 9.22. *In re-examination* Mr Deer said that he could not recall having known anything about the Freedom of Information request about which he had been asked some questions. Normally that would be dealt with by a central response team of the Council.
- 9.23. When there is a contract for the use of the land at the Rec for parking, such a contract would just mention the recreation ground in general, and would not specify the hardstanding in particular. Thus if the Rec is let for parking, the users would be able to overflow onto the grass if they wanted to or needed to.
- 9.24. *To me* Mr Deer confirmed that on any normal day he would have two staff at the car park end of the ground, in other words the hardstanding area which is not within the application site. However when there were special events being held at

the recreation ground there would be more staff, who may or may not be collecting money.

- 9.25. *Mr Alex O'Brien*, gave his address as the Civic Centre, Swansea. He is a chartered surveyor employed as Property Manager in the Corporate Building and Property Services department of the Council. He had worked for the Council since 2012. He is jointly responsible for the management of the Council's property holdings.
- 9.26. The Council's records show that the site forms part of what is known as the "*Ancient Corporate Estate*" held by the Council. It forms part of a larger area of former common land which was acquired by the Council's predecessors under the *Townhill and Burroughs Enclosure Act 1762*. The deeds in respect of the Ancient Corporate Estate had he understood been lost or destroyed, and the Council's freehold ownership has therefore been registered at the Land Registry based on a statutory declaration made by the former City Estate Agent in 1968. He produced a copy of that statutory declaration and its plan.
- 9.27. It was apparent that the site had been the subject of a lease which by the late 1800s was in the possession of one Colonel Morgan. In the 1870s the Council's predecessor, the Swansea Borough Council, commenced discussions regarding the possible acquisition of the site from Colonel Morgan for use as a recreation ground. Mr O'Brien exhibited articles from the Cambrian Journal relating to those discussions, showing (he said) that by 1885 the lease of the site had been relinquished by the lessee, and the site was in the possession of the Council under the auspices of its Parks Committee. He thought that Council minutes had been destroyed during the War, and therefore full records were not available.
- 9.28. The powers under which the Council accepted the surrender of the lease from Colonel Morgan and set out the site as a recreation ground were not specifically mentioned in any of the contemporary Council minutes. However in view of the purpose for which the land was acquired he inferred that the statutory authority was likely to have been the *Public Health Act 1875*.
- 9.29. The site was made subject to Byelaws in respect of pleasure grounds in 1918. Mr O'Brien exhibited a copy of those Byelaws.
- 9.30. The site has remained under the management and control of the various Parks and Open Spaces Committee of the Council and its predecessor. He produced some copies of committee and Council minutes in that regard.
- 9.31. The Council's property records show the site as being subject to an internal letting arrangement from 1928 onwards, between the Estates and Parks departments. That arrangement was based on the principle that the whole of the Ancient Corporate Estate was vested in the Estates Committee. He believed that there had been a

misinterpretation of the situation in respect of the site, which from the minutes he had examined showed that it had in fact been vested in and managed by the Parks Department of the Council since the surrender of the previous lease on the land in the late 1880s. However even if the entry in the Council's records is correct it shows that the site has been held and managed by the Parks Department as a public recreation ground since at least 1928. He produced a record showing the internal letting between the Estates and Parks Department for the nominal sum of £50 per annum.

- 9.32. The Council had a number of Ordnance Survey plans from the early 1900s which clearly showed the land in question being referred to as the Swansea Bay Recreation Ground. He produced copies of those plans. He also produced a copy of the Parks landscaping specification for the current year of 2015/2016. However his colleagues in the Parks Department, and the minutes which he had examined, all indicated management of the landscape of the park going right back before 1988.
- 9.33. The Council had previously granted consent for the use of the recreation ground to the Swansea Cricket and Football Club for training purposes between certain times of the day. As part of the agreement the Council granted consent for the Club to install floodlighting at their own cost. Mr O'Brien produced a copy of the relevant consent and supporting documentation, dating from 1992/3.
- 9.34. The Recreation Ground has also been used historically for a variety of other events, as had been explained by Mr Deer.
- 9.35. The Council had erected signs at the site in April 2012 stating that the public has permission to use the site on foot for recreation purposes, but that that permission could be withdrawn at any time. Similar signs were erected on a number of other Council owned sites during the same period.
- 9.36. The Council erected perimeter gates and railings at the application site in the early 1990s, although the evidence of the precise installation dates is limited. He understood that the railings were originally installed by the Council for health and safety reasons, to prevent any objects or persons straying onto Oystermouth Road. He understood that the gates are locked on a permanent basis to prevent vehicular access, and are only opened for organised events. The surrounding railings however have a number of open access points to allow pedestrian public access.
- 9.37. Mr O'Brien produced a number of new copy photographs. One of them showed some runners on the esplanade, with Oystermouth Road visible to the left, and beyond that cars parked on the grassy part of the recreation ground. He had no date for that photograph. Another photograph showed an inflatable slide on the grassy area of the recreation ground. That photograph had been uploaded in the year 2010 to an internet photograph sharing site (Flickr). That photograph would have been taken in approximately the middle of the grassy area, looking

- northwards towards Bryn Road. One can clearly see the grassy surface in the picture, and also a mobile chip shop on the grass. The worn area in the foreground of the picture appeared to be at the position where one enters onto the grass through the normally locked gates.
- 9.38. A third photograph, uploaded in 2010 to Flickr, showed a fairground ride on the grassy area of the application site. He believed this was related to the Air Show, as a number of RAF symbols are visible in the photograph. There is also a flight simulator in the foreground of the picture. All of this was on the grassed area of the application site.
- 9.39. He also produced a number of other photographs relevant to the application site. One was a copy aerial photograph thought to be from the 1960s, an observation supported by the fact that the railway line along the Swansea Bay seafront was still visibly present in the photograph. This photograph showed a very large number of cars parked on the grassy area of the recreation ground.
- 9.40. He also produced an aerial photograph believed to be from 2005, showing the gates and railings around the grassy part of the recreation ground (the application site), but also showing the areas where the grass had been worn away near to the vehicular entrance to the grassy area, indicating that it had in fact been used to accommodate vehicles (he said).
- 9.41. He produced a number of other photographs showing circus or other attractions taking place on the grassy area of the application site. One of the photographs, which had been uploaded to the internet in 2012, showed a circus ticket office for the Moscow State Circus on the grassy part of the application site. Another group of photographs, also apparently uploaded in September 2012, showed a number of different circus attractions on the grassy part of the application site, including the ticket office just referred to, but also the Big Top of the Moscow State Circus, which could clearly be seen to have been erected on the grass of the application site. He also produced a photograph without a date showing a classic car show taking place on the grass of the application site. Although the photograph had no date assigned to it, Mr O'Brien ventured the view that it was a fairly recent photograph.
- 9.42. He produced an 'Event Management Plan' document dating from May 2011, relating to a Swansea Pride 'Pink in the Park' event which it seems held on the land in June 2011. The actual main event was held in Singleton Park, but there was a reference in the document to parking for the event being available on both the hardstanding and grassy areas of the recreation ground.
- 9.43. He produced a letter dating from October 2012 from a Mr Wilson, living in Bryn Road, who was complaining vigorously about the use of the grassy part of the recreation ground to accommodate a circus and its vehicles, which Mr Wilson had thought to have been a ridiculous thing to allow.

- 9.44. He also produced a transcription of a handwritten record in the Council's historical records dating from November 1882, which appeared among other things to note the moment at which the decision had been taken that the present application land, with the area currently used for car parking to its west, should henceforth be called the "*Swansea Bay Recreation Ground*". He noted from other records that this recreation ground was from then on managed by the then Borough Council's Open Spaces Committee.
- 9.45. As for circuses on the recreation ground, he himself had been to a circus on the Rec during the last 20 years, and had seen it on the grassed area of the land, i.e. within the application site. He was not saying that the circus covered the grassy area of the application site entirely, but it definitely took up part of the site. He had definitely seen the Big Top of the circus on the grassy area. That was not a one-off occasion, he believed.
- 9.46. He recalled the funfair, as opposed to the circus, being on the hardstanding, but in his recollection the circus had predominantly been held on the grass.
- 9.47. As for car parking on the land, he had himself on numerous occasions parked on the grass; this had been mainly for the fireworks events, which he had attended on two or three occasions. There is substantial use of the grassed area on that occasion, when it is used as overflow car parking.
- 9.48. *In cross-examination* Mr O'Brien confirmed that he has been employed by the Council since 2012, but he is a Swansea man, and is familiar with the ground over a longer period.
- 9.49. On his understanding the records showed that the Council had always owned the freehold of this land, but that it had been leased to another party in the 1820s. Then in the 1870s that lease reverted back to the Council. The historical records he had produced were the only records there were, he believed. He had enquired in this respect of the Council's archivist. The historic newspaper articles from the Cambrian Journal had referred to the ground as the Swansea Bay Recreation Ground or as St Helen's Field, which later became the Swansea Bay Recreation Ground.
- 9.50. It was clear from Council records dating from 1883 that the site at that date was under the control of the Council, because there was reference to planting of trees on the Swansea Bay Recreation Ground, and the removal of illicit entrances which had been made onto the recreation ground from other properties, both in that year. He himself had spoken to the Council's archivist about the availability of documentation, and as far as he was aware everything available had been provided to the Inquiry.

- 9.51. **Mr Thomas Brian Hughes** gave his address as the Guildhall, Swansea. He is employed by the Council in its Leisure Department, in the role of Outdoor Leisure Manager. That involves responsibility for car parks, activity areas, sports clubs etc. The car parks he is responsible for are those on Leisure Department land, not general urban car parks. He has been employed by Swansea Council since the 1996 local government reorganisation in Wales, although he had spent 35 years in total in local authority employment. He has held the same job during his period working for Swansea Council.
- 9.52. That job includes responsibility for car parking at the Rec, Oystermouth Road. There is an entrance onto the hardstanding car park area to the west of the application site from Mumbles Road, just past Brynmill Lane. There is an exit from that car parking area further east, near to the end of the hardstanding area. Only the exit is now gated, although both accesses were until about 4 years ago. There is fencing around the grassed area of the Rec, and also down the length of Mumbles Road alongside the hardstanding area. There are double gates and a barrier at the entrance from the hardstanding area onto the grassed area of the application site. Those gates are usually locked, and a shroud is placed over the locks to prevent their removal. His staff based at the Rec keep the keys for those locks.
- 9.53. On a normal weekday, for car parking purposes they would only use the hardstanding, and the grassy area would remain locked. On such a normal day he has two members of staff taking money from cars parking on the hardstanding. There is also a permit system for regular parkers. In general they do not need to use the grassy area in the week.
- 9.54. On a normal weekend his staff do not work, so cars can park free on the hardstanding area. However, in practice the land is not used that much on a weekend when no event is taking place. However the gates of the hardstanding are left open.
- 9.55. When there are special events, once the hardstanding is full with parked vehicles they would open the gates to allow additional cars to park on the grassy area. The staff on site would then be up to four. On such occasions the parking is sometimes paid parking (in the sense that money is collected), and sometimes free parking. Sometimes the organisers of events request that the Council staff charge individual users, and sometimes the Council is paid a block sum so that the users get free parking.
- 9.56. In terms of charges to event organisers, there is a two tier charge, one being for just using the hardstanding and the second being for the hardstanding plus the grass overflow area. The latter type of charge would, for example, be one typically made to the University or the Metropolitan University. They are generally the ones who use that service.

- 9.57. There are probably some 7 or 8 events on the ground in a typical year. The University has three major events each year, all of which require both the hardstanding and the grass area for parking. Other events on the ground typically use the hardstanding for car parking, with the actual events taking place on the grass. The Circus nowadays takes place typically on the grass, leaving the hardstanding for car parking.
- 9.58. So for the last two years or so the circus Big Top itself has been on the grass.
- 9.59. In a typical year the grassy area is used between 10 and 20 times for general overflow parking, for example at the start of University terms etc. When the grass is used for overflow parking, there would typically be an agreement to use only the first one third of the grass for parking for general overflow (the western end of the grassy area). If however it is a University open day for example, the whole grass area is made available. The University typically warn his department beforehand of the number of cars expected. The hardstanding will hold about 400 – 450 cars, and a similar number can be held on the overflow grassy area. However the overflow area is only ever fully used during University open days. Thus it would be three times a year that there would be maximum capacity use of the grass. Other than on those days they would only typically use the western third of the grassy area for parking.
- 9.60. *In cross-examination* Mr Hughes said that the circus Big Top had been on the grassy area over the last two years.
- 9.61. *To me* Mr Hughes said that prior to two years ago the Big Top of the circuses used to be on the hardstanding, with use of the grassy area for parking; however bad weather had made that difficult.
- 9.62. Typically the Air Show however has used the hardstanding for car parking, and the grass area for the actual events, and for locating toilets etc. The Air Show takes place once every two years.
- 9.63. There is also a church or religious event which takes place once every two years, where the event is on the grass, with its parking on the hardstanding. Other events also use the grass area, for example when the BBC use the land. They use the grass to locate their trailers and equipment etc., while using the hardstanding for car parking. The land is used for a variety of different types of event.
- 9.64. *In re-examination* Mr Hughes said that he could by reference to some of the photographs produced by Mr O'Brien see that the circus booking or ticket building had been on the grassy area of the application site, and also that the Big Top was on the grass. With that in mind, on reflection it might well have been longer ago than two years ago that the new normal practice became that of using the grass for the circus Big Top. It could well have been some four years ago, having regard to



the fact that photographs uploaded in September 2012 showed the circus Big Top and other attractions clearly on the grassy area.

## 10. THE SUBMISSIONS FOR THE OBJECTORS

- 10.1. As noted earlier in this report, there were in fact two objections to the application I am considering. The principal reasoned objection was made by the Council as landowner. However another objection was made by Mrs Joan Henry, who lives in West Cross, Swansea.
- 10.2. *Mrs Henry* thought it was ludicrous that a public area only minutes away from the city centre could be considered as a village green. She thought it was inappropriate for such an area, or for suburbs to claim to have village greens. She thought that the people applying for town or village green status here already had sufficient space to walk their dogs in Singleton and Brynmill Parks. What with those parks and the shoreline they already had more green space than any other suburb of Swansea. She believed that the Rec is used extensively by teams playing American football, and visitors to the St Helen's ground. She wondered if those people would be allowed to continue to use the space.
- 10.3. As for the **Principal Objector (the Council as landowner)**, in submissions lodged in writing before the Inquiry the history of the recreation ground was noted. It was pointed out that it had been acquired by the old Swansea Corporation under a local Act of Parliament of 1762. The Commons of Townhill and the Burroughs had been owned by the Duke of Beaufort as Lord of the Manor, and the Burgesses of the Borough of Swansea had had certain rights of common over the two commons. Under the 1762 Act the commons were divided between the Duke of Beaufort and the Incorporated Burgesses of the Borough of Swansea. The land now constituting the recreation ground was part of the land then allotted to the Corporation. The Corporation was given power to lease the land allotted to it, but the land allotted to the Corporation was not vested in it for any particular purpose. It was therefore available to the Corporation for its general purposes.
- 10.4. The land was then leased by the Corporation to Colonel Morgan for agricultural purposes for a time until (it was initially argued) that lease was surrendered back to the Corporation in the 1880s so that it could be used as a recreation ground. The recreation ground was then laid out by the Corporation in the 1880s as a public recreation ground, and the land subject to the present application has been used as such ever since, under the control of the relevant committee or department of Swansea Council or its predecessors. Late 19<sup>th</sup> and early 20<sup>th</sup> century Ordnance Survey maps show that the land was part of what was then known as "*Swansea Bay Recreation Ground*". In 1918 the Council of the Borough made Byelaws in respect of a number of pleasure grounds including the Swansea Bay Recreation Ground. Then in 1928 records show that the recreation ground was notionally let by the Corporation's Estates Department to its Parks Committee.

- 10.5. Swansea Council and its predecessors have maintained the recreation ground as a public recreation ground since the 1880s. In addition they have authorised a number of events on the recreation ground, some of which involve the exclusion of the public except on payment of an entry fee. Such events could be shown to have dated back before April 2007. The Council has also licensed the use of the recreation ground by sports clubs.
- 10.6. In 2001 the Council's ownership of the land was registered with the Land Registry. Then in 2012 permissive signs were erected by the Council on the recreation ground.
- 10.7. The land covered by Ms Dodds' application is only the eastern part of the original recreation ground, because the western part has been turned into a car park.
- 10.8. It was noted that the application had been made under *section 15(3)* of the *Commons Act 2006*. The Council submitted that the Applicant had brought her application under the wrong sub-section. If there had been qualifying use of the application land for more than 20 years before the date when the permissive signs were erected in April 2012, the effect of *section 15(7)(b)* is that qualifying use would not have been terminated by the permissive signs, and would have been deemed to be continuing at the time when the application was made. The application should therefore have been made under *section 15(2)*.
- 10.9. There is clear legal authority that applicants for registration of town and village greens must be required strictly to prove that all the relevant criteria under *Section 15* of the *Commons Act* are met. However this does not mean that the standard of proof is any higher than the civil standard of proof, i.e. on the balance of probabilities.
- 10.10. Another general principle to be derived from the authorities is that the decision maker should deal with the application as made. The Registration Authority has no investigative duty which requires it to seek to reformulate the applicant's case, or itself to seek out evidence which might support that case.
- 10.11. The Council as Objector took three main points, any one of which would be sufficient to defeat the Applicant's application. The first is that recreational use of the application site was not "*as of right*", because the land has been held under *Section 164* of the *Public Health Act 1875*. Second, and in the alternative, the public were from time to time prevented from freely accessing parts or the whole of the recreation ground by reason of events being held there, and that amounted to implied permission to use the Rec for recreation at other times, or alternatively an interruption in continuous prescriptive use. The Objector's third point was an argument that the Electoral Ward of Uplands is not capable of being a locality or a 'neighbourhood within a locality'. [The Council abandoned this point at the Inquiry].

- 10.12. **Section 164** of the **Public Health Act** enabled urban authorities to purchase or lease or lay out public walks and pleasure grounds. It is clear that Swansea Corporation was an urban authority in the sense of the legislation. Accordingly Swansea Corporation had the powers conferred by **Section 164** of the **1875 Act**. It had not purchased or taken the recreation ground on lease, because it had already acquired the land under the 1762 Act. However, **Section 164** authorises a local authority to lay out and maintain land which it already owns for the purpose of public walks and pleasure grounds.
- 10.13. It is clear from judicial authority such as **Hall v Beckenham Corporation** [1949] 1KB 716 that if a local authority acquires land under **Section 164** and uses it as a public walk or pleasure ground, the public have a *right* to enter the land, subject to compliance with any Byelaws. The public use such land *'by right'* and not *'as of right'*. There are a number of judicial authorities to support this point. Although the present case is not completely on all fours with **Hall v Beckenham Corporation**, the same principles apply.
- 10.14. It is true that no document has been found which records that the laying out of the recreation ground was carried out pursuant to the statutory power under the **1875 Act**, but that is not necessary because it is a reasonable inference from the circumstances that on the balance of probabilities it was. The case of **R (Malpass) v Durham County Council** [2012] EWHC 1934 (Admin) supports this view.
- 10.15. When the land was laid out as a recreation ground in the 1880s there was no general statutory power for a local authority to acquire land for one purpose and then appropriate it for another purpose. Normally if the land was no longer required for the statutory purpose for which it was acquired it had to be sold. Under the **Public Health Act 1875, Section 175** there was limited power, with the consent of the Local Government Board, to retain land purchased for the purposes of the **1875 Act** if no longer required for its original purpose, but it was held in an early case that the section did not authorise the Board to consent to the retention of land for a different statutory purpose. The general power of appropriation was a later introduction, by legislation in 1907. That was then re-enacted in 1933 and eventually became **Section 122** of the **Local Government Act 1972**. The requirement for consent to such appropriations was subsequently dropped.
- 10.16. Swansea Corporation acquired the land under the 1762 Act for its general purposes, without having any specific purpose attached to it. There was therefore nothing unlawful in deciding in the 1880s to use the land for the purposes of **Section 164** of the **Public Health Act 1875**. Equally there would have been no need for any appropriation in those circumstances. Thus recreational use of the recreation ground since the 1880s has been *'by right'* and not *'as of right'*, and the application must fail on that ground.
- 10.17. If that point is rejected, then the decision of the High Court in **R (Mann) v Somerset County Council** [2012] EWHC B14 (Admin) must be considered. There

is was held that where land had been generally used by local people for informal recreation for more than 20 years, but where the landowner occasionally erected a beer tent on his land and charged for admission, there was an inference that the landowner had granted permission to local people to use his land for recreation, so that such use was not ‘as of right’ for the purposes of the *Commons Act*. That case had been mentioned with approval in at least one subsequent case.

- 10.18. *Section 15(7)(b)* only applies to permission to use land granted after 6<sup>th</sup> April 2007, the date when the *Commons Act 2006* came into effect. It follows that since Swansea Council authorised third parties to close off parts of the recreation ground and charge for admission before April 2007, other recreational use was permissive and not as of right before that date. The application must therefore fail on that basis. Further or alternatively, the events amounted to such interruptions of recreational use of the recreation ground as to prevent such use being continuous for the purposes of the Act.
- 10.19. In further submissions made at the opening of the Inquiry, it was indicated that the Council as Objector does not dispute that the recreation ground (the application site) has been generally used by the public for lawful sports and pastimes since the 1880s, and that such use has continued ever since. It was also not disputed that such use had been without force and without secrecy.
- 10.20. It was reiterated however that at all material times since the 1880s the recreation ground had been held by the Council pursuant to *Section 164* of the *Public Health Act 1875*.
- 10.21. In the alternative it was argued that the use had been expressly permissive since the signs were erected on approximately about 15<sup>th</sup> April 2012.
- 10.22. A further alternative way of putting the argument about ‘permission’ was to the effect that the Council had authorised uses of the recreation ground which had had the effect of excluding the public from parts of it. This leads to the view that there was an implied permissive use, or alternatively, interruptions to any ‘as of right’ use.
- 10.23. Evidence would show clearly that the Council had authorised use of the recreation ground for many events. Although it was accepted that some of those events took place on the hardstanding area, it was clear that others took place wholly or partly on the application land. That was supported by some of the observations made in material which had been put in by the Applicant’s side.
- 10.24. It was accepted that the presence of parking or fairgrounds on the land would not necessarily exclude local members of the public, but the presence of the circus and its Big Top would inevitably exclude the public from the relevant part of the land.

- 10.25. In reliance of the case of *Mann*, referred to in previous submissions, the fact that the landowner had authorised third parties to enclose part of the application side and charge for admission gives rise to an implication that general recreational user of the land was permissive.
- 10.26. In final submissions at the end of the Inquiry, the essential points taken in the earlier submissions for the Council as Objector were reiterated, save for the acceptance of the Uplands Electoral Ward or the (identical) Uplands Community Area as an appropriate locality for the purposes of the Commons Act. Thus the Council as Objector accepted that the recreation ground (the application site) has been used by a significant number of the inhabitants of the locality for lawful sports and pastimes since the 1880s, and that such use has continued ever since. It is accepted that such use has been without force or secrecy.
- 10.27. However the Objector takes two main points, either of which is sufficient to defeat the application. As indicated previously, the first of these points is that use of the recreation ground was not as of right because it was held under the *Section 164* of the *Public Health Act 1875*. The second point, which is in the alternative to the first one, is that the public were from time to time prevented from freely accessing parts or the whole of the recreation ground, by reason of events and parking, and this amounted to implied permission otherwise to use the recreation ground for recreation; or alternatively it represented an interruption to continuous prescriptive use.
- 10.28. In relation to the history of the land, it was clear that the basis of the title of the Council was the 1762 Local Act of Parliament. The common land in the area had previously been owned by the Duke of Beaufort. There is no real dispute that this Act is the root of the Council's Title, and in reality the Council's position is consistent on this point with the legal advice which the Applicant had received from Mr Edward Harris, solicitor. The Objector agrees with Mr Harris that any reference to there being Title Deeds to the land is mistaken. The land vested in the Council's predecessor by the 1762 Act of Parliament itself. Further, any reference to an enclosure award is itself otiose. The Act itself allocated the land to the Burgesses of the Borough of Swansea (the Council's predecessor). There were no commissioners involved.
- 10.29. It was also agreed on behalf of the Council as Objector that the advice the Applicant had received from Mr Edward Harris to the effect that between 1877 and 1920 the old Swansea Corporation had held the land of the recreation ground by an underlease from the Morgan interest, in spite of itself (the Corporation) being the freeholder, was correct (rather than there having been a surrender of the lease back to the Corporation in the late 1870s or early 1880s). So strictly speaking it was accepted there was not a surrender, but a sub-lease. However this had the same practical effect. There was a leasehold in possession from 1877, vested in the Corporation. It seems clear from the evidence produced by the Applicant herself that in August 1878 the Corporation proposed to create a number of recreation grounds. Therefore there is no doubt at present that the land was earmarked in the 1870s for a recreation ground.

- 10.30. It can be noted that the 1879 Ordnance Survey extract which had been produced showed the relevant ground as sand dunes or rough grass. It is not known what the survey date for the 1879 map would be; however it would seem that the recreation ground was laid out in the 1880s as a public recreation ground, and was thereafter used as such ever since. This is supported by the various minutes referring to the Swansea Bay Recreation Ground. Therefore the land was laid out and used as a recreation ground, after the interest in possession had been acquired by the Corporation; the Ordnance Survey map extract of 1899 shows it as a recreation ground, and as open land with some trees.
- 10.31. In any event it is quite clear that the 1918 Byelaws, copies of which had been produced, included the Swansea Bay Recreation Ground, and therefore the application site, as one of the grounds covered. It does appear that those were the first Byelaws in relation to this particular recreation ground, and there is no evidence that those Byelaws have ever been repealed.
- 10.32. As for the arrangement represented by the 1928 internal lease document, that appears to be part of the common local authority concept of land being owned by a particular committee, even though legally that is not the case. What it was intended to represent is that the land was owned by the Council, but its management vested in the Parks Committee. Therefore it appears clear that the recreation ground has, since the 1880s, at all times been maintained as a public recreation ground, subject only to the use which has been made of it as a car park, and the fact that it is clear that for a number of years at least the Council have authorised the holding of events on the Rec, such as fairs and circuses.
- 10.33. It appears from photographic evidence that for a number of years, at least from 2012, the circus has been held on the grassy part of the Council's overall landholding here. It is also clear that the RAF show events have been held on the grass, using the hardstanding for car parking. The evidence also showed that the Council has licensed use of the Rec by sports clubs, although that was done without the land ever having been formally laid out as sports pitches.
- 10.34. It was noted that Mr Harris, who advised the Applicant, accepted that the Council is properly registered as the owner of the recreation ground. There is no dispute that the land was properly registered as belonging to the Council, even if (as Mr Harris pointed out) some of the things that were said at the time of the registration were technically incorrect.
- 10.35. A further point which the Council as Objector wished to take was that in any event, by virtue of the 1918 Byelaws, use of the land of the recreation ground has been impliedly permissive, under the doctrine laid down by the Supreme Court in the *Newhaven* case. There is no general principle that the land has to be open for the whole time. There is no inconsistency in the Council's position. This was a public recreation ground. When the Council was not using it for some particular purpose

it was allotted to public recreation. It is extensively used for most of the time for public recreation. This is consistent with the view that when the public are using it, they are using it 'with permission'.

- 10.36. The evidence of Mr Deer said that the circuses were normally on the grass, albeit Mr Hughes recalled that historically the circus had been held on the hardstanding area, and only in more recent years had been held on the grassy part. What is clear is that the Moscow circus in 2012 or earlier had begun to be held on the grass. The presence of the circus Big Top is the aspect of the situation which is most directly analogous to what happened in the *Mann* case.
- 10.37. In relation to car parking, Mr Hughes's evidence showed regular use of the application site several times a year for overflow car parking, albeit that this was mostly confined to the western one-third of the grassy area. But at least three times a year the whole grassy area was used. It was also clear from the evidence that the Council controlled the car parking. Normally the grassy area is securely gated and locked. It does seem that car parking on the grass is not a matter of trespassers, it is an organised allocation.
- 10.38. That volume of car parking taking place falls within the *Mann* analysis. It does not in fact matter when it was that this car parking use started, but taking up half or a third of the ground for car parking is a direct analogy with the *Mann* case.
- 10.39. It was established in the Supreme Court in the *Newhaven* case that Byelaws can be construed as impliedly giving permission to use the land concerned. Here at the recreation ground there have been Byelaws since 1918, which have never been repealed. Those Byelaws prohibit a number of specific activities. The Supreme Court said that where there are Byelaws forbidding a number of activities, they must impliedly permit the activities not prohibited.
- 10.40. So if in 1918 the Council promulgated Byelaws prohibiting specifically various activities, they impliedly permitted the public to use the recreation ground for recreation which did not infringe the list of prohibited acts. Therefore there was implied permission under the Byelaws to use the land. The *Newhaven* case did appear to suggest that statutory Byelaws are not dependent on whether they are displayed or not.
- 10.41. Even if part of the land was used for car parking, circuses etc., people were still impliedly permitted to use the land when it was not used for those other purposes. Therefore even if the use of the land was not by right, it was still by permission.
- 10.42. Thus the argument can be put in a number of ways. First it can be said that use of the land by the public was *by right*. Secondly it can be said that there was implied permission, as per the *Mann* case. Thirdly there was implied permission arising

from the existence of the Byelaws. Any of those interpretations of the position would lead to the town or village green claim being rejected.

- 10.43. The letter from Ms Dodds' solicitor, Mr Edward Harris, is not quarrelled with by the Objector in substance. It does not affect any of the arguments advanced on behalf of the Council.
- 10.44. An alternative legal analysis is that there had been interruptions in recreational use of the application land, so that 20 years continuous use has not been proved. Swansea Council authorised third parties to close off parts of the recreation ground and charge for admission, and regularly used the land for car parking. On that basis recreational use was permissive and not as of right, and the application must fail.
- 10.45. It is also necessary to consider the recreation ground as a whole. For many years the whole of the recreation ground was used for recreation. At some unknown date half of it was turned into a car park. That in itself was evidence of implied permission to use the remaining parts of the ground for recreational purposes. Permission does not expire the moment it is granted, but has continuing effect.
- 10.46. On the question as to which sub-section the application should have been made under, if the Council's argument was correct that the application should have been made under *subsection 15(2)*, then the relevant 20 years would be up to 2014, which makes the position even more difficult for the Applicant.
- 10.47. Any submission on the part of the Applicant that the land of the application site has not been *maintained* by the Council is not supported by any evidence before the inquiry or the Registration Authority.

## 11. **DISCUSSION AND RECOMMENDATION**

- 11.1. The application in this case was made under *Subsection (3)* of *Section 15* of the *Commons Act 2006*. That subsection applies where:

- "(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
- (b) they ceased to do so before the time of the application but after the commencement of this section; and*



(c) *the application is made within the period of two years beginning with the cessation referred to in paragraph (b).*”

The application was dated, and received by the Registration Authority, on 25<sup>th</sup> March 2014. That is therefore the ‘time of the application’. The application suggests that use of the claimed land ‘as of right’ ceased on 30<sup>th</sup> March 2012, which was less than two years before the time of the application. On that basis 30<sup>th</sup> March 2012 would be the date from which the relevant 20 year period needs to be measured (backwards).

11.2. I shall consider later in this section of my Report the argument advanced for the Principal Objector that the application was made under the wrong subsection, and should have been made under *subsection 15(2)* of the *2006 Act*. This is a point I discuss below, under the sub-heading “*for a period of at least 20 years*”.

### **The Facts**

11.3. In this case, as things turned out, there were at the Inquiry only relatively minor areas of factual dispute as to the history of the use of this site over the relevant years, and to some extent over the earlier history of the site before those years. However the Principal Objector correctly noted the point that the law in this field initially puts the onus on an applicant to prove and therefore justify his/her case that the various aspects of the statutory criteria set out in *Section 15(3)* have in reality been met on the land of an application site.

11.4. To the extent that any of the facts were in dispute in this case, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether those statutory criteria for registration have been met or not.

11.5. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point, canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements (particularly ‘pro forma’ statements), questionnaires and the like, which have not been subjected to any such opportunity of challenge.

11.6. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of ‘findings of fact’. Rather, what I propose to do, before setting out my overall conclusion, is to consider in turn the various particular aspects of the statutory test under *Section 15(3)* of the *2006 Act*, and to assess how my conclusions (on the balance of

probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying evidence in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

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

- 11.7. The original application put forward the ‘Uplands Electoral Ward’ as being the relevant area to meet one or other of these criteria. From the submissions exchanged between the parties prior to the Inquiry, it had appeared that it would be a matter or major dispute whether that area was capable of constituting a ‘locality’ or a ‘neighbourhood’ for these purposes, and/or whether it had been in existence for the whole relevant period of 20 years.
- 11.8. However from research carried out, and information provided most helpfully on behalf of the Applicant, it was established clearly that the Uplands Electoral Ward is in fact co-terminous with the Community area of Uplands, which had been defined under a Statutory Instrument of 1983, and had been in existence for a period well in excess of the relevant 20 year period.
- 11.9. Such Community areas, and their equivalent civil parishes in England, are almost the ‘classic’ examples of areas which are clearly capable of constituting ‘localities’, in the way in which the courts have said that term should be interpreted for the purposes of the *Commons Act* (and its predecessor the *Commons Registration Act 1965*).
- 11.10. In the light of that information, it was expressly conceded on behalf of the Principal Objector (and the other objector had taken no point in this regard) that the Uplands Electoral Ward (being identical to the Uplands Community area) constitutes a valid locality (or neighbourhood within a locality) for the purposes of these proceedings. I may say that in my opinion this concession was entirely correct. The application therefore meets this aspect of the statutory criteria.

***“A significant number of the inhabitants”  
“Lawful sports and pastimes on the land”***

- 11.11. It was also expressly conceded at the Inquiry on behalf of the Principal Objector (the Council as landowner) that the evidence showed that the Recreation Ground (the application site) had been used by a significant number of the inhabitants of the Uplands Community or electoral ward for lawful sports and pastimes since the 1880s, and that such use has continued ever since (subject to the issue about interruptions/implied permission which I discuss below).

11.12. It therefore follows that in my judgment the application also meets these two aspects of the statutory criteria.

*“for a period of at least 20 years”*

11.13. It follows also from what I have recorded above that it is clear, and not in dispute, that regular and significant ‘lawful sports and pastimes’ use of the application land by local inhabitants has taken place (subject to points about interruption/implied permission – discussed under the ‘as of right’ sub-heading, below) over any relevant period of 20 years, and more.

11.14. The only issue which I therefore need to consider under this present sub-heading is the point taken on behalf of the Principal Objector, arguing that the Applicant has made her application under the wrong subsection, it being suggested that she should have made it under **subsection 15(2)**, based on the claimed use still continuing as at the time of the application. It was pointed out that she had made no application to amend her application, so as to be considered under that subsection.

11.15. The logic of this argument was based on the wording of **Section 15(7)(b)** of the **2006 Act** which provides:

*“For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied:-*

...

*(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land ‘as of right’.”*

**Subsection 2(a)** is the provision requiring at least 20 years use to be established, and **2(b)** requires that the ‘as of right’ use (in a subsection (2) case) is continuing “*at the time of the application*”.

11.16. This argument arises from what appears to be the undisputed fact that during the first few days of April 2012 the Council as landowner erected at the site a number of signs purporting to grant to the public a revocable permission to use the application land for recreation. [However I note in passing that the Principal Objector’s main case at the Inquiry argued that the public had already in fact enjoyed ‘permission’, or even a statutorily based ‘right’, to use the land for recreation, since as long ago as the 1880s].

11.17. The argument on this point was that if local people were correctly to be regarded as having used the land ‘as of right’ before the ‘permissive’ signs were put up in

2012, then *subsection 15(7)(b)* has the effect that that the permission given by those signs should be disregarded for the purposes of *subsection 2(b)* [about use continuing at the time of the application]. Therefore, it is argued, the application should have been made under *subsection (2)*, not *subsection (3)*.

- 11.18. One general point which I feel it is appropriate for the Registration Authority to take cognisance of is that the amendments made by Parliament to the law of town and village greens, when the *Commons Registration Act* was replaced by the *Commons Act 2006*, were manifestly designed to make things easier and more straightforward for applicants. They were clearly not introduced in order to create legal ‘traps’ for the unwary, or lay applicants. Of course they may have achieved such a result inadvertently, but considerable care would be needed (in my view) before coming to a decision that they had done so.
- 11.19. The Applicant makes the fair point that the whole question of whether there had been ‘as of right’ use of the application site in the first place, even before the 2012 signs were put up, is an unresolved one until the dispute about the application as a whole is decided. It is reasonable in that context (she argues), for the purposes of making an application, to take an express (purported) ‘permission’ conveyed by new signs erected in April 2012 as bringing to an end ‘as of right’ use, bearing in mind that one of the legally clear criteria for such use is that it is ‘without permission’.
- 11.20. I understand the logic behind the point advanced by Mr Chapman QC for the Principal Objector. However it is clear from its wording that *subsection 15(7)(b)* has relevance *only* in relation to the interpretation of *subsection 2(b)* [and therefore only in relation to a ‘subsection (2)’ case]. There is nothing in *subsection (7)(b)* which affects or in any way disapplies the actual statutory words of *subsection 15(3)*.
- 11.21. *Section 15(1)* says, with no qualification that town or village greens may be registered where (as one of three options) *subsection (3)* applies. In my judgment it is clear that when a landowner purports to give permission to use land, that action takes away one of the key ingredients of ‘as of right’ use, so that a use of land which really was ‘as of right’ prior to that permission would cease to be so upon its grant. The wording of *Subsection (3)* therefore would clearly apply to the situation, provided the application is made within the relevant period thereafter.
- 11.22. I can see that there is a somewhat curious interrelationship between *s.15(7)(b)* and *s.15(3)*, in a case where both might be seen to apply. However I am not aware of any judicial authority (and nor did I have any drawn to my attention) to the effect that *Section 15(3)* is disapplied, for cases falling within its express wording, because *subsection 15(7)(b)* arguably produces a situation where *subsection 15(2)* could be relied on by an applicant as well, or alternatively.

- 11.23. The written notes which Mr Chapman QC provided to back up his oral submissions made a somewhat oblique and passing reference to the judgment of Lewison LJ in the Court of Appeal in *R(Newhaven Port & Properties Ltd) v East Sussex CC (No. 2)* [2014] QB 282, at paras. 28-37. I have considered those paragraphs, but they do not seem to me to deal with the particular issue which I am considering.
- 11.24. Therefore, in the absence of any apparent judicial authority to a different effect, it seems to me that the Applicant is correct in arguing that her application can appropriately be determined under *subsection 15(3)*. Even if what I have said above were wrong on this procedural point, in my opinion the Applicant would have an overwhelmingly strong case, in the interests of fairness and justice, for having her case considered by the Registration Authority under *Section 15(2)*, as affected in its interpretation by *s.15(7)(b)*. Any other approach would, in my judgment, produce a most uncalled-for ‘trap for the unwary’ for applicants, seriously at odds with the manifest intentions of Parliament in enacting *Section 15* of the *2006 Act*.

*“As of right”*

- 11.25. As was the subject of discussion at the Inquiry, without there being any dissent on the point, the expression “*as of right*” in the law of England and Wales is correctly understood as meaning ‘without force, without secrecy and without permission’ – or in Latin “*nec vi, nec clam, nec precario*”. In this case it was expressly conceded on behalf of the Council as Principal Objector that the use which has been made by the local inhabitants of the Recreation Ground over the years has been without force, and without secrecy. So it is only the “*without permission*” or “*nec precario*” aspect of the above definition which has been in issue in the present case.
- 11.26. From a number of relatively recent judicial discussions of this topic it had seemed that there might perhaps be a fourth category of situation where “*as of right*” use could not be established (beyond absence of force, secrecy or permission), namely where the use was ‘by right’, in the sense of there existing an actual *right* (as opposed to mere permission) for the relevant people, or the public generally, to do what they had been doing on the land concerned. However the Supreme Court in the important recent case of *R (Barkas) v North Yorkshire County Council* [2014] UKSC 31 made it clear that it regards a ‘by right’ situation as effectively no more than a sub-species of the category “*with permission*” or “*precario*”.
- 11.27. What is clear is that ‘as of right’ use cannot be established in circumstances where the persons concerned already have a right to do what they are doing on the land, either because they have been given permission (or licence), express or implied, or because they have an actual statutory or legal right to do so. And it is still legally correct to take the view that ‘as of right’ really means ‘as *if* of right’, in the sense that the people concerned behave as if they had the right to do what they were doing (on the land concerned), when in fact they had no right or permission to do

so. Or, to put it another way, there is a trespassory element which is essential to establishing an ‘as of right’ use, as opposed to a use which was by right or with permission.

- 11.28. None of what I have set out in the preceding paragraphs was really in dispute between the parties in the present case. I have only sought to set out my understanding of the correct legal position because it is absolutely critical to the two main surviving strands of objection to the present application taken by the Principal Objector.
- 11.29. The first of these strands is the argument that local people’s use of the Recreation Ground was not ‘as of right’, because the land has been held for very many years by the Council and its predecessors under **Section 164** of the **Public Health Act 1875**, i.e. as a ‘public walk or pleasure ground’. Its use by the public would have been ‘by right’ or ‘with permission’ (*precario*), because there is long-standing (and recently approved) case-law establishing that in such circumstances the public has an actual right to use the land, subject only to any byelaw restrictions which might be in force.
- 11.30. The second strand of the Principal Objector’s argument, which is in the alternative to the first, is that because of the evidence about various things which have taken place on the Recreation Ground during the more recent decades, it is clear that the public were from time to time prevented from freely accessing the whole or parts of the recreation ground for recreation, so that it should be assumed, relying on recent case-law [**R (Mann) v Somerset County Council** [2012] EWHC B14 (Admin)], that for the remainder of the time there was an impliedly revocable *permission* to use the land, or the parts of it not in use for events etc. As a further sub-alternative within this strand, it was also argued that the various events, uses for parking (usually commercially paid for) etc., during the relevant period of 20 years, represented material interruptions to any ‘as of right’ use.
- 11.31. I feel I ought to observe that in relation to the first strand of argument, the one concerning the basis on which the Council and its predecessors have held the land at the Recreation Ground, there had initially been a certain amount of confusion on both sides (by which I mean both the Applicant’s side, and the Council as Principal Objector) as to some of the historical facts, and their legal consequences. Fortunately, through the medium of holding a public local inquiry into the matter, it has I believe proved possible to achieve some clarity on most of the matters which actually are important to the decision needing to be made.
- 11.32. It is appropriate that I now set out some conclusions which it has been possible to reach on relevant factual aspects of the history. It is clear that land including the application site first came into possession of the Council’s predecessor directly by virtue of the **Townhill and Burroughs Inclosure Act 1762**. It was not allotted or granted to the Burgesses of Swansea for any particular statutory or other purpose, but for what might be described as general purposes. It seems clear that the land

including the application site was in fact later leased by the Borough to someone else for 99 years in September 1821. However in 1877 the Corporation took a (sub) lease back of the remainder of the term, to September 1920, in respect of the Recreation Ground (including the land west of the application site) and the Esplanade.

- 11.33. I accept, as did Mr Chapman for the Principal Objector at the Inquiry, that this was a sub-lease arrangement (even though the Corporation was already the freeholder of the land), and not a surrender of the 1821 lease. This is what the Applicant, assisted by the advice of Mr Edward Harris, Solicitor, had argued, contrary to the view originally being assisted on behalf of the Council; I believe, and conclude, that the Applicant and Mr Harris were right in this respect. It was therefore only in 1920 that Swansea Corporation (re)acquired the unencumbered freehold of the land.
- 11.34. What seems clear however, from the interesting historical information provided by both sides, is that Swansea Corporation re-acquired *possession* of the relevant land (albeit under a sub-lease arrangement) in the late 1870s with a view to its being laid out as a public recreation ground or pleasure ground. It is further clear that by 1882/3 it had been so laid out, and that in late 1882 it was recommended that henceforth it should be called the Swansea Bay Recreation Ground, a recommendation which had clearly been acted upon by the time of several surviving Minutes referring to it by that name, dating from 1883. The Applicant herself produced a copy map dating from 1878 showing the application site as part of one of a number of proposed recreation grounds.
- 11.35. It is the case, as the Principal Objector acknowledged, that no formal document has been discovered which sets out the statutory powers under which Swansea Corporation laid out this recreation ground. However it is reasonable to take note of the point that the then fairly recent ***Public Health Act 1875*** provided by ***Section 164*** for authorities such as Swansea Corporation to lay out, plant and maintain lands which it either owned or leased for the purposes of being used as public walks or pleasure grounds.
- 11.36. By 1899 Ordnance Survey large-scale mapping was clearly showing the present application site, with other land extending to the west, as the Swansea Bay Recreation Ground.
- 11.37. No evidence has been found of any Byelaws relating to this ground of an earlier date, but the ‘Swansea Bay Recreation Ground’ was clearly included in the County Borough of Swansea’s “*Byelaws in respect of Pleasure Grounds*”, of November 1918. I was told, and this was not disputed, that there is no evidence that these Byelaws have been subsequently repealed or replaced in respect of this land.
- 11.38. It is true that these Byelaws were enacted at a time when Swansea Corporation was still only in possession of the land under the somewhat curious ‘sub-lease’

- arrangement described above (albeit also being the freeholder), which situation lasted until a little later, in 1920. However it does not seem to me that this fact makes any difference, in terms of what inferences can be drawn as to the basis on which the Corporation was holding and managing the land, both before and after 1920.
- 11.39. The Byelaws of 1918 do not state which statutory power they were made under. However everything about them, including their title, makes it highly likely in my judgment, and on the balance of probabilities, that they were and remain Byelaws made under *Section 164* of the *Public Health Act 1875*.
- 11.40. All the facts and justifiable inferences of fact to which I have referred so far lead me to the view that from the early 1880s onwards (and indeed from the regaining of possession under the sub-lease of 1877) Swansea Corporation's intention had been to lay out, and then provide and maintain this land as a 'public walk or pleasure ground' under the *Public Health Act 1875, Section 164*. It is clear, not least from the important recent Supreme Court case of *Barkas*, to which I have referred above, that in these circumstances use of the Recreation Ground by the public would have been 'by right', not 'as of right'. The public, including the local inhabitants, would manifestly not have been trespassers in using this land for lawful recreations.
- 11.41. The fact that full freehold ownership in possession was only restored to the Council's predecessor in late 1920, after the date the Byelaws were made, does not in my view have any bearing on this. The Recreation Ground continued thereafter to be provided for the public's benefit under the 1875 legislation.
- 11.42. The record showing that in 1928 the view was apparently taken that the Recreation Ground (including the application site) and Promenade should be regarded as notionally let by the Corporation's Estates Committee to its Parks Department at £50 per annum similarly does not seem to me to affect the situation in any meaningful way. I agree with Mr Chapman's submission that this seems to have been a manifestation of the commonly encountered local authority concept of land being *owned* by a particular committee or department of a council, when in legal reality that is not the case. And in any event, under that arrangement, the Council's Parks Department continued in fact to provide the land as a recreation ground for public use.
- 11.43. It seems to me that some of the Council's actions in more recent decades have shown a distinct element of administrative confusion as to the basis on which the Council was holding the land including the application site. It is striking, as the Applicant pointed out, that in March 2014 the Council advertised formally an intention to appropriate the land of the Recreation Ground as 'Public Open Space', only for it later to be stated in writing by an officer of the Council that this action had not been pursued because the land was *already* held by the Council as Public Open Space, so that no appropriation was required.



- 11.44. The action of the Council in erecting signs at the Recreation Ground in April 2012, giving the public ‘permission’ to enter the land on foot, but saying “*this permission may be withdrawn at any time*” also makes no sense in relation to the land being either ‘Public Open Space’ or (as I believe was the case) land provided for public use under **Section 164** of the **Public Health Act 1875**. In either case no further ‘permission’ was necessary to use the land; the public has a *right* to use it. That right may not ‘be withdrawn at any time’. It could only be withdrawn after following a statutory procedure allowing for public objection, and requiring consideration of any such objections.
- 11.45. Back in 2007 the Applicant herself had been told in writing by a legal officer of the Council that the land of the Recreation Ground formed part of the ‘Ancient Corporate Estate’ of the Council, with “*no restrictive covenants affecting its use*”, having been held by the former Borough Council ‘under the power of the Townhill and Burroughs Enclosure Act 1762’. While literally true, that was plainly an inadequate and incomplete reply to say the least, in the light of the further researches which have been carried out into the history of this land, both by the Applicant and by the Council itself.
- 11.46. It is perhaps fortunate therefore that the making by the Applicant of her application, and the holding of this Inquiry into it, have caused those further researches to be carried out, so that the correct position has been able to be clarified.
- 11.47. That position appears to be (and I so conclude and advise the Registration Authority on the evidence and submissions I have received) that the Recreation Ground, although part of the ‘ancient corporate estate’ of the Council’s predecessors since 1762, has since the early 1880s been provided by those predecessors, and then the Council itself, as a ‘public walk or pleasure ground’ under **Section 164** of the **Public Health Act 1875**. As such the public have a right to use the land for recreation, which cannot be removed or ‘withdrawn’ without following an appropriate statutory procedure, which allows for objections.
- 11.48. However the consequence of this as far as **Section 15** of the **Commons Act** is concerned is that the application site cannot have been used ‘as of right’ during the relevant 20 year period, so that the Applicant’s application under this piece of legislation must inevitably fail.
- 11.49. My recommendation to the Registration Authority to that effect, and for the reasons I have discussed, accords with the principal submissions made at the Inquiry on behalf of the Council itself, as landowner and Principal Objector.
- 11.50. I emphasise that point because it is on the face of things less than easy to reconcile what appears to be the actual legal status of the land concerned with some of the

actions and activities which the Council and its predecessors have allowed to take place on the land concerned over the last several decades. This concern logically applies to the whole area of what was from the 1880s the ‘Swansea Bay Recreation Ground’ including the area to the west of the present application site, currently used for day to day car parking, as well as to the application site itself. I was given to understand at the Inquiry that there was no evidence that the formal status of any of this land had changed since the time of the records dating from the 1920s which were produced by the parties. However my appointment and role in advising the Registration Authority relate only to the application site itself, and I shall as far as practicable confine my further observations on this matter to that land alone.

- 11.51. It was acknowledged very clearly on behalf of the Council as Principal Objector that the Council’s second main argument was *in the alternative* to its first one, and only really had any force if that first main argument were concluded to have been wrong. That view of the matter must be correct, it seems to me.
- 11.52. The second main strand of argument by the Principal Objector was based on the proposition that the public have in fact been prevented from freely accessing parts or the whole of the application site on numerous occasions during the relevant 20 year period, because the land was being used for the purpose of holding events, or for car parking. The legal consequence of these states of affairs was then put in two alternative ways: if the use of ‘the Rec’ by local people had otherwise seemed to be ‘as of right’, then these occasions of events or parking use either (i) showed that the regular use for recreation was really by an *impliedly revocable permission*, or (ii) represented significant *interruptions* to continuous prescriptive use.
- 11.53. As far as the relevant evidence was concerned, I was shown convincing evidence, in the shape of an aerial photograph which must have been from the 1960s or earlier, that even as far back as that the then Council was on occasion (at least on the occasion of the photograph) allowing the application site to be almost completely filled with parked cars. That was of course well before any relevant 20 year period, but most of the other evidence I received about such occurrences did relate to the relevant period, or to the time since the Applicant’s claimed period ended (30<sup>th</sup> March 2012).
- 11.54. Mr O’Brien, a witness for the Principal Objector, put in photographic evidence, albeit taken from the internet, which with his explanation I found entirely convincing, that as early as September 2012 (but possibly before), a circus with a ‘big top’ had been licensed to set up on the grassy area of the application site (as opposed to the ‘car parking’ area to the west). The other evidence from a variety of witnesses as to when and whether a ‘Big Top’ had been set up on the ‘grass’ (i.e., the application site), as opposed to elsewhere, was somewhat inconsistent. On balance it appeared to me that the more convincing evidence was to the effect that Circus ‘Big Tops’ have been sited on the grassy application site on a number of occasions in the most recent years, but that in earlier years they tended to be on the hardstanding, further west, with the application site used for parking.

- 11.55. The evidence was persuasive (and accords with common sense) that when a circus Big Top is there, it is surrounded by a cordon, to pass beyond which members of the public are required to pay. The problem with this particular point, from the point of view of the Principal Objector's case, is there was no clear evidence that this particular state of affairs existed on the application site in the period prior to April 2012.
- 11.56. There was however a considerable amount of evidence about other events, or occasions of major car parking use, going back well before the end of March 2012. One example is that it was clear from documentary evidence produced that in May 2011 it was arranged (in terms of what was licensed by the Council) that up to 500 cars could be parked on the application site (as an overflow to the adjacent hardstanding area), in connection with an event ('Pink in the Park') which was itself being held in the nearby Singleton Park. I did not however have any clear evidence as to whether that overflow parking was actually needed and used on the day.
- 11.57. I found the evidence of Mr Hughes, the Council's Outdoor Leisure Manager, helpful and generally reliable. It was clear that his work had since 1996 involved actual direct personal knowledge of the car parking and special events which have been allowed to take place on the Recreation Ground, and on the application site specifically.
- 11.58. From him I understood (and accepted as convincing) that typically, over the period he has known the land, the grassy application site has been used between some 10 and 20 times a year for overflow parking, in connection with special days, e.g., ones involving the Universities. Generally that overflow parking takes place only on about the western third of the application site, but about three times a year the overflow parking capacity on the application site itself is fully used.
- 11.59. From a combination of Mr Hughes's evidence and other evidence I learned that a variety of other events have been allowed to take place regularly on the Recreation Ground as a whole. There appear to have been regular fairgrounds, every year, with the fairground stalls and rides themselves on the hardstanding, but with associated parking on the grassy application site. Similarly, even when circuses were (quite regularly) set up on the hardstanding in the period before 2012, associated parking took place on the application site.
- 11.60. Conversely the evidence from Mr Hughes and others was quite clear (and convincing) that when 'Air Shows' have been held, which has been approximately every two years, significant parts of the event itself, which has typically included funfair rides, flight simulators, toilets etc., have been set up on the application site, with associated car parking on the hardstanding area to the west.
- 11.61. Similarly an 'apostolic church' event appears to have been held a number of times prior to 2012 (Mr Hughes said approximately every 2 years), with the event itself

on the application site, and parking on the hardstanding. On the other hand the evidence was that *parking* for an annual fireworks event was always on the application site.

- 11.62. The BBC appear to have been reasonably regular users (under licence from the Council) of the Recreation Ground as a whole in connection with filming (e.g., of “Dr Who” programmes), using according to Mr Hughes) the grassy application site for placing their trailers and equipment, and the hardstanding for parking.
- 11.63. It was clear from the evidence that there have been a number of other special events of different kinds every year, with Mr Hughes estimating that about 7 or 8 of them in a typical year would have involved use of the application site in one way or another (as well as the occasions when it has been used to a greater or lesser extent for overflow parking).
- 11.64. Undoubtedly, of all the events or uses about which I heard evidence, the type which most resembled the situation addressed in ***R (Mann) v Somerset County Council*** was the visits of one or other circus, with the public having to pay to enter an enclosed compound. However the evidence was not clear as to whether such a specific situation had existed on the application site, as opposed to the adjacent hardstanding, prior to April 2012.
- 11.65. Nevertheless the evidence was clear, in my judgment, looking back earlier than April 2012, that in every year the Council would typically, in terms of what it licensed or permitted on the application site specifically, behave on a significant number of occasions as if it could allow whatever it liked to take place there, regardless of the effect that would have on local inhabitants (and others) wishing to indulge in lawful sports and pastimes on the land.
- 11.66. It is true that (apart from the circus ‘enclosures’, which I have discounted) there was no real evidence that during the other types of event the (local) public were actually prevented from entering the land. Clearly however people could not disport themselves or engage in pastimes on the actual spots where vehicles, trailers, etc., were parked, or where equipment, portable toilets, funfair rides, aircraft flight simulators or the like were situated. But, it would seem, people could and probably did still walk around these obstacles, on the pieces of grass where nothing was parked or positioned.
- 11.67. I am very much aware of the point that in the important case of ***R (Lewis) v Redcar and Cleveland Borough Council*** [2010] UKSC 11 the Supreme Court came to the clear view that ‘as of right’ use of a claimed town or village green could be recognised even where the owner of the land concerned (or its tenant/licensee) had been carrying on other activities at the same time as local people’s ‘lawful sports and pastimes’. This could be so even if the other activities (in that case those of a private golf club) were carrying on every day of the year, provided they were

compatible with the ‘lawful sports and pastimes’, with a degree of mutually respectful ‘give and take’ on both sides.

- 11.68. As regards *R (Mann) v Somerset CC* Mr Chapman for the Council correctly argued that this case must be taken as representing the law as it currently stands. It is not entirely clear however how far any principle it enunciates can go, or how consistent it is with another principle established by case law (at a higher level) that the area of land covered by a town or village green application can be reduced in size (to exclude an inappropriate part) during the process leading to its determination, where that can be done without injustice to the parties.
- 11.69. However those concerns do not seem to me to arise here – this is not a case where the Applicant is suggesting that the application site could reasonably be cut down in size to exclude parts where the owner has carried on or licensed incompatible activities during the prescription period.
- 11.70. On the *Lewis v Redcar* issue, I accept the Applicant’s point that when ‘events’ were going on local people could (it seems) still walk among the parked cars – even though at times there were a great number of them – or around the pieces of equipment. A balance must be struck, in my view, in coming to a sensible and legally justifiable conclusion on issues of this kind. I can envisage, as a matter of law, that there might be situations where use from time to time of the same piece of land by a number of vehicles, parked or moving, might be compatible, on the *Lewis v Redcar* ‘give and take’ principle, with an ‘as of right’ use for lawful sports and pastimes becoming established by prescription under the *Commons Act*.
- 11.71. However, as a matter of judgment, it appears to me on balance (and I so conclude) that some of the regular interferences with ‘lawful sports and pastimes’ uses here were so significant and substantial that they must be taken to have shown that the landowner was asserting a ‘right’ to exclude local people from their own regular use of substantial parts of this land.
- 11.72. It would follow, in the sense discussed and considered in *R (Mann) v Somerset CC*, that local people who might seem to use the land as of right at other (unobstructed) times should be seen as having done so with implied permission, and therefore not in reality ‘as of right’.
- 11.73. On the Principal Objector’s ‘sub-alternative’ argument, it seems to me also that the amount of incompatible use over the relevant 20 year period has in this case been sufficient to amount to a considerable number of ‘interruptions’ to the establishment of a continuous period of ‘as of right’ use of the application site.
- 11.74. In my judgment therefore the Principal Objector’s second main argument also succeeds, on both its ‘sub-alternative’ strands – implied licence and/or interruption to continuous use. I repeat however the point which I have explained before, that

in my view this second strand of alternative argument(s) is entirely inconsistent with what I believe is the correct position, as advanced in the Council's first argument, namely that throughout the relevant period the application site has properly been held and provided by the Council under **Section 164** of the **Public Health Act 1875**, and local people have had a *right* to use it, subject only to not infringing the relevant Byelaws; they have not been using it 'as of right'. This is so, in my view, even though the actions of the Council in recent times have sometimes suggested that it had corporately 'forgotten' the actual basis on which it holds this land.

- 11.75. Thus my conclusions on the Council's second strand of argument are only of relevance if (which I do not believe to be the case) my conclusions the first strand were adjudged to be wrong. Those second conclusions however still lead to the view that the site here cannot be registered under **Section 15** of the **Commons Act**.
- 11.76. A yet further sub-issue which arose within the arguments of the Council as Objector was the argument that because there were Byelaws in relation to use of this land by the public, those Byelaws themselves impliedly gave *permission* for the use of the land, even though they had not been displayed there (which it appears they had not). The argument was that this should follow from the similar conclusion the Supreme Court reached in relation to the existence of (undisplayed) harbour byelaws in **R (Newhaven Port and Properties Ltd) v East Sussex County Council** [2015] UKSC 7.
- 11.77. It seems to me however that this argument goes beyond and outside anything that is required for the resolution of this case. In *this* case the Byelaws concerned are clearly (in my judgment) **Public Health Act 1875** byelaws, and relate to (indeed are part of the evidence for) the point that the land is held and made available to the public under **Section 164** of that Act. The public therefore already has the *right* (and therefore permission, '*precario*') to be on the land, and does not need the existence of byelaws to give it a further 'implied permission'.
- 11.78. That in effect concludes my consideration of the issues in this case, and leads inexorably to the conclusion that the application here cannot succeed. Before setting out my final conclusion, however, I ought just to recall the point that the Council as landowner was not the only objector to the application. Mrs Henry, from West Cross, was also an objector. However nothing in her letter of objection raises any legal issues, or any matters of disputed fact which I need to resolve.
- 11.79. I further reiterate the point, which was made in the Directions issued before the Inquiry, that nothing in my conclusions and recommendation relates in any way to the question of what *ought* (as a matter of desirability) to happen to this land in the future, or to matters of town and country planning.

### **Final conclusion and recommendation**

- 11.80. In the light of all the considerations which I have discussed above, my conclusion is that the Applicant has **not** succeeded in making out the case that the application site, or any part of it, should be registered pursuant to **Section 15** of the **Commons Act 2006**. In particular she failed to establish that the land, or any part of it, had been used "*as of right*" during the relevant period, within the legal meaning of that expression.
- 11.81. Accordingly my recommendation to the Council as Registration Authority is that **no part** of the land of the application site should be added to the Register of Town or Village Greens maintained under **Section 1, 3 and 15** of the **Commons Act 2006**, pursuant to the Applicant's application, for the reasons given in my Report.

**ALUN ALESBURY**  
26<sup>th</sup> April 2016

Cornerstone Barristers  
2-3 Gray's Inn Square  
London WC1R 5JH  
*and*  
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## **APPENDIX I**

### **APPEARANCES AT THE INQUIRY**

**FOR THE APPLICANT** – Ms Kathryn Dodd, the Applicant (for the “*We Love the Rec*” group)

She gave evidence herself, and called:

Mr David Roger Brown, of 31 Westfield Road, Waunarlwydd, Swansea  
Mr Robin Wood, of 8 Lon Cwmgwyn, Sketty, Swansea  
Mr Craig Lawton, of 22 Laburnum Place, Sketty, Swansea  
Mr Philip Andrew, of 7 Hazel Road, Uplands, Swansea  
Mr Peter May, of 41 Finsbury Terrace, Brynmill, Swansea  
Mrs Irene Mann, of 7 Richmond Terrace, Uplands, Swansea  
Mrs Elizabeth Byatt, of 4 Westfa Road, Uplands, Swansea  
Mr Colin Williams, of 96 Bryn Road, Brynmill, Swansea  
Dr Sandy Reid Johns, of 61 Glanbrydan Avenue, Uplands, Swansea

**FOR THE PRINCIPAL OBJECTOR** – The City and County of Swansea as landowner

Mr Vivian Chapman, Queen’s Counsel  
- Instructed by Mrs Frances Wilson, Solicitor

He called:

Mr David Deer, Special Events Team, City & County of Swansea, Guildhall, Swansea

Mr Alex O’Brien, Chartered Surveyor, Property Manager, Corporate Building & Property Services Dept, City & County of Swansea, Civic Centre, Oystermouth Road

Mr Thomas Brian Hughes, Outdoor Leisure Manager, City & County of Swansea, Guildhall, Swansea.



## **APPENDIX II**

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

NB This (intentionally fairly brief) list does *not* include the original application and supporting documentation, the original objections, or any material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared, mainly paginated bundles of documents produced for the purpose of the Inquiry, on behalf of the Applicant and Principal Objector, all of which were provided to the Registration Authority (and me) as complete bundles. Included within this exclusion is a bundle produced by the Principal Objector concerning land at Cae Park, Brecon, which was admitted to the present proceedings, but to which in the event no substantive reference was made.

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

Written note of Ms Dodd's Opening Statement

'Dot Map' of Addresses on Evidence Questionnaires

1878 Map (copy) of Proposed Recreation Grounds, St Helen's, Swansea.

Addition to Witness Statement of Dr Sandy Reid Johns

Email exchange (Oct 2015) concerning Ward boundaries

Swansea Local Development Plan Baseline Data Ward Profiles: Uplands, May 2013

Letter from Mr Edward Harris, Solicitor, 18.2.2016

#### **FOR THE PRINCIPAL OBJECTOR**

Written Opening Statement

Aerial Photograph (1960s) showing eastern part of application site

Aerial Photograph of site, 2005

Photographs taken from internet:

Swansea 10k runners, cars on application site

Funfair slide on application site during Air Show

Funfair ride, etc. on application site during Air Show

Classic Car Show on site (undated)

Photographs ("uploaded Sept 2012") showing Moscow State Circus and associated features on site

Swansea Pride "*Pink in the Park*" Event Management Plan, 2011

Transcript of 24/11/1882 Swansea Corporation Minute

Email exchange (July 2011) and photograph, re complaints concerning funfair lorry parking on application site

Correspondence and email (October 2012) re complaint concerning events held on application site (and Singleton Park)

Note of Closing Submissions for Principal Objector

## Report of the Head of Economic Regeneration and Planning

Planning Committee - 7 June 2016

Planning Application Ref: 2014/0977

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

Parc Ceirw, Cwmrhydyceirw Quarry and adjoining land, Cwmrhydyceirw, Swansea

#### 1.0 Background

- 1.1 This application was reported to Planning Committee on 10<sup>th</sup> May 2016 with the recommendation that planning permission be approved subject to conditions. Members did not accept the recommendation but resolved that the application be deferred under the two stage voting process so that further advice could be provided on reasons for refusal. The application will not be deemed to be refused unless and until reasons for refusal have been recorded and approved by members.
- 1.2 In reaching a decision Members will need to consider advice on the award of costs in planning appeals in Welsh Office Circular 23/93 : 'Award of Costs incurred in Planning and other (including Compulsory Purchase Order) Proceedings'. The circular states that Planning Authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers, or received from statutory bodies or consultees. However, they will be expected to show they had reasonable planning grounds for taking a decision contrary to such advice, and be able to produce relevant evidence to support the decision. If they fail to do so, costs may be awarded against the Authority.
- 1.2 A copy of the report to Planning Committee on 10<sup>th</sup> May 2016 is attached as Appendix A. The corrections reported on the committee update sheet have been incorporated into the report.

#### 2.0 Main Issues

- 2.1 Members identified the following areas as grounds for refusal of the application: highway safety, no affordable homes, loss of amenity for school pupils due to the reduction in play space, the provision of three classrooms is not sufficient and concerns over the long term pumping arrangements.
- 2.2 The applicant's agent has submitted further information for Committee to consider in response to the discussion at the Planning Committee. The agent has indicated that the issues raised do not provide anything new – with all items having been previously tabled as part of the application and discussed with officers. The response therefore reiterates / repackages the offer, in order to meet the concerns raised by Members.

Furthermore, the additional offer in terms of affordable housing provision aims to channel the monies which would otherwise be spent on any appeal (should the application be refused) into the development, and accordingly to the wider benefit of the locality. Should an appeal need to be pursued, then this offer would not be able to be maintained, due to the significant costs that would be associated with progressing an appeal, and the viability position of the proposal – which has been previously established. It is also reiterated that the Council defined the S106 package and improvement works deemed necessary as proposed at the recent Committee meeting – with reference of course to the established viability position. Affordable housing had initially been part of the applicant S106 offer, but the Council confirmed that their preference was for these monies to go towards education. These current proposals therefore reinstate a contribution towards affordable housing, without diminishing the education contribution (i.e. it will be over and above and not in lieu).

2.3 More detailed comment is provided in each of the sub-headings below.

#### 2.4 Highway Issues

2.5 In terms of highway safety, concerns were raised that the proposal would lead to congestion on Maes-Y-Gwernan Road, particularly in the vicinity of Cwmrhydyceirw Primary School. The application as reported to Committee indicated that no highway objections had been raised to the scheme subject to conditions and a contribution to highway improvements via the Section 106 obligations. Based on the comments of the Planning Committee, it is considered that the following reason reflects the concerns raised:

*'The applicant has failed to prove that the additional traffic movements generated by the proposal will not have an adverse effect on local congestion to the detriment of the safe and free flow of vehicles and pedestrians, contrary to the provisions of policies EV1, AS2 and HC2 of the City and County of Swansea Unitary development Plan (2008)y.'*

2.5 The following additional information has been submitted on behalf of the applicant.

*'As set out in the original Transport Assessment submitted in support of the application, the development is proposing a number of initiatives to help improve accessibility from the site to local amenities and mitigate the effect of additional traffic generated from the proposed development. Part of this investment is targeted at improving links to Cymrhydyceirw Primary School and also reducing the existing congestion which occurs during peak school times (AM and PM) outside of the school on Maes Y- Gwernen Road. Of course congestion is not uncommon outside schools during peak periods.*

*As such the following are proposed as Section 106 / Section 278 items in relation to the proposed development;*

- *Creating a formal drop off, pick up waiting area within the existing verge on the northern side of Maes Y Gwernen Road); Note that the creation of such a layby will mean that the effective carriageway width on Maes Y Gwernen Road would go from 2.8m to 6m.*
- *Providing a zebra crossing facility of Maes Y Gwernen Road near the junction with Heol Maes Eglwys (see attached);*
- *A Toucan crossing on Heol Maes Eglwys – Secured by Section 106 with location to be determined*

- A Section 106 contribution of £30,000 towards school travel planning at Cwmrhydyceirw Primary School including provision of cycle / scooter storage within the school, walking buses, safe routes to school etc – further details / evidence below.

*As part of the overall sustainable strategy of the site, it is important to consider journeys made for education purposes. National Statistics suggest that some 50% of all journeys during the morning peak hour are related to education. Of these education trips, travel by car accounts for 46% and 23% of journeys to primary and secondary schools respectively. Hence it is important to consider this when designing and developing a new site in close proximity to the existing primary school.*

*The site is immediately adjacent to Cwmrhydyceirw Primary School and the Morryston Comprehensive school and so it could not be better suited to children walking, scooting and cycling to school.*

*An initial meeting and subsequent discussions have taken place with Head Teacher Darren Casker at the Primary School to understand what issues relating to transport to /from school and access presently exist. The measures proposed as part of this application are a reflection of the requirements of the school and are supported by the Head Teacher as being beneficial to reducing congestion outside of the Primary School at peak school times.*

*Based on these discussions it would appear that the Primary School has a Travel Plan, but they lack the resources to implement travelling planning measures on a regular basis. Given this and their enthusiasm for encouraging sustainable travel to the school, there are some easy wins to be had by implementing updated or new Travel Plans, with the effects of reducing car borne school movements, improving travel sustainability, improving health and reducing any highway congestion.*

*Therefore, as part of the development's Travel Plan, the proposal is, with the assistance, support or lead of the Council, to design school specific travel planning, which will benefit the wider community as well as the development proposal. In particular, specific Travel Planning measures were identified and discussed with Cwmrhydyceirw Primary School and included;*

- *Contributing to a walking bus scheme;*
- *Contributing to improve their cycle proficiency training;*
- *Bike/ scoot to school days;*
- *Providing secure/ sheltered scooter and cycle parking;*
- *Parents shelter and*
- *Provision of high visibility gear.*

*The Section 106 monies could also be used to fund a walking bus leader or responsible adult for walking children to school from the proposed development and also a Living Streets pedestrian / cycle audit – [www.livingstreets.co.uk](http://www.livingstreets.co.uk) (See attached).*

*Living Streets' vision is that every child who can walk to school, does so. This links with our sustainable travel approach, and commitment to improving and promoting safe and enjoyable walking routes the local schools. Experience suggests that Living Streets' audits of the local walking network are independent, and the act of bringing them into the project actually helps to ensure that local communities feel involved and not under any pressure from the developer.*

*Following or in place of an audit, Living Streets' 'Walk to School campaign' can: deliver improved physical and mental health for children, parents and carers; provide cost savings through improved public health, reduced congestion, improved road safety and reduced carbon emissions; and break down the environmental and behavioural barriers to walking to school.*

*Indeed, the 'Walk once a Week (WoW)' scheme, in just 5 weeks, has seen an increase in walking by up to 26% (Internal monitoring of the LSTF Walk to School Outreach programme. Based on Living Street coordinator supported WoW. Living Street crucially maintain that 'at a stage when children form habits for life, walking to school should be a positive and natural choice for children, families and the wider community'.*

*There are also lots of other examples attached which seek to improve congestion outside schools by promoting walking, scooting and cycling and engendering health initiatives within young children. These examples have demonstrated many benefits in terms of reducing car usage for school related transport.*

*In addition, I have also attached a significant appeal decision (2013) on behalf of Harrow Estates at Hartford, Cheshire to fall back on. We were involved in this appeal. This is attached and broadly concludes that whilst adjacent to a congested highway network during peak times sustainable travel offers choice for commuting and educational-based trips and as such development should not be thwarted on the basis of the convenience to the car commuter. '*

- 2.7 The Head of Highways and Transportation has raised no highway objection to these proposals.
- 2.8 It is considered that it is lawful to refuse an application on the grounds of highway safety, but Committee will need to consider whether sufficient evidence can be provided to demonstrate that the proposal will have an unacceptable impact on highway safety. Recent appeal decisions have clearly indicated that in the absence of any evidence to prove a proposal will be detrimental to highway safety, an appeal will be allowed. Members will need to be satisfied that relevant evidence to support the decision can be provided. Failure to do so, may result in costs being awarded against the Authority.
- 2.9 Affordable Homes
- 2.10 Committee expressed the view that in the absence of any affordable housing within the development, in an area where a demonstrable need exists, the proposal would not create a sustainable community. In the light of this, it is considered the following reason addresses the concerns of Committee:
- 'The proposal fails to provide sufficient affordable housing to contribute towards the demonstrable need within the area, to the detriment of community regeneration and social inclusion. The proposal is therefore contrary the aims of Planning Policy Wales (edition 8) and the Well-being of Future Generations Act 2015'*
- 2.11 As noted in the original committee report, Policy HC3 states that in areas where a demonstrable lack of affordable housing exists, the Council will seek to negotiate an appropriate element of affordable housing where this is not ruled out by exceptional development costs. In this case, the Housing Department requested a contribution of 30% affordable housing within the scheme.

In considering the viability information submitted in support of the application, it was considered that once other necessary S106 contributions had been identified, the provision of an affordable housing contribution was not viable. Consequently, no affordable housing was requested.

- 2.12 With regard to affordable housing provision, the applicant's agent has commented as follows:

*'As you will be aware, the scheme will yield much needed housing generally. Accordingly, the proposal will, in itself, make a significant contribution to housing land supply. Bringing the new stock to the market will increase supply in the area, which will meet local demands, and free up stock elsewhere. This increase in supply will also have a positive impact on lowering price levels, by relieving some of the pressure in the market and meeting existing demands.'*

*Furthermore, the vast majority of the units on the site will be in a price band that will enable them to be eligible for the 'Help to Buy' scheme, meaning that they are affordable in general terms / by nature – thereby having a further positive impact on housing needs.'*

*In terms of S106 contributions, as you will be aware, our originally proposed package of contributions provided for a 5% level of affordable housing provision (in addition to other highways contributions), in view of the assessed and established viability of the scheme – this is outlined in our attached email. However, the Authority confirmed, whilst the overall sum of contributions was agreed, that this was preferred to go towards education and highways – something that was agreed to by our clients.'*

*However, having regard to the current position, and on a without prejudice basis, we can now confirm that we will revert to the original offer made of 5% affordable housing provision on site – based on low cost home ownership tenure. This offer is in addition to (rather than in lieu of), the agreed contributions elsewhere (i.e. education and highways etc.).'*

*This offer has been enabled by the clients consideration of the considerable costs that would be associated with an appeal, should we need to challenge a refusal of the application. It is considered that these costs would be better channelled into the scheme itself through the now proposed affordable housing provision, rather than spent on the appeal process. Clearly, having regard to the viability of the scheme, this offer can only be made at this stage on the basis that an appeal wouldn't be required, as the development would not be able to shoulder these costs should an appeal be required.'*

- 2.13 The Housing Division has indicated that whilst this percentage does not meet the original provision requested this offer is accepted taking into account the viability issues on this site. The offer is for 5% Affordable Housing, low cost home ownership tenure to be picked up by Registered Social Landlord at 70% of Acceptable Cost Guidance .

- 2.14 The need to provide affordable housing could be a lawful reason for refusing planning permission. As detailed above, Council policy in respect of the provision of affordable housing is that an appropriate element of affordable housing should be provided where this is not excluded by exceptional development costs. Whilst it is recognised that the aims of Planning Policy Wales and the Wellbeing of Future Generations Act seek to support sustainable communities, the evidence submitted in respect of the viability of this site indicates that the site cannot support the level of affordable housing requested when assessed against other S106 requirements.

It is noted that the developer is proposing a 5% contribution in line with their original offer on the basis that money set aside for a possible appeal could be utilised. This is welcomed and on the basis of the viability evidence available, it is not considered that the lack of affordable housing provision could be supported at appeal should the application be refused, particularly when taking into account the material contribution that this development would make to the Council's Housing Land Supply, which is currently below the 5 year supply required under National Planning Policy.

2.15 Issues associated with Cwmrhydyceirw Primary School

2.16 Committee raised concerns that the provision of three classrooms at Cwrhydyceirw Primary School was not sufficient and in any event, the provision of three classrooms would have an unacceptable impact on the amount of play space available at the school. Based on these concerns, the following reason would cover the points raised by Committee:

*' The proposed development would generate a demand for English Medium primary school places which cannot be accommodated at the catchment school without overloading the community facility, contrary to the requirements of policies EV2 and HC2 of the City and County of Swansea Unitary Development Plan 2008'*

2.17 It is lawful to refuse an application due to the impact on existing community facilities. The issue here is whether it can be evidenced that the proposed development will have an adverse impact on the school. In terms of the provision of three classrooms, the Education Department has confirmed that in line with the calculations set out in the SPG on Planning Obligations, the provision of three classrooms is sufficient to meet the need for additional spaces generated by this proposal. In view of this, it is not considered that this issue can form a reasonable reason for refusal that could be supported at appeal and to refuse the application for this reason would leave the Council open to an application for costs at appeal.

2.18 With regard to the amount of space available within the school grounds to accommodate the three additional classrooms, the Education Department has advised that a site meeting has taken place and it is deemed that there are a few options within the school grounds that could be investigated to extend the school buildings. Adding a potential additional 90 pupils to the site would mean a very small shortfall in the recommendation areas provided by Building Bulletin (0.35acres below recommended levels).

School Name	Capacity	BB99 lower limit recommended site M2	BB recommended Acres - lower limit	Actual Acre	Difference
Cwmrhydyceirw	420	17320	4.28	4.73	0.45
Cwmrhydyceirw	510 (420+90)	20560	5.08	4.73	-0.35

2.19 Building Bulletin provides a recommendation only and some schools in Swansea and other local authorities fall short of this recommendation. The advice given by the Education department is that the proposed three class extension is required and appropriate and can be accommodate satisfactorily within the school. In view of this, it is not considered that a strong case could be argued should an appeal be submitted.



## 2.20 Long Term Water Pumping

- 2.21 Concerns were raised regarding the long term pumping arrangements to keep the water table at the quarry artificially low and below the existing waste mass. These concerns could be translated into the following reason for refusal:

*'The long term need to keep the water table at the site artificially low cannot be adequately secured and as result, any long term failure in the pumping system would lead to increased risk of flooding within the former quarry area, particularly the area that has been subject to landfill, to the detriment of the residential amenity of existing and future occupiers of nearby residential properties. The development would therefore be contrary to policies EV1, EV2 and HC2 of the City and County of Swansea Unitary Development Plan 2008.'*

In support of the application, the applicant's agent has submitted a statement prepared by the quarry operator's environmental consultants in relation to water pumping. This is attached as appendix 2. It has been further confirmed that as the attenuation pond forms part of the public open space, it will form part of the Management agreement covered under the proposed Section 106 agreement. The Land Trust, the nominated party to control and manage the site in perpetuity, has confirmed their willingness to operate a pumping regime and provided examples where they currently manage sites where pumping is in place.

- 2.22 The pumping of ground water is not an unusual occurrence and it is considered that it can be effectively managed through the proposed Section 106 agreement. Furthermore, neither the Council's Pollution Control Division nor NRW have raised objection to the proposal. Whilst it is considered that this issue would form a lawful reason for refusing a planning application, based on the evidence available and the lack of objection from the relevant statutory consultees, it is not considered that there are grounds to refuse the application. Should Committee consider this to be a reasonable ground for refusal, they would need to be sure evidence could be produced to defend an appeal or the Council may be liable for a costs application.

## 3.0 **Conclusion**

- 3.1 My original report to Planning Committee on 10<sup>th</sup> May 2016 recommended approval of the application and I have received no evidence to change this recommendation. However, it is recognised that Committee may not accept my recommendation and should this be the case, any decision to refuse the application will need to take into account my advice given above in relation to each possible reason for refusal Committee identified previously.

## 4.0 **Recommendation**

- 4.1 The application be approved in accordance with the recommendation set out in Appendix A, subject to the additional S106 contributions proposed by the applicant.

If, however, Committee does not consider that the application should be approved, the reason(s) for refusal should take into account the advice given above.

## **BACKGROUND PAPERS**

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

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

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<b>Date of Production:</b>	<i>27<sup>th</sup> May 2016</i>	<b>Document Name:</b>	<i>Parc Ceirw</i>

ITEM

APPLICATION NO.

2014/0977

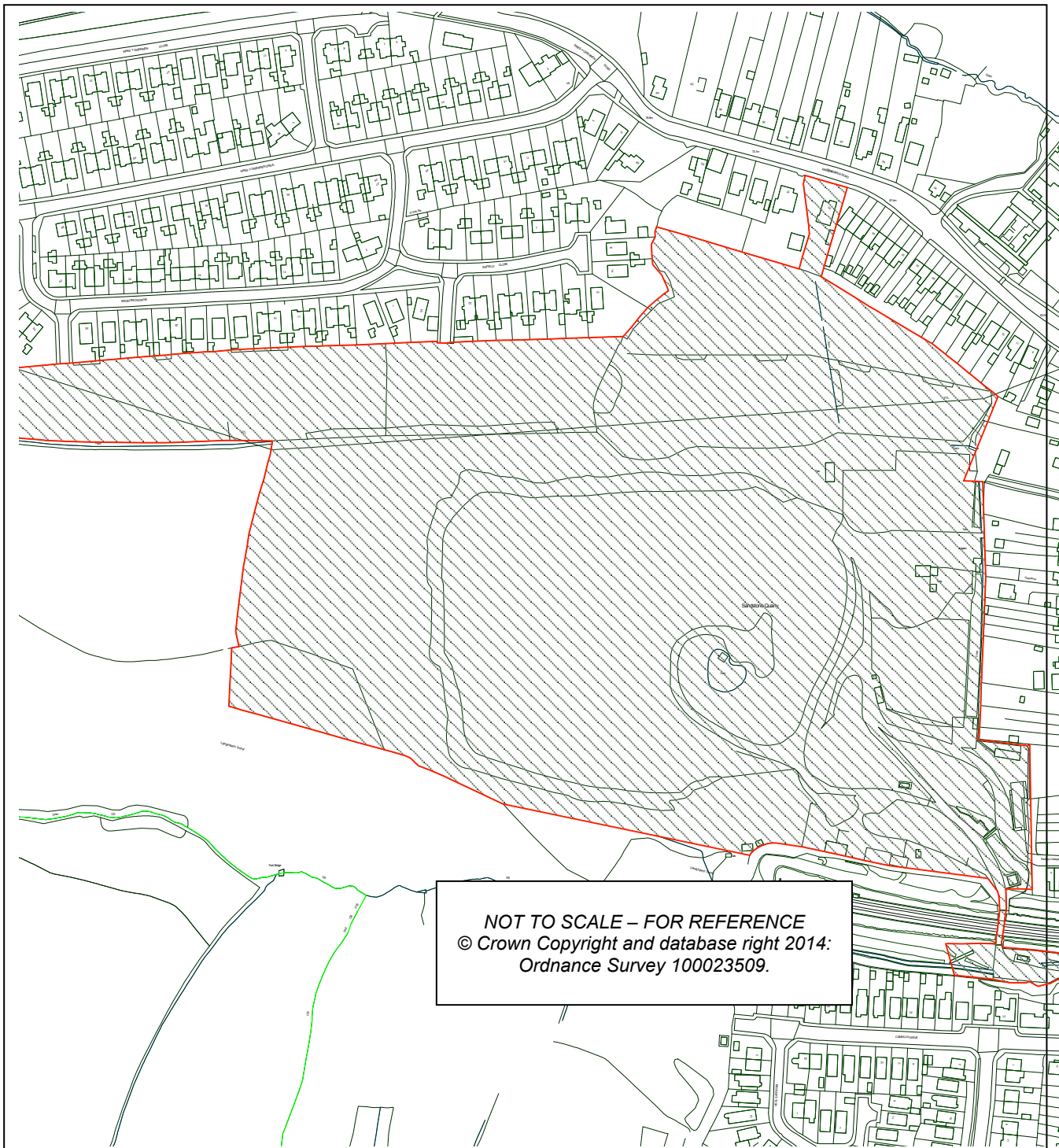
WARD:

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



## **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 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)
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)
- 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

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

## **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.
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 Morrision Comprehensive, Morrision Leisure Centre and Morrision 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 /LlanllienwenRoad /  
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/Morrision Comprehensive School/Rhodfa Fadog;  
M4 slips/Neath Road/Ffordd Cwm Tawe/B4603.

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 Morriston 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.

### 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

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.

## 6. Recommendation

6.1 I recommend no highway objection subject to the following;

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.

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.

#### 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.

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.

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

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 intension 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.

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 Soltly 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.**

## **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.

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.

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.

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.

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.

#### 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.**

**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, Morrision Comprehensive had an unfilled surplus capacity of 229 pupils, with a projection for January 2021 of being 262 pupils. In addition, Morrision 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>Morrision 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

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.

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. 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.

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 Vicarage 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. 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.

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. 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.

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. 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. 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 Morriston ward, there is a deficiency in open space provision in accordance with Fields in Trust guidelines. Morriston 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, Morriston 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.

## 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 landfill 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 inspectors decision the site was a permitted landfill with no immediate prospect of an alternative end use for the site, as such it is 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 numbers of people in the locality, into a unique openspace 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 in 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.

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. 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.

#### **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.**

**Beyond Bricks and Mortar – the developer shall provide a commitment under the Council’s Beyond Bricks and Mortar scheme to bring added social value to the development through training and supply side activities during the development of the site.**

**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.

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.

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.

- 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.
- 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.

(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.

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 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:

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

25 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.

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.

- 28 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: 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 approved 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 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 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, unless the Local Planning Authority gives

written consent to any variation.

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.

- 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, C and D 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).
- 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 birdCare 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.
- 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). 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.

## Statement in respect of groundwater management at Parc Ceirw/Cwmrhydyceirw Quarry

### 1. Current Groundwater Management Arrangements

- 1.1 The base of the quarry is below the rest groundwater level. Groundwater currently is controlled by pumping from the groundwater and surface water sump in the eastern area of the quarry. Surface water also accumulates in the sump. The surface water comprises surface water which drains to the sump. Water pumped from the sump is discharged directly to the Cwmrhydyceirw Stream. The discharge to the Cwmrhydyceirw Stream is the subject of conditions of the Environmental Permit for the site. The conditions specify limits for the quality of the discharge to the Cwmrhydyceirw Stream. The facility is available at the site to discharge directly from the groundwater and surface water sump to the sewer if the quality of the discharge does not meet the discharge limits specified in the Environmental Permit for the discharge to the Cwmrhydyceirw Stream. The discharge to the Cwmrhydyceirw Stream is monitored regularly.
- 1.2 An electrically operated pump with an integral float switch is located in the groundwater and surface water sump. The integral float switch provides automatic management of the water level in the groundwater and surface water sump at a predetermined level. The electrically operated pump with an integral float switch is simple off the shelf technology. The operation of the pump and the maintenance of the water level in the groundwater and surface water sump is monitored regularly by visual inspections. The pump is maintained in accordance with the manufacturer's recommendations. If the pump breaks down and cannot be repaired it is replaced.
- 1.3 The pipework from the groundwater and surface water sump to the discharge point is laid across the ground surface. The pipework is inspected visually on a regular basis. Maintenance of the pipework is undertaken as necessary.
- 1.4 Records are maintained of the quantity of water pumped from the groundwater and surface water sump. Based on records collected since February 2010 the average quantity of water pumped from the groundwater and surface water sump is approximately 330m<sup>3</sup> per day which is equivalent to approximately 120,000m<sup>3</sup> per year.

## 2. The Regulatory Regime

2.1 The regulatory regimes which apply to groundwater level management are:-

a) The Environmental Permitting regime

b) The planning regime (or agreements associated with the planning regime such as Section 106 Agreements).

2.2 The Environmental Permitting regime is only relevant to the site as a result of the presence of the landfill. There are no other regulatory regimes which exist to control groundwater levels due to the presence of housing, public open space or any other form of development which is below the rest groundwater level other than the planning regime. The abstraction of groundwater for use or to dewater sites such as quarries for operational reasons are subject to controls for different reasons relating to groundwater resource protection. Clearly any discharge of pumped groundwater is controlled but the regulation of the discharge relates to the quantity and quality of the discharge (be it to sewer, ground or surface water) and not to the groundwater level resulting from the abstraction which then forms the discharge.

## 3. The Without Housing Scenario

3.1 There are two options under this scenario which are:-

a) Remediation and landfilling

b) Leave the existing waste in place

Taking each of these options in turn.

### a) Remediation and landfilling

3.2 This is the development which the Environmental Permit for the site currently authorises. The management of groundwater including the groundwater level is the subject of conditions of the Environmental Permit. In accordance with the Environmental Permit it will be necessary to manage the groundwater at a low level until such time that it is agreed with Natural Resources Wales (NRW) that groundwater pumping can cease. It is likely that NRW will specify more robust groundwater pumping infrastructure including back up facilities, some form of remote telemetry link and more robust connections to the discharge points. Although the point at which groundwater management may cease has not yet been agreed with NRW it is anticipated that it would be towards the end of the operational life of the landfill when



it can be demonstrated that a recovered groundwater level will not have an unacceptable impact on the integrity of the landfill containment system or the hydrogeological setting of the site. This point is normally agreed with NRW at a much later date.

- 3.3** Groundwater level is also the subject of the extant planning consent. Condition 3 of planning permission reference P84/1057 states that *'the site shall be drained and full details of the means of drainage shall be submitted to the Local Planning Authority for written approval...Such details shall include controls over groundwater...'*. Any scheme which may have been agreed with the City and County of Swansea now would be outdated. These controls duplicate those issues which now are the subject of the Environmental Permitting regime but could continue even after the Environmental Permit is surrendered.

**b) Leave the existing waste in place**

- 3.4** In the absence of the housing development proceeding it will be an absolute requirement that until such time as the Environmental Permit is surrendered it will be necessary to control the groundwater level consistent, generally, with the current reduced groundwater level. This pumping will be the subject of regulation under the Environmental Permit for the site to a scheme agreed with NRW. It is likely that in the longer term NRW will specify more robust groundwater pumping infrastructure including back up facilities, some form of remote telemetry link and a more robust connection to the discharge points.
- 3.5** It is unclear whether Condition 3 of planning permission reference P84/1057 would be relevant in the event that the existing waste remains in situ as it would be necessary to apply for planning permission to revise the restoration proposals for the site. A similar condition is likely to be included in any subsequent planning permission and some form of legal agreement may be necessary in respect of groundwater management.
- 3.6** It is anticipated that at some point in the future the Environmental Permit would be surrendered. At this point the control of the groundwater level by conditions of the Environmental Permit will cease. The planning permission would include condition(s) relating to groundwater management depending on the end use of the site.

#### 4. The With Housing Scenario

4.1 The With Housing Scenario is very similar to the Scenario above with respect to leaving the existing waste in place. In summary the Environmental Permit will provide for the management of groundwater insofar as it is necessary with respect to the waste in place currently in the base of the quarry until such time as the Environmental Permit is surrendered. At that point any further groundwater management would be the subject of control under the planning regime or through agreements associated with the planning regime. More robust groundwater pumping infrastructure including back up facilities and some form of remote telemetry link will be necessary together with a more robust connection to the discharge points.

#### 5. Groundwater pumping in perpetuity

5.1 Groundwater has been managed successfully at the site using simple, off the shelf technology for more than 25 years. Although there were operational problems relating to groundwater management in the late 1980s we assume that the controls were effective for many years before that when the quarry was operational. The long term management of groundwater to protect development is not unique. One of the most famous examples of long term groundwater management is the London Underground. It is reported<sup>1</sup> that 30 million litres of groundwater are pumped from parts of the London Underground network every day. 30 million litres per day is equivalent to 30,000m<sup>3</sup> per day or 10.95 million m<sup>3</sup> per year. Clearly this volume far exceeds that pumped from Cwmrhydyceirw Quarry. It is essential to the continued safe operation of the London Underground network that this groundwater pumping is carried out in perpetuity.

5.2 There is no practical reason why suitable modern infrastructure including appropriate back-ups and telemetry cannot be provided at Cwmrhydyceirw Quarry. Back up pumps could be provided which are automatically operated in the event of failure of the primary pump. Telemetry could be provided to ensure that any malfunctions or breakdowns of the pumping system are notified to the operator and can then be attended to and remediated without delay.

5.3 The water level in the groundwater and surface water sump currently is maintained at approximately 32mAOD. As explained above, on average approximately 330m<sup>3</sup> of water per day is pumped from the sump to maintain the water level at approximately

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<sup>1</sup> <http://www.theengineer.co.uk/issues/16-january-2006/cooling-down-the-london-underground/>

32mAOD. The average daily pumping rate is equivalent to the average daily inflow of groundwater and surface water to the sump. It is estimated that the lowest level of the southern bench in the base of the quarry on which the housing development will be located is at a level of approximately 45mAOD. The volume of void available in the base of the quarry above 32mAOD and below 45mAOD is approximately 60,000m<sup>3</sup>. In the unlikely event that pumping from the groundwater and surface water sump ceases, based on the accumulation of 60,000m<sup>3</sup> of water in the base of the quarry and the average daily inflow of groundwater and surface water to the sump it is estimated that it will take approximately 6 months for the water to rise to reach the lowest level of the southern bench in the base of the quarry on which the housing development will be located. Even if it is assumed, as a worst case scenario, that the inflow of groundwater and surface water to the void is approximately 780m<sup>3</sup>/day which comprises the 95<sup>th</sup> percentile of the inflows recorded it would take approximately 2.5 months for the water to rise to reach the lowest level of the southern bench in the base of the quarry on which the housing development will be located. Clearly there is more than sufficient time to repair any malfunctions or breakdowns to primary and backup pumps or to replace them notwithstanding the likelihood that the failure of both primary and backup pumps is extremely unlikely.

- 5.4** Clearly the Environmental Permit is a regulatory regime which will provide for the management of the groundwater level, but the objective of this regulatory regime is protection of the environment associated with the waste or the waste related operations at the site and not the presence of housing or public open space which would be present after the Environmental Permit is surrendered. Even if the Environmental Permit is transferred to another party the obligations of the permit will not change nor will the need to make adequate financial provision which will include for the management of the groundwater level. The Environmental Permit can only be transferred to an organisation that demonstrably is fit and proper to hold the Environmental Permit in accordance with the regulations. The fit and proper person tests include consideration of financial and technical issues together with any regulatory compliance issues.

# Agenda Item 7

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: 7<sup>TH</sup> JUNE 2016

<b>Bay Area</b> Team Leader Liam Jones - 635735	<b>Area 1</b> Team Leader: Ian Davies - 635714	<b>Area 2</b> Team Leader: Chris Healey - 637424
Castle Mayals Oystermouth St Thomas Sketty Uplands West Cross	Bonymaen Clydach Cwmbwrla Gorseinon Landore Llangyfelach Llansamlet Mawr Morryston 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	2016/0556	<p>Mariner Street car park, 2-3 Mariner Street, 59-60 and 63-64 High Street, Swansea</p> <p><b>Demolition of existing buildings on site and the construction of a purpose built student accommodation building between 6, 8 &amp; 22 storeys (725 bedrooms comprising 145 studios &amp; 105 cluster units) with ancillary communal facilities / services, 4 no. ground floor commercial units (Classes A1 (retail), A2 (Financial / Professional), A3 (Food and Drink), B1 (Business), D1 (non-residential Institution), D2 (Assembly /Leisure) and nightclub (sui generis), car parking/servicing area, associated engineering, drainage, infrastructure and landscaping works</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	2015/1938	<p>Former Wings/RAFA Club &amp; Uplands Nursing Home (Llwynhelyg and Cilwendeg Houses), Ffynone Road, Uplands, Swansea, SA1 6BT</p> <p><b>Demolition of sections of existing buildings to facilitate side extension, link extension and conversion of existing buildings to provide 24 apartments, construction of a pair of detached two storey coach houses to provide a total of 8 apartments, with associated works, landscaping and car park provision.</b></p>	APPROVE
4	2016/0086	<p>Land at Cefn Betingau Farm, Morryston, Swansea, SA6 6NX</p> <p><b>Construction of solar farm without compliance with condition 8 of planning permission 2013/0865 requiring planting of hedgerow to sub-divide fields 9 &amp; 10.</b></p>	APPROVE
5	2016/0177	<p>Hendrefoilan Student Village Hendrefoilan Drive Killay Swansea SA2 7PG</p> <p><b>Construction of 43 no. two / three storey dwellings and associated access, infrastructure, engineering works, public open space and landscaping (Details of access, appearance, landscaping, layout and scale pursuant to conditions 2, 5, 6, 8 &amp; 16 of the outline planning permission 2014/1192 approved 6th January 2016)</b></p>	APPROVE

ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
6	2016/0692	Plot D7, Langdon Road, Swansea <b>Construction of 23 no. four &amp; three storey townhouses with associated access, car parking and landscaping works</b>	APPROVE

PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 1

APPLICATION NO.

2016/0556

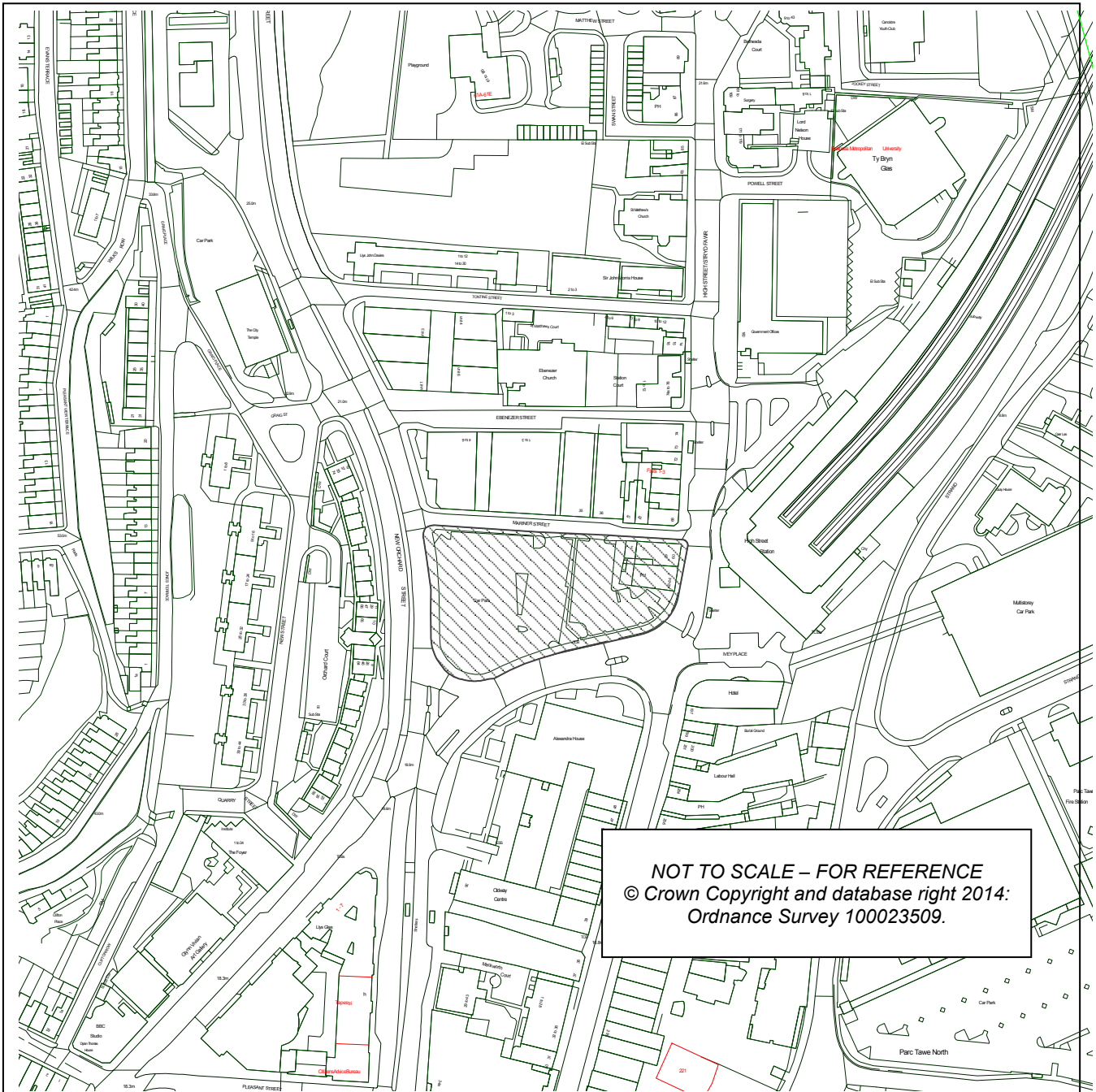
WARD:

Castle

**Location:** Mariner Street car park, 2-3 Mariner Street, 59-60 and 63-64 High Street, Swansea

**Proposal:** Demolition of existing buildings on site and the construction of a purpose built student accommodation building between 6, 8 & 22 storeys (725 bedrooms comprising 145 studios & 105 cluster units) with ancillary communal facilities / services, 4 no. ground floor commercial units (Classes A1 (retail), A2 (Financial / Professional), A3 (Food and Drink), B1 (Business), D1 (non-residential Institution), D2 (Assembly /Leisure) and nightclub (sui generis), car parking/servicing area, associated engineering, drainage, infrastructure and landscaping works

**Applicant:** Varsity Projects Limited





**BACKGROUND INFORMATION**

**PLANNING POLICIES**

**National Planning Guidance**

Planning Policy Wales (PPW) (Edition 8 January 2016)

Technical Advice Note 12 – Design (May 2016)

Technical Advice Note 18 – Transport (March 2007)

Technical Advice Note 23 – Economic Development (February 2014)

**Swansea Unitary Development Plan**

<b>Policy</b>	<b>Policy Description</b>
Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
Policy 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 EV4	New development will be assessed against its impact on the public realm. (City & County of Swansea Unitary Development Plan 2008)
Policy EV5	The provision of public art in new developments and refurbishment schemes will be supported. (City & County of Swansea Unitary Development Plan 2008)
Policy EV6	Scheduled ancient monuments, their setting and other sites within the County Sites and Monuments Record will be protected, preserved and enhanced. (City & County of Swansea Unitary Development Plan 2008)
Policy EV9	Development within or adjacent to a conservation area will only be permitted if it would preserve or enhance the character or appearance of the conservation area or its setting. (City & County of Swansea Unitary Development Plan 2008)
Policy EV13	Proposals for new or renovated shopfronts, including security grilles, should be sympathetic to the character of the building, adjacent properties and the surrounding area. (City & County of Swansea Unitary Development Plan 2008)

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 1 (CONT'D)	APPLICATION NO.	2016/0556
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 EV36	New development, where considered appropriate, within flood risk areas will only be permitted where developers can demonstrate to the satisfaction of the Council that its location is justified and the consequences associated with flooding are acceptable. (City & County of Swansea Unitary Development Plan 2008)	
Policy EV38	Development proposals on land where there is a risk from contamination or landfill gas will not be permitted unless it can be demonstrated to the satisfaction of the Council, that measures can be taken to satisfactorily overcome any danger to life, health, property, controlled waters, or the natural and historic environment. (City & County of Swansea Unitary Development Plan 2008)	
Policy EV40	Development proposals will not be permitted that would cause or result in significant harm to health, local amenity, natural heritage, the historic environment or landscape character because of significant levels of air, noise or light pollution. (City & County of Swansea Unitary Development Plan 2008)	
Policy EC3	Improvement and enhancement of the established industrial and commercial areas will be encouraged where appropriate through building enhancement, environmental improvement, infrastructure works, development opportunities and targeted business support. (City & County of Swansea Unitary Development Plan 2008)	
Policy EC4	All new retail development will be assessed against need and other specific criteria. (City & County of Swansea Unitary Development Plan 2008)	
Policy EC6	The provision of appropriate small-scale local shopping and neighbourhood facilities will be encouraged within local shopping centres and in areas of acknowledged deficiency in order to meet local need. (City & County of Swansea Unitary Development Plan 2008)	

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 1 (CONT'D)	APPLICATION NO.	2016/0556
Policy HC1	Allocation of housing sites for 10 or more dwellings. (City & County of Swansea Unitary Development Plan 2008)	
Policy HC11	The use of appropriate City Centre sites for student accommodation will be favoured. (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 R16	Proposals for major new developments will be required to incorporate adequate and effective waste management facilities (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 AS5	Accessibility - Assessment of pedestrian and cyclist access in 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 CC1 - UDP	Within the City Centre, development of the following uses will be supported:- (i) Retailing and associated uses (Classes A1, A2, A3), (ii) Offices (B1), (iii) Hotels, residential institutions and housing (C1, C2, C3), (iv) Community and appropriate leisure uses (D1, D2, A3) (v) Marine related industry (B1, B2). Subject to compliance with specified criteria. (City & County of Swansea Unitary Development Plan 2008)	
Policy CC2 - UDP	New retail development that maintains and enhances the vitality, attractiveness and viability of the City Centre as a regional shopping destination will be encouraged subject to compliance with specified criteria. (City & County of Swansea Unitary Development Plan 2008)	

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 1 (CONT'D)

APPLICATION NO.

2016/0556

### RELEVANT PLANNING HISTORY

2002/0715      Realignment of existing highway and construction of new highway, relocation of station car park to site off Mariner Street, relocation of bus stops to land adjacent to the Station buildings on High Street, relocation of the taxi rank and setting down /pick point to the northern side of the station, relocation of the staff parking area, and provision of pedestrian areas including hard and soft landscaping (Council Development Regulation 3)  
Planning Permission July, 2002

### RESPONSE TO CONSULTATIONS

The application was advertised on site and in the local press. TWO LETTERS OF OBJECTION have been received making the following points:

- Noise and dust will be intolerable.
- Station area will become a noisy area with 725 students, bars and a nightclub.
- Height of building will block views from the surrounding area and result in a loss of light.
- There is no need for a student development in the middle of Swansea.
- Devalue property in the area.

**Network Rail** – whilst there is no objection in principle to this proposal, the developer should liaise with Network Rail prior to any work commencing to come to an agreement regarding varying aspects of the construction process.

### **Glamorgan Gwent Archaeological Trust -**

Mariner Street is located outside the walls of the medieval town of Swansea in an area thought to have included in an area of medieval settlement centred on the chapel of St. John (now St Mathew's Church). The area was incorporated into a post-medieval suburb of the town, and in the 19th century was noted as being poor quality housing. There has been considerable research into the post-medieval settlement of this part of Swansea, with particular reference to the poor housing and health issues arising from this.

You will recall our response to the screening opinion request for this application in which we noted that *“that the archaeological appraisal being proposed in that letter [Nathaniel Lichfield and Partners letter of 29th February 2016] will be inadequate to fully understand the archaeological resource in the proposed development area and therefore may underestimate the risk that mitigating the impact of the proposed development on the archaeological resource could have on the construction programme. We therefore strongly recommend that a much fuller archaeological assessment of the site is commissioned, [...]. The results of this work could lead to the need for archaeological evaluation of the site to be carried out prior to the determination of any planning application for the development.”* An “Archaeological Appraisal” dated March 2016 prepared by Cotswold Archaeology has been submitted in support of this application.

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The submitted appraisal goes some way to identifying the archaeological potential of the proposed development area, however the conclusions drawn in this report do not effectively consider the impact of the proposed development on the archaeological resource nor the implications of the discovery of any archaeological resource on development.

Paragraphs 5.3, 5.4 and 5.5 of the appraisal document discuss the potential for archaeological remains of medieval, post-medieval and modern date to survive within the proposed development area, it is noted that in particular the centre of the proposed development area may offer the highest potential for surviving archaeological remains as it had escaped later development. In paragraph 6.3 of the appraisal document it is suggested that *“traces of medieval land use may have been truncated or removed by post medieval and modern development.”* and 6.4 *“Only remains at considerable depth (i.e. beyond the extent of any potential basements and foundation, estimated to be 1-2m below ground level) are likely to survive.”* However at multiple similar sites across the city remains of post-medieval date have been found to be built directly on to medieval foundations, further such remains have been found to be less than 1m below the current ground level. Paragraph 7.1 of the appraisal continues to note that the state of survival of the archaeological resource is unclear; a conclusion with which we concur. It is evident from the documentation submitted with this application that the impact of the development on the potential buried archaeological remains and the significant risk that the discovery of such remains could have on the viability of the proposed development is not fully understood. In such circumstance. Planning Policy Wales 2016 (Edition 8) Section 6.5.2 notes that *“If important remains are thought to exist at a development site, the planning authority should request the prospective developer to arrange for an archaeological field evaluation to be carried out before any decision on the planning application is taken.”* More detail on this guidance can be found in Welsh Office Circular 60/96 sections 13 and 14.

It is therefore our opinion in our role as the professionally retained archaeological advisors to your Members that the applicant should be requested to commission the required archaeological work. Consequently, as the impact of the development on the archaeological resource will be a material consideration in the determination of the current planning application this should be deferred until a report on the archaeological evaluation has been submitted to your Members.

We recommend that this work be undertaken to a brief approved by yourselves and upon request, we can provide a suitable document for your approval. If you have any questions or require further advice on this matter please do not hesitate to contact us.

**CADW** - Thank you for your email of 8 April 2016 inviting our comments on the planning application for the proposed development as described above.

Our role in the planning process is to provide the local planning authority with an assessment concerned with the likely impact that the proposal will have on scheduled monuments or registered historic parks and gardens. It is a matter for the local planning authority to then weigh our assessment against all the other material considerations in determining whether to approve planning permission, including issues concerned with listed buildings and conservation areas.

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

The proposed development is within the vicinity of the scheduled monuments known as Swansea Castle (GM012), Original Swansea Castle (GM441,)and GM482, Foxhole River Staithes (GM482).

The application is accompanied by a Heritage Impact Assessment produced by Cotswold Archaeology (Report number 16110). The report concludes that the upper storeys of the proposed building will be visible from the above scheduled monuments, which will be *from some distance and within the context of intervening city centre developments*.

We agree with the assessment of the potential impact of the proposed development on the setting of the above listed Scheduled Monuments. In our opinion, the proposed building will be visible from the Scheduled Monuments, but is unlikely to affect interpretation or understanding of the monuments and will have a negligible impact upon their settings.

### **The Coal Authority**

The application site does not fall with the defined Development High Risk Area and is located instead within the defined Development Low Risk Area. This means that there is no requirement under the risk-based approach that has been agreed with the LPA for a Coal Mining Risk Assessment to be submitted or for The Coal Authority to be consulted.

In accordance with the agreed approach to assessing coal mining risks as part of the development management process, if this proposal is granted planning permission, it will be necessary to include The Coal Authority's Standing Advice within the Decision Notice as an informative note to the applicant in the interests of public health and safety.

**Council's Drainage Engineer** - The proposed strategy is reliant on DCWW accepting the surface water connection however we consider that there is no other reasonable alternative due to site conditions. Subject to DCWW accepting the connection we recommend that the following condition is appended to any permissions given.

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### Condition

1. *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 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.*

**Dwr Cymru Welsh Water** – No objection subject to conditions.

**Natural Resources Wales** – We have concerns regarding the proposal as submitted and consider that there is currently insufficient information to assess the possible impact on bats, a European protected species. We require additional information before we can provide you with detailed comments on the application.

### Protected Species (Bats)

The document reviewed is the; '*Mariner Street Ecological Assessment*', dated March 2016, by Jared Fox (Urban Green). The assessment states that a bat scoping inspection was carried out on the 23 February 2016 and that no evidence of bats was found. The report goes on to conclude that the buildings are of '*low suitability for use by bats.*'

Both building 1 and 2 were described as having '*no external gaps or crevices visible from the exterior.*' However, our recent observations of building 1 show that the building is in a poor state of repair, including; a number of raised and slipped roof tiles, windows either poorly boarded or partly left open. In addition, one of the rear gable fascia's is missing and the eaves are exposed. Building two was observed as also being in a poor state of repair, with a number crevices that could potentially lead into the void in the flat roof.

Therefore, recent observations do not match up with the descriptions of the buildings provided in the report, as such we cannot agree with the report's conclusion of; '*negligible suitability to support roosting bats.*'

It is also our understanding that your Authority's Planning Ecologist has recently looked at the buildings and considers them to have moderate potential to support bats. We advise that further surveys of the buildings are undertaken by a suitably qualified and licenced ecologist / bat worker; in accordance with; '*Bat Surveys; Good Practice Guidelines 3rd Edition*' published by the Bat Conservation Trust 2016. Surveys should consist of at least one activity survey (dusk emergence and/or dawn re-entry) carried out between May and August inclusive. The results of these surveys should be used to inform any mitigation proposals, which may be required.

**Head of Environmental Management (Pollution Control)** - have no objection to this application but would like to attach the following conditions:

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Condition 1 Noise:

- *Unless otherwise agreed in writing by the Local Planning Authority, prior to the beneficial use of the development a scheme shall be submitted to and approved in writing by the Local Planning Authority that adequately restricts the flow of sound energy through party walls and floors between the commercial and residential class uses within the development. The scheme supplied shall achieve a minimum  $D_{nT,w} - (C_{tr})$  of 50dB for the ceiling/floor between the commercial and residential uses and be verified by the appropriate testing methodology upon completion.*

*Reason: - to protect the proposed residential use against noise emanating from the commercial activity on the ground floor.*

Within the DAS the applicant provides an overview of the acoustic requirements stating that 'Environmental noise break-in will be mitigated to the reasonable values stated within BS 8233:2014'. Welsh Government produced Noise Maps in 2012 to meet the requirements of the Environmental Noise Directive (Directive 2002/49/EC) and the Environmental Noise (Wales) Regulations 2006 (as amended). These maps indicate the facades of application site will be exposed to a daytime range of 65-69.9dBAL<sub>eq,16hr</sub> and night time range 55-54.9dBAL<sub>eq,8hr</sub>. In order to protect the residential uses of the application please could you attach the following condition: -

Condition 2:

- *Prior to commencement of the development a scheme shall be submitted to and approved in writing by the Local Planning Authority to provide that all habitable rooms exposed to external road traffic noise in excess of 63 dBA Leq 16 hour (free field) during the day (07.00 to 23.00hrs) or 57 dBA Leq 8 hour (free field) at night (23.00 to 07.00 hours) shall be subject to sound insulation measures. These measures should ensure that all such rooms achieve an internal noise level of 35 dBA Leq 16 hour during the day and 30 dBA Leq 8 hour at night as set out in BS 8233:2014 Guidance on sound insulation and noise reduction for buildings. The submitted scheme shall ensure that habitable rooms subject to sound insulation measures shall be provided with mechanical ventilation units so that future residents can keep their windows closed. No habitable room shall be occupied until the approved sound insulation and ventilation measures have been installed in that room.*

*Reason: - To protect the proposed residential use against noise arising from the existing traffic use of the area.*

The DAS overview of acoustic requirements also refers to noise from 'building services plant'. I am satisfied with their comments that quiet plant will be selected and that the rating level for such plant will be control to no more than the background (dBL<sub>A90</sub>) of the early hours. To this end please attach the following condition: -



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Condition 3:

- *Prior to commencement of the development a scheme shall be submitted to and approved in writing by the Local Planning Authority to provide that all building services plant noise shall be designed to achieve a rating level ( $dB_{LA_{rTr}}$ ), that does not exceed the representative night time background sound pressure level ( $L_{A90,15min}$ ) in accordance with BS 4142:2014. Methods for rating and assessing industrial and commercial sound.*

*Reason: - To protect the existing and proposed residential uses against noise from building services plant.*

Condition 4:

- *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.*

*Reason: - to protect the proposed and neighbouring residential use against noise emanating from such units.*

Condition 5:

- *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.*

*Reason: - to protect the proposed and neighbouring residential use against noise emanating from such units.*

Condition 6:

Contaminated Land: -

The Patrick Parsons Phase 1 Report, Mariner Street, Swansea (N16053) submitted with the application states the following within its conclusion: -

*6.8 Recommendations for Ground Investigation In order to establish the environmental and geotechnical risks, the following works are recommended:*

- Intrusive ground investigation utilising Cable Percussive Boreholes, with rotary follow-on and trial pits to assess both shallow and deep ground conditions and obtain samples of soils and rock for logging and laboratory testing purposes;*
- Installation of gas monitoring standpipes within Made Ground and natural soils and monitoring for a minimum of 6 visits over a 3 month period in accordance with CIRIA C665 & BS8485;*
- Laboratory geotechnical testing of both soil and rock to determine strength parameters for use in pile design;*

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- Laboratory chemical testing of soils to confirm or otherwise the findings of the Conceptual Site Model and enable a generic quantitative risk assessment to be carried out; and,*
- Factual and interpretative reporting, providing recommendations for the existing site and any future development.*

Please attach the following condition to ensure that the above recommendations are carried out: -

Condition 7:

- *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 the Patrick Parsons Phase 1 Report, mariner Street, Swansea (N16053)*

➤

**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.*

Condition 8:

- *Unforeseen Contamination*

*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.*

*Reason: To ensure that the safety of future occupiers is not prejudiced.*

Air Quality: -

The Air Quality Assessment, Mariner Street Student Accommodation, Swansea (N16053) concludes the following: -

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- *with respect to the construction phase, in the absence of mitigation, construction and track-out due to vehicles may present a medium risk of dust impacts in the immediate vicinity, the other main activities are predicted to result in a low risk of impact. However, with the effective implementation of the defined mitigation measures, the impacts are reduced and considered not to be significant at receptors;*
- *the operational phase of the scheme is not considered to lead to an adverse impact on air quality given that the development will result in an overall decrease in vehicle trips to and from the application site;*

I am in agreement with these conclusions, please attach the following condition: -

Condition 9:

- Demolition/Construction Dust Management Plan

*Prior to the commencement of demolition/construction works on the application site a Dust Management Plan (DMP) shall be submitted to and approved in writing by the LPA. The DMP is to include the Mitigation Measures set out in Table 5-4 of The Air Quality Assessment, Mariner Street Student Accommodation, Swansea (N16053).*

*Reason: to ensure minimal nuisance impact on local residents/ businesses from dust arising from construction activities.*

Informative: - Once a successful application has been made and a principal contractor for the demolition and construction phase has been appointed, the Pollution Control Division will serve a section 60, Control Of Pollution Act 1974 notice to restrict the hours of operation at the site.

However, The Air Quality Assessment, Mariner Street Student Accommodation, Swansea (N16053), also states the following within its conclusion: -

- *air quality at potential future locations of relevant exposure for short-term (commercial use) and long-term (student residential use) averaging periods at the proposed development is predicted to be below the relevant Air Quality Assessment Levels.*

Having reviewed the recent Air Quality monitoring data that the Local Authority collects, I do not agree with the comment within the report that the application site is '*considered unlikely to result in pronounced canyon like effects*' like those experienced at the ground floor and first floor Nitrogen Dioxide (NO<sub>2</sub>) monitoring locations on High Street (Sites 123 and 242). Whilst the LAQM Updating and Screening Assessment 2015 document predicts that future concentrations will be below the UK Annual Mean Air Quality Objective of 40µgm<sup>-3</sup>; there is the potential for elevated concentrations of NO<sub>2</sub> to be experienced at both the ground floor and the first floor and so it is felt that the fenestration conditions attached relating to noise exposure will have a beneficial effect upon residential exposure to Air Quality Objective Pollutants. I would like to put a S106 on the application for Particulate Monitoring to quantify the effect that the new building will have upon PM10 (particulate matter) for the residential and commercial uses. An Ebam unit is approximately £8000 all in.

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### Vibration Effects: -

The Patrick Parsons Phase 1 Report, Mariner Street, Swansea (N16053) submitted with the application refers to the need for piling to be utilised for the foundations at the site. Given the close proximity of residential and commercial premises please could you attach the following condition: -

#### Condition 10:

- Piling Assessment

*Prior to the commencement of any works on the site a Piling Assessment report shall be submitted to and approved by the Local Planning Authority. The report shall set out the different types of piling methods that could be utilised at the site; along with consideration of the noise and vibration effects that the operation may have upon surrounding land uses and the mitigating measures that may be utilised.*

*Reason: To protect the residential and commercial land uses from noise and vibration within the surrounding area.*

### Other Comments: -

There is the potential for disturbance from other activities from the proposed end uses; such as delivery noise, hours of refuse collection, late night noise from the night club premises. Do you want these to be conditioned or will they have been covered by other matters within the application?

### **Highway Observations –**

Demolition of existing buildings on site and the construction of a purpose built student accommodation building between 6, 8 & 22 storeys (725 bedrooms comprising 145 studios & 105 cluster units) with ancillary communal facilities / services, 4 no. ground floor commercial units (Classes A1 (retail), A2 (Financial / Professional), A3 (Food and Drink), B1 (Business), D1 (non-residential Institution), D2 (Assembly /Leisure) and nightclub (sui generis), car parking/servicing area, associated engineering, drainage, infrastructure and landscaping works

Mariner Street car park, 2-3 Mariner Street, 59-60 and 63-64 High Street, Swansea

#### 1. Introduction

1.1 This application is for a planning permission for works as outlined above on land currently used as a car park plus cafes/derelict buildings.

1.2 In order to assess the impact of the development, a Transport Statement was submitted with the full planning application prepared by Vectos. The content and scope had been agreed with CCS Highways.

1.3 The site is located at the top of High Street directly opposite High Street Railway Station. The site is bounded by the adopted highways of High Street to the east, Mariner Street to the north, New Orchard Street to the west and Alexandra Road to the south.

1.4 The ground floor uses are intended to be ancillary to the student accommodation and to that end low level parking has been provided (15 in total, of which 6 are associated with the student uses and the remainder for the commercial uses). The parking is discussed detail later on in my report section 4.

## 2. Vehicular Access and Traffic

2.1 The access to the site is gained off Mariner Street which is a one way street running from High Street to Alexandra Road. The site located in an extremely sustainable location with excellent access to public transport both bus and rail and a number of local amenities within a short walk.

2.2 The Transport Assessment indicated that the Highway Network could accommodate the additional traffic generated by the proposal. The scheme was assessed in accordance with the National Database TRICS and the following conclusions were made:

*The existing car park generates around 1000 2 way trips in 12 hours, and the current car park has a usage of around 80%. It is thought these vehicles can be accommodated into nearby car parks, predominantly the High St MSCP.*

*Multi modal trip rates have been derived via the TRICS database, multi modal trip rates for all uses have been calculated, this results in 9289 person trips over a 12 hour day. These however are primarily via sustainable modes, with only 4% of proposed trips being made by private car, this will result in a net reduction in trips to the site of around 900 two way. It must be noted however that these trips are not a reduction on the network as a whole, but will likely redistribute to alternative car parks in the area.*

*The proposal therefore is unlikely to generate any noticeable increase in car movements but will bring about an increase in walking, cycling and public transport usage by virtue of minimal car parking being provided.*

The student accommodation will to generate negligible traffic due to the lack of parking facilities provided. A section 106 Agreement linking to the tenancy agreement will be required to ensure that students taking up residence do not own cars as there is no parking provided for this purpose.

2.3 The thrust of land use and transport policy is to promote and encourage the choice of walking/cycling above all else where travel needs to occur. It is reasonable to assume that walking is a viable and growing means of travel and this development should be designed to promote it.

2.4 The proposed layout has created a pinch point on the north eastern corner (junction of Mariner Street with High Street) and reduced down the footway to an unacceptable width. Given the expected pedestrian footfall this is of concern. This can be overcome by possibly realigning the line of the kerb to allow a widening to 2m of the footway but this would be dependent upon an Autotrack run being submitted to demonstrate that safe vehicular access can still be gained to Mariner Street.

2.5 The sample sites from the TRICS Database chosen related in the main to 'City Centre universities'. The number of trips has been agreed but it is considered that the modal split of 'cycle' was underestimated (given that the university is not located within the city centre itself- as such the cycle share would be likely to be underestimated). Similarly the public transport provision is likely to be more popular given the longer distances to the university campus at Singleton. The pedestrian movements would therefore be reduced by an equivalent volume. Notwithstanding that, the contributions have been agreed as per the detail set out in the following section 5 of my report.

### 3. Relevant policies

The newly adopted Swansea Central Area Regeneration Framework regarding car parking states:

#### *City Centre Car Parking Standards*

*The City and County of Swansea adopted car parking standards for the Central Area as supplementary planning guidance in 2012. These standards seek to ensure a transparent and consistent approach to the provision of parking, submission of travel plans and sustainability considerations that inform developer's designers and builders of what is expected of them in terms of parking provision at an early stage in the development process. The policy defines two zones for Swansea City Centre, a central core and central area where different parking requirements apply for different land uses.*

*To facilitate new land uses and regeneration initiatives in the Central Area which align with the aims, objectives and proposals of the Regeneration Framework, including the re use of vacant upper floors and vacant underused buildings for residential use, a limited relaxation of car parking standards will be considered where appropriate and where there are no adverse effects on highway conditions.*

*Each site will be treated on its merit, however there will be instances where assessed parking demand cannot be met onsite and for such circumstances there is provision within adopted parking standards to require developer contributions towards Transportation initiatives to enhance alternative modes of transport or off-site parking provision. This approach would require the applicant to enter into a Section 106 Agreement.*

In view of this adopted policy document there is scope to relax the parking standards subject to mitigation measures.

### 4. Car Parking

4.1 The development has been assessed against adopted parking guidelines and falls short. As referenced in section 3 above the current city centre framework acknowledges that there are sites where parking to the standards cannot be achieved. In the interests of regeneration, and assuming that adequate support measures are put in place to prevent cars being brought to the site, and to secondly enhance walking and cycling measures to support the alternative forms of transport then this is an acceptable approach.

4.2 The student accommodation is planned to be essentially car-free. 13 car parking spaces are provided for visitor and disabled use. To ensure that this car free arrangement works satisfactorily and does not cause overspill parking problems there is a need to ensure that students do not have cars, and that alternatives are in place. Vectos (Transport consultants) are working with the CCS Legal representative to draft a legal agreement that will form part of the section 106 Agreement which will tie the student residents into agreeing not to bring cars to the site. It is envisaged that if a student fails to comply with his tenancy agreement then a worst case scenario would be that the tenant is evicted.

4.3 Car parking within the site is provided for pick up /drop offs only and no long term parking is available for student users (in line with the tenancy agreement referenced earlier. High street multi storey car park is available for visitors and/or pick up/drop off purposes at the beginning or end of term.

4.4 Due to the lack of parking for the student element there is a requirement for a management scheme to ensure that all the limited parking spaces are managed effectively (including for the retail use) and to ensure that maintenance/servicing can be accommodated.

4.5 To avoid any parking in nearby residential areas (by for example visitors etc.) a sum of £30,000 has already been secured to be held for 30 years and can be used to implement residents parking or traffic regulation orders as and when needed in any affected area.

4.6 To mitigate for the loss of parking on the site Network Rail have entered into an agreement to utilize spaces in the High Street MSCP which is currently under utilized.

4.7 Whilst problems have been encountered on other 'car free' developments controlled by the use of tenancy agreements it is considered that as CCS will retain control of the lease then the control will be easier to maintained.

## 5. Pedestrian and Cycle Access

5.1 Pedestrian and cycle facilities are to be enhanced by the development. A sum of £160,000 has been requested and agreed in line with the SPG on Highways contributions. There are two main items that this will fund:

- a) Diagonal pedestrian crossings on the junction on High street/Alexandra road junction- estimated scheme utilizing existing kerb lines £35,000
- b) Completion of missing links and /or upgrades to the cycle network on Orchard Street. - contribution requested to be £125,000 towards the missing link on Orchard Street.

Given that other student sites will be potentially developed in the immediate area any shortfall can be made up with contributions from these other sites, being mindful on the restrictions on pooling monies from more than five separate developments.

5.2 There is a room provided on the basement levels to cater for 200 cycle stands so cycling will be a sustainable mode of transport particularly in view of the proximity of the site to the NCN Routes.

5.3 In terms of pedestrian routes, the applicant has agreed a section 106 contribution and part of this will be assigned to improving pedestrian movements at the existing junction.

## 6. Public Transport

6.1 The site is currently well served by a number of frequent bus services. It is not considered that there are any improvements needed to improve the frequency given the existing high levels of service provision.

6.2 The site is located immediately opposite Swansea Rail station with links to both local stations and further afield.

## 7. Highways Infrastructure

7.1 The applicant has agreed to make contributions of £160,000 towards works to upgrade the cycle and pedestrian facilities in the area. The redevelopment of the whole site will require new footways and public areas and this will need to be undertaken by a section 278 agreement if the developer wants to keep the footways etc as adopted highways as they currently are. It is likely that there could be damage done to the existing infrastructure and as such replacement will be required on the four roads bounding the site, particularly in terms of footway construction and tying into the public realm shown as part of the site boundaries. The plans indicate that the footways are to be laid out to tie into the public areas surrounding the proposed building envelope.

## 7. Conclusions

7.1. The Transport Assessment indicated that the development will not result in a material increase in car usage and associated congestion, subject to the mitigation measures proposed and a robust tenancy agreement to prevent car ownership.

7.2 Pedestrian and cycle facilities will be catered for within the development in conjunction with the contents of the section 106 and the proposed building layout.

7.3 The use of the incorporation of the tenancy agreement into the section 106 should ensure that car use is minimized.

## 8. Recommendations

8.1 No highway objection subject to the following;

i. All adoptable highway works being completed to Highway Authority Standards and Specification.



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- ii. The section 106 to include details of a parking management scheme for the parking both within the area designated for student use, and also in the adjoining retail area
- iii. The section 106 to include the tenancy agreement to ensure that there is a mechanism for dealing with failure to comply, in the interests of highway safety.
- vi. The section 106 to include the financial contributions as outlined above for the upgrade works to the pedestrian and cycle facilities £160,000. Money to be contributed at an agreed point in the development, and should be tied into the beneficial occupation of any of the units. I would suggest the Diagonal crossing works to be completed prior to beneficial occupation of any part of the development, whereas the second larger contribution can be tied into occupation of the student element. Both these elements will require a lead in time in order for construction to be completed so the financial contributions will need to be mindful of this.
- v. The kerb line on the north eastern point needs to be realigned to allow the footway to be widened to 2m, an Autotack run will also need to be submitted to demonstrate that this will not have any impact on access to Mariner Street
- vi. I recommend that the applicant be required to submit a Travel Plan for approval within 12 months of consent and that the Travel Plan be implemented prior to the beneficial use of the building commencing.
- vii. 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.

Note 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

### APPRAISAL

#### Introduction

The planning application is for a mixed-use student accommodation-led development at Mariner Street Car Park, Swansea. The scheme proposes the demolition of the existing buildings on the site ('Espresso' café) and the construction of a purpose built student accommodation building between 6, 8 & 22 storeys (725 bedrooms comprising 145 studios & 105 cluster units) with ancillary communal facilities / services, 4 no. ground floor commercial units (Classes A1 (retail), A2 (Financial / Professional), A3 (Food and Drink), B1 (Business), D1 (non-residential Institution), D2 (Assembly /Leisure) and nightclub (sui generis), car parking/servicing area, associated engineering, drainage, infrastructure and landscaping works.

The development comprises a high density student development with an active ground floor frontage and represents a significant regeneration development within the City Centre at this key site adjacent to High Street Station. The 22 storey tower at 72 metres would be the second tallest building in Swansea (Meridian Quay is 107m and Alexandra House 46m) and together with the 6 / 8 storey urban block would redefine the street edge and create a new public realm area.

The supporting information submitted with the application indicates that there is a growing need for bespoke student accommodation in Swansea, with both Swansea University and Trinity St David Universities undergoing a period of expansion within the City following the development of the new Swansea Bay campus and the development of the Swansea Waterfront Innovation Quarter by The University of Wales, Trinity St David (UWTSD), which will include purpose-built facilities for learning, teaching and applied research as well as associated leisure and hotel facilities, cafes and restaurants. This planning application seeks to respond to both the existing and future demand for high quality, purpose built student accommodation in Swansea.

### **Application Site and Surroundings**

The application site is currently predominantly used as a public car park (part leased to Network Rail), although there is a coffee shop and disused building located on the eastern part of the site. The site is opposite Swansea train station, with the 13 storey high office tower block of Alexandra House and the Oldway Centre) to the south with a number of garage units/ small scale commercial and residential industrial uses to the north.

The proximity of Swansea train station provides sustainable transport links for local and national rail travel, including Carmarthen to the west and Cardiff and London to the east. A regular bus route served by the First Bus Company also passes the site and there are good cycle linkages in the vicinity of the site, with a signed cycle route running from Mariner Street Car Park, along Orchard Street and to the city centre. There are also extensive cycle paths in and around the site that run north along the River Tawe and south / south west to the seafront to the main university campus.

High Street is the historic north-south link in the city core which dates from medieval times but became less important as a retail street following the popularity of the areas around Oxford Street and the development of the Quadrant in the late 1970's. It has become a secondary area for shopping, and as a consequence has a high number of vacant units and inactive upper floors. Some of the older buildings in the street retain character and uniqueness but many are not maintained sufficiently and are in physical decline.

High Street remains a key route from the Railway Station towards the retail core of the central core. The Railway Station has had recent investment and enhancement providing a significant point of arrival for visitors and workers arriving by train. Improvements in the built fabric of the area have been stimulated by the Urban Village scheme frontage to High Street, and new infill developments on derelict sites below along The Strand. This has begun to redefine the character the area based on mixed uses including the arts and creative industries, with live/ work opportunities for start-up and artisan businesses. Some ground floor space has also been let to new retail and commercial businesses, but more is required to encourage appropriate upper floor residential uses which to generate a new community as well as ground floor commercial occupation. The Urban Quarter development in High Street will further contribute to the regeneration of the area.

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The site was historically a densely built up area, with buildings of character and tall 4 storey scale on Alexandra Road but has generally been cleared with the exception of the two existing properties and is now mainly used for surface parking. There are trees and railings on the perimeter but this does not represent an active frontage. The site is directly adjacent to the Alexandra Road Conservation Area which is one of the finest townscapes in the city with a number of listed buildings.

### **Proposed Development**

The student accommodation scheme, providing a total of 725 bedrooms within 105 bedroom clusters of between 4 and 6 bedrooms off a single cluster corridor and 145 studio bedrooms, would be located on the upper floors of the development, with four commercial units at ground floor level totalling 1,950.4 sq m. This will be split between one large (1,184.6 sq m) and three smaller units (321.3 sq m, 299.9 sq m and 144.6 sq m respectively). At this stage no occupants have been identified for the commercial units, therefore allowance for a variety of uses is sought; namely:

- A1 – Shops;
- A2 – Financial and professional;
- A3 – Food and drink;
- B1 – Business;
- D1 – Non-Residential institution (e.g. GP/health centre);
- D2 – Assembly and leisure; and
- Sui Generis – Nightclub.

Other ancillary uses will include refuse storage and recycling provision, a management suite of rooms and a gym totalling 650.8 sq metres. 13 car parking spaces will be provided, including 4 disabled spaces, with access from Mariner Street. A service bay for the student accommodation will also be accessed from Mariner Street, whilst a cycle hub will be accessed from Alexandra Road.

### **Planning Application**

The planning application has been supported with the following documents:

- a Design and Access Statement;
- b Planning Statement
- c Landscape Design and Access Statement;
- d Townscape & Visual Assessment
- e Transport Statement including Travel Plan;
- f Ecological Report;
- g Arboriculture Impact Assessment and Arboricultural Method Statement;
- h Archaeological Appraisal;
- j Heritage Impact Assessment;
- k Daylight & Sunlight Assessment;
- l Wind Micro Climate Assessment;
- m Phase 1 Geoenvironmental Study;
- n Flood Risk Assessment and Drainage Strategy;
- o Air Quality Assessment;
- p Noise and Vibration Assessment;

The design of the building has evolved following extensive pre-application consultation with the Council and from the review process with the Design Commission for Wales. The proposed development heights across the site range from 6 storeys (Levels 0 to 5) overlooking New Orchard Street and up to 22 storeys (Levels 0 to 21) above High Street, with the highest part of the building being situated in the eastern extent of the site to act as a point of arrival to the city from the railway station. The lower part of the development to the west of the focal building will be developed around a courtyard. From the street level the differing heights of the building and different materials and façade design styles will add interest and design quality to the street scene.

The tower's location at the junction of High Street and Alexandra Way opposite the Central Train Station offers a gateway location for this striking structure which will be treated in a different material from the lower plinth structure. Elevational treatment is based upon the strong concept of the industrial heritage of the area, combining a palette of coal, nickel and copper treatments. The lower level of the plinth structure is wrapped in a coal coloured cladding system with the intermediate slightly higher plinth element treated as a nickel block sitting adjacent to the prominent copper vertical sculpted form of the tower. This complimentary materiality breaks the building form into the recognised forms of the individual elevations that make up the historic High Street. In order to maximise active frontages retail/commercial uses are proposed at ground floor level to the east, south and western elevations. The main forms of the building are set off ground level by a continuous glazed active retail frontage that wraps from High Street all the way to New Orchard Street to the west. This active frontage allows all of the servicing and back of house functional activity to be consolidated onto Mariner Street screening it from public views. Car parking will also be accessed to the rear of the site, via Mariner Street.

#### Sustainable Energy

As a large scale, high density residential development, it is likely to have significant energy demands related to on-site electrical consumption for lighting and power, as well as hot water. To meet this need/demand combined heat and power (CHP) technology will be installed to generate electricity on site, whilst the associated waste heat will be used to produce domestic hot water. The CHP may be supplemented by the installation of roof top photovoltaic panels that will generate electricity from solar energy.

#### Access Arrangement and Parking

Access to the 13 car parking bays (of which 4 will be designated for disabled use) will be from Mariner Street. A service bay for the student accommodation will also be accessed from Mariner Street, whilst a cycle hub will be accessed from Alexandra Road. This will create a largely car-free development. In order to ensure that students do not utilise the parking places without prior approval, the tenancy agreement will prevent students bringing a car to the site, or parking on the site itself. All servicing for the commercial units will also take place from Mariner Street. This will allow the other elevations of the building, which front the main road network, to provide active uses and frontages in on this gateway site.

#### Landscaping

The existing trees around the application site will be removed for the construction of the development, however, replacement tree planting will be undertaken as part of the development and additionally, the development also includes provision for green roofs.

### **Material Planning Considerations**

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

- Compliance with prevailing Development Plan policy and Supplementary Planning Guidance;
- Townscape and visual impact;
- Impact on residential amenity including noise impact;
- Highways, traffic, car parking, access and pedestrian movements;
- Impact on archaeology and cultural heritage;
- Flood risk and Drainage;
- Pollution and ground contamination;
- Impact on ecology;

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

### **Development Plan Policy and Supplementary Planning Guidance**

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the determination of a planning application must be made in accordance with the development plan unless material considerations indicate otherwise.

#### Planning Policy Wales ('PPW')

PPW states that there is a preference for the re-use of previously developed land compared to greenfield sites and Paragraph 4.9.2 goes on to state that many previously developed sites in built-up areas may be considered suitable for development because their re-use will promote sustainability objectives. This is especially so where there is vacant or underused land. PPW (para 4.2) states that sustainable development means the process of improving the economic, social and environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.

#### Swansea Unitary Development Plan ('UDP')

The primary focus of the UDP Spatial Strategy is to encourage a sustainable approach to the development of a prosperous region focused on a cosmopolitan and multi-cultural City and County, which capitalises on its waterfront location. Strategic Policy SP1 states that sustainable development will be pursued as an integral principle of the planning and development process. Development proposals designed to a high quality and standard, which enhances townscape, landscape, sense of place, and strengthens Swansea's Waterfront identity will be favoured.

Goal 2 of the UDP is to help promote the sustainable growth of the local and regional economy and a high priority is placed on raising economic prosperity in the region. PPW states that the Welsh Government defines economic development as development of land and buildings for activities that generate wealth, jobs and incomes and the planning system should support economic and employment growth alongside social and environmental considerations.

Technical Advice Notice 23 ('TAN23') (Economic Development) states that the economic benefits associated with development may be geographically spread out far beyond the area where the development is located and therefore as a consequence it is essential that the planning system recognises and gives due weight to the economic benefits associated with new development. The development will provide significant economic benefits to the City of Swansea.

The application site is located within the City Centre Action Area where the objective is to reinforce and improve the City Centre as a vibrant regional focus for business and administration, shopping, culture and leisure. UDP Policy CC1 (City Centre Mixed Use Development) of the UDP states that within the City Centre, development of numerous uses will be supported and these include retail, offices, hotels and housing, community and leisure uses.

The site is currently in use as a pay and display surface level car park and it also includes a small café. The principle of development on this brownfield site is established and indeed encouraged both by the UDP and PPW, especially where the redevelopment will promote sustainability objectives. The principle of development of this site is therefore considered to be policy compliant.

In terms of the proposed use, the UDP sets out the different uses that are considered acceptable within the City Centre. Although purpose built student accommodation is not listed specifically under Policy CC1, student accommodation is similar to both hotels and residential apartments in terms of format and operation, however, UDP Policy HC11 specifically states that the use of appropriate City Centre sites for student accommodation will be favoured. The student accommodation use would generate a large number of city centre residents that would add footfall and activity in the city centre. The residents would positively contribute to how the city centre functions by taking advantage of its facilities and amenities. In addition, the ancillary commercial uses would create active frontages and would attract additional footfall to the area. As promoted by PPW, the proposed use would make efficient use of a plot of land that is currently underutilised.

On the basis of the above, and taking into consideration the Council's acknowledgement within the recently published Regeneration Framework that the site is suitable for significant amounts of living accommodation, the principle of a student accommodation development at this site is acceptable.

#### Swansea Central Area Regeneration Framework ('SCARF')

The site is located within the Swansea City Centre Strategic Framework area which has been defined to encompass all of the main retail and commercial areas of the City Centre. The Framework states that a priority for the City Centre is that it develops as an attractive, distinctive, mixed-use, higher density urban core.

The regeneration framework for Swansea city centre (SCARF) has recently been updated and has been the subject of public and stakeholder consultation and was adopted as informal planning guidance in February 2016 by the Council's Cabinet. It is informing the drafting of the Local Development Plan and will ultimately become SPG to updated Development Plan.

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The current regeneration framework for the city centre designates High Street as a 'complementary area' with the vision theme of '*living, working and learning*'. The SCARF seeks to continue the diversification of the High Street started under the earlier regeneration framework. This recognises that the retail heart of the city has shifted to the area around the Quadrant and that the new role of High Street should focus on the 'living, working and learning' theme with an emphasis on creative industries and culture.

Strategic objectives set out in the SCARF that are particularly relevant to High Street and the application site include:

- Developing City living
- Achieving a High Quality Environment
- Expressing a distinctive identity

The SCARF states that High Street has the capacity to build a resident community which supports a thriving economy in the Central area and play a significant role in complementing the retail leisure led mixed use core. The catalyst effect of the Urban Village is recognised: this has set a positive benchmark for quality of design and unique local businesses but a critical mass is required to generate the revitalisation necessary to make it a busy, vibrant street

The application site is specifically identified as a key opportunity in the High Street complementary area for commercial and or residential development which will generate activity and footfall, and should be developed to a quality that reflects its significant gateway location with active frontages to its prominent street frontages.

The SCARF also sets out strategic development and design principles for the area relative to the scheme:

- *Ensure quality active frontages* – the proposed ground floor onto High Street, Alexandra Road and New Orchard Street is shown as commercial units with glazed frontages and entrances to upper floors. The design has been amended slightly to bring areas of cladding to ground. This helps to anchor the buildings and break up the expanses of glass. This maximises active frontages and ensures a quality elevation. However care is needed to ensure that the internal unit layouts do not result in blank windows. Therefore a condition should be added to prohibit the use of window vinyls/ blanking off windows and instead should require unobstructed views into the ground floor units. Mariner Street becomes a service area where active frontages are not a requirement.
- *Ensure mixed uses* – the proposal comprises commercial units at ground floor with student bedrooms above. Therefore not only does the scheme comprise mixed uses within the building, it would also add to the mixture of uses in the area with a significant quantum of city living, thereby increasing activity and vibrancy with a critical mass.

- *Enhance public realm and widen pavements* – the scheme includes new areas of public realm to provide circulation space and spill out areas for the ground floor commercial uses. Furthermore the new buildings are set some 1.5-6m away from the existing back of pavement. This will allow the pavements to be widened to a typical width of 4-6m which reflects the scale of the buildings, the much higher levels of walking and also provides space for street trees to green the public realm. The public realm materials include high quality concrete paving to match the existing materials palette on High Street which is broken up by feature bands and contemporary elements of street furniture. This is supported to raise the quality of the public realm and the street furniture is essential to ensure that the spaces are used for sitting (the detail can be resolved through condition). The applicant is also providing a S106 contribution towards the reconfiguration of the crossings to the station and High Street which will increase pedestrian priority and improve the public realm.
- *Encourage residential use (including student accommodation) on upper floors* – the scheme proposes high density accommodation with 725 student rooms on the upper floors. This represents city living on a significant scale and will add significant vitality to High Street which in turn will encourage vacant ground floor uses to be brought into use to help provide facilities such as cafes etc for the new city residents.
- *Highlights the potential for a tall building on the application site and sets minimum scale requirements of 3 storey to intensify the location* – the scheme boldly embraces the requirement for the tall building on this site with a 22 storey tower with distinctive sloping roof profile and vertical cladding bands that marks the rail station and acts as a focal point for the regeneration of High Street. The urban scale courtyard block is 6 storey which relates well to the proportions of the immediate streets and scale of existing surround buildings. Therefore the scale of the scheme enhances the immediate townscape. The later sections of this write up consider the relationship of the scale to existing residents and heritage assets.
- *Promote high quality materials* – the scheme is based on a variety of metal cladding panels to ensure a high quality finish which takes inspiration from Swansea's metallurgical history. This will ensure a quality and distinctive scheme that continues the raised quality in the High Street area started by the Urban Village project. There is no render in the scheme.
- *Establish new pedestrian priority crossings and reduce vehicle speeds* – the scheme does not propose any new streets however it will create significant levels of pedestrian movement between the student accommodation and public transport and city centre generally. This will require the existing pedestrian crossings to be reconfigured. Traffic speeds in this area is already low due to the street alignment and traffic lights and the reconfiguration of the pedestrian crossings will help reinforce slower traffic speeds and will improve the priority given to pedestrians.

Therefore the proposal is considered to be fully compliant with the SCARF requirements. Whilst the Urban Village project has significantly regenerated High Street, the further introduction of 725 students and high quality commercial offerings will further revitalise the street with significantly increased footfall and vibrancy.



This is likely to encourage the reuse of other vacant buildings and will help dilute/discourage the antisocial behaviour that has become associated with High Street. This project also has the potential to link the upper and lower High Street areas. As the upper High Street becomes more active, this could also help encourage the sustainable reuse of buildings such as the Palace Theatre.

#### Tall Building Strategy SPG

The following assessment is based upon the 2008 version of the tall building SPG. Although this has been updated and was subject to public and stakeholder consultation in 2015, the 2008 version remains the adopted SPG until superseded. The updated 2015 version does not change the principles used below, nor the status of the Mariner Street site as a 'consider zone' for tall buildings.

The Tall Building SPG defines a tall building as being twice the height of adjacent buildings and recognises that tall buildings can have a positive role in the City. It highlights the Mariner Street application site as a 'consider zone' which is defined as a location where *'well designed tall buildings can have a positive impact, subject to the availability of supporting information'*.

The SPG indicates that tall buildings should:

- Signify areas of regeneration
- Create a distinctive skyline that projects a new image for Swansea
- Form a landmark that marks a key city gateway
- Maximise densities in proximity to public transport

The proposal is a refinement of a concept suggested by the Councils Urban Designer which marks the station gateway with a tower, redefines the urban block and steps down to an 'urban scale' in the west to relate to the Alexandra Road Conservation Area and homes to the west the tower will be a bold symbol of Swansea's continued regeneration.

The Tall Building Strategy SPG also sets out a broad range of principles for tall buildings (on pages 19-22):

- *Work with the topography by setting set tall buildings against backdrop of surround high ground.* The scheme does this as it is viewed from the east against the backdrop of Mayhill but it does project above the profile of the high ground as indicated in the visual assessment. This is considered acceptable to create a bold addition to the skyline and to mark the site as a focal point for regeneration on the High Street. The subsequent parts of these comments considers the visual impact in detail.
- *Define key districts, gateways and areas of functional importance.* The design and scale of the scheme marks the rail station gateway and will create a new focal area with the High Street 'district'. Furthermore the design and scale of the lower urban block element will create a much improved vehicle gateway when approaching the city from the north on New Orchard Street.

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- *Create a legible and permeable environment.* The scheme does not need to create any new routes as the existing desire lines are well catered for by the existing street network. It does importantly redefine the city block with active frontages and a building of urban scale. This will create a legible environment that reinforces the historic vision of creating a 'grand boulevard' along Alexandra Road to the rail station.
- *Be sensitive to heritage assets.* There are 3 conservation areas and 19 listed buildings within 500m of the site. The relationship to these designated heritage assets is addressed in the Heritage Impact Assessment and this is addressed later in these comments.
- *Exhibit the highest standards of architectural design.* The concept is for a bold tower and lower urban scale block. This approach has been endorsed by the independent expert Design Review panel of the Design Commission for Wales. The elevations are proposed to be finished in a range of cladding systems that make reference to Swansea's metallurgical history. The materials strategy is confirmed in the DAS addendum. The architecture has been tested close up from the immediate streets and from further afield from key view points as discussed in the Townscape and Visual Impact section.
- *Create a memorable skyline.* The visual testing from key approaches and gateways as required by the Tall Building SPG demonstrates that the proposed 22 storey tower will be taller than the adjacent Alexandra House/ Oldway House block. In comparison with the adjacent tall building, the proposal is slender and has a distinctive sloping roof profile. Furthermore the elevations are designed to reinforce the vertical nature and slenderness through vertical bands of glazing and cladding.
- *Sustainability.* Although there is no longer a mandatory sustainability target imposed through the planning system in Wales, the Tall Building SPG indicates that building of this scale is expected to demonstrate best practice with regards to sustainable building standards. In terms of transport, it is a highly accessible and sustainable location on key public transport routes and walkable to the city centre, plus it is at the centre of emerging cycle network which links to both universities. In terms of the building itself, the DAS addendum confirms that the sustainable building standard for the development is BREEAM Very Good which is welcomed. Specific features proposed include a gas combined heat and power system (CHP) and extensive areas of green roof.
- *Local microclimate.* The wind study assesses the potential wind effects of the proposed development in conjunction with the existing adjacent tall buildings this applies a recognised wind environment criteria for pedestrian comfort and safety. This highlights two areas where wind mitigation is required. Firstly there will be wind acceleration from wind hitting the main tower and urban scale block and dropping to the ground level. This is especially identified as a potential issue close to the main entrance to the student accommodation which will require mitigation. Secondly there will be wind effects beyond the site on the opposite side of the street to the east in the station forecourt and at the station entrance itself. The wind study confirms that the impact on the station area will move the annual pedestrian comfort categorisation from sitting to standing.

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- As the station does not have doors, this may require mitigation in the form of building features (often in the form of a 'wind skirt' or wind break features such as trees in the public realm). This detail can be required through condition.
- *Compatibility with transport infrastructure.* The site is highly sustainable given the relationship to the rail station and stops on main bus routes. It is also walkable into the city centre and on the emerging city centre cycle network which links to both universities. The site is marginally outside the central core parking zone where developments can be car free which starts on the opposite side of Alexandra Road to the south as defined in the Car Parking Standards SPG. However this 2012 SPG does not take account of the highly accessible site location. This issue is addressed in the more recent 2015 SCARF which provides a framework for a relaxation of parking standard central core parking zone (p36) where there are no adverse effects on highway conditions and where sufficient S106 contributions are made to support walking, cycling, public transport and off-site parking provision. Therefore the walking and cycling aspects should be supported through a redesign of the High Street/ Orchard Street junction to improve pedestrian priority. An element of limited off-site parking provision could potentially be accommodated within the existing High Street multi-storey which is understood to be significantly underused at present. These issues are discussed in more detail in the transport section.
- *Clustering of tall buildings.* The proposed 22 storey tower will form the centre point of a tall building cluster comprising Alexandra House/ Oldway House, Urban Village Strand towers and the Matthew Street flats to the north which have recently been reclad.
- *Requirement for public uses at ground floor* A key issue for tall buildings is often how they relate to the street level and public realm. As there is very limited car parking within the proposal, this allows the commercial units to be maximised to create active frontages at street level. As yet the exact size of the units and tenants is to be confirmed, but this could include a supermarket, pub/ cafes and small scale retail. This will bring quality commercial space to High Street. It will benefit more than the students living above, for example the supermarket is likely to be well used by commuters and workers/ residents in the wider area. It should also be noted that unlike existing shops on High Street, no security shutters are proposed. This is a strong statement of confidence in the area and will ensure that even when closed, the commercial units add to the vibrancy of the streetscene. The entrances to the upper floors are also key elements of the active frontages. These student entrances will need to be legible and welcoming so will need to be distinguished from the commercial frontages and a condition is required to allow this issue to be addressed.
- *Scale, form, massing.* Whilst the slender tower with sloping roof profile is the bold iconic element of the scheme, the majority of the accommodation is contained within an urban block of 6 stories (22m high) and 8 stories (28m high). This urban block defines the street edge thereby improving the connection of Alexandra Road to the station and reduces the massing to respect the setting of the adjacent Alexandra Road conservation area and to address the residential amenity of the existing flats to the west of the site on the opposite side of New Orchard Street. The scheme is broken down into a series of blocks using different cladding and changes to the heights.

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This avoids a monolithic appearance and reflects the traditional townscape character of 'joined buildings'. At present the ground floor perimeter is double height glazing to the commercial units. The proposal needs to achieve a human scale at street level and this has been achieved in the amended plans by bring cladding down to ground level in places.

- *Visual – should be of slender proportion and elegant in design.* In comparison to existing tall buildings in Swansea, the proposed 22 storey tower will slender and elegant in design:

<b>Tower</b>	<b>Footprint (m)</b>	<b>Height (m)</b>	<b>Height (floors)</b>	<b>Notes</b>
Meridian Quay	45 x 18	107	29	
BT tower	45 x 15	63	13	Offices – higher floor to dimension
Alexandra House/ Oldway House	87m length width varies	46	13	Offices – higher floor to dimension
Matthew street flats	25 x 14 (Staggered footprint)	32	11	
<b>Mariner Street proposal</b>	<b>30 x 14.5</b>	<b>72</b>	<b>22</b>	

The comparisons above demonstrate that the width of the various tall buildings is fairly constant. The Mariner Street proposal north south length is the shortest of the towers, which combined with the 72m height will give a slender appearance. This is reinforced in an elegant manner by vertical cladding and glazing bands that accentuate the slenderness. The roof profile which slopes up from south to north is a bold statement that also distinguishes the proposal from the earlier flat roof towers.

- *Full visual testing undertaken.* At 72m tall the proposed tower will be some 25m taller than the adjacent Alexandra House. The visual testing information is set out in a Townscape and Visual Assessment section below and includes the 'Theoretical Zone of Visibility'. This demonstrates that the tower will be widely visible as a bold addition to Swansea's skyline.
- *Should avoid rooftop plant and include them within the building envelope.* There will be a maintenance crane at the top of the tower for window cleaning and this will be 'parked' within the distinctive sloping roof profile slope when not in use and therefore will not be visible. Enclosed internal plant areas are indicated on the ground floor which is welcomed. However the level 6 plan also indicates a rooftop plant area above the lower part of the urban block. This was originally shown as an open area and revised plans have been provided to demonstrate that the plant area will be enclosed as part of the building envelope which is screened from view from the sides and above.

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- *Must achieve high standards of inclusive design.* The level of the existing pavement around the perimeter of the site varies and the proposal is for very gently sloping public realm and level access to the entrances. This removes the need for ramps and steps to ensure an uncluttered public realm (where level changes are needed, they will be accommodated internally within the ground floor slabs).
- *Parking and servicing is well integrated.* As indicated above, there is only operational parking and student drop off/ disabled parking within the site. This is by virtue of the highly accessible nature of the site. The parking and servicing of the commercial units is all accessed from the rear off Mariner Street. This ensures that the east, south and west elevations are high quality public realm and that vehicle flows around the edges of the site are not impeded.
- *High quality public realm.* The proposal is to widen the existing footways and create a new space at the base of the tower that corresponds to the main entrance to the student accommodation. This effectively forms a wider 'space' in conjunction with the existing station forecourt. This area can accommodate spill out tables and chairs from the commercial units and a setting for the tower. This area can reflect the existing materials palette on High Street in a 'fresher' manner with contrasting bands and contemporary street furniture (obviously the public realm materials will be controlled by condition). The new areas will be positively integrated with the existing station forecourt by means of improved pedestrian crossings thereby creating a unified quality public realm. The wind study indicates that the public realm areas may require wind mitigation which can be resolved by condition. Internal private amenity space for the student residents is also provided in the first floor courtyard and the first floor show multiple entrances to this area – it can be used as a short cut between the main entrance lobby and stairs to upper floors.
- *Quality* – the architectural concept is based upon a tower marking the station and an urban scale 6 storey block with link between the two. This redefines the city block and ensures that the tower relates positively to the immediate context. The tower is designed to emphasise the slenderness with vertical windows and cladding in a colour that makes reference to Swansea's copper history. The tower is deliberately bold and is a symbol of the confidence in the regeneration of High Street. The sloping roof profile has been used to good effect in other tall buildings such as the Great Northern Tower in Manchester.

The Design Commission for Wales has been invited to comment on various versions of the scheme and has helped in the independent testing and scrutiny of the proposals. The most recent design review (Jan 2016) highlighted the following:

- Support for the tower, urban block and link as per the proposed scheme
- Suggested that the retail units be enlarged and the undercroft customer parking be omitted on the basis that this public parking would be unattractive and hostile to users, and that the site was highly accessible by foot, cycle and public transport. This has been amended in the proposed scheme
- They suggested that the main entrance to the student accommodation be made more legible – this has been highlighted in this assessment and can be controlled by condition

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- They stressed that the materials and elevation design needs to be high quality. This assessment confirms that both the elevation design and the material strategy are high quality and that the detail can be adequately controlled by condition.
- The urban block element is broken down into a number of frontages to have a vertical emphasis and to avoid a monolithic appearance. This makes reference to the historic character of the area which comprises and comprises joined buildings albeit on a different scale. The developers are aware of the weathering issues associated with render in Swansea and have therefore designed the scheme to use cladding panels that reference Swansea's metallurgical past and the detail can be resolved through condition. The main tower will be clad in a green panel on the east and west flanks that reflects the green of copper and use a mesh that reflects the colour of new smelted copper on the north and south elevations. The tower cladding will emphasis slenderness and use subtle angles as 'pop outs' to the panels to create a dynamic form.
- *Microclimate* – As indicated above, wind mitigation is needed and this can be resolved through condition.
- *Security*. By defining the urban block, the development creates a secure perimeter with gates enclosing the rear service area on Mariner Street. Access to the upper floor student accommodation will be access controlled on secondary entrances and the main student entrance will have a reception desk for visitors at ground floor level. The majority of the student bedrooms and lounge areas units will have an outward aspect towards the streets and public realm around the site. This will significantly increase the levels of natural surveillance in contrast to the current surface car park. Furthermore the use of these rooms especially after dark when the lights are on will make the surrounding areas feel safer.

To sum up the assessment against the Tall Buildings SPG, it is considered that the proposal conforms fully with all requirements. The proposed tower will be a bold and highly visible addition to the city skyline which marks a key area of regeneration. It is well designed and will have a positive impact. The only unresolved issue is the wind mitigation and this can be dealt with by condition.

### Places to Live Residential Design Guide SPG (2014)

Whilst this adopted design guide is generally aimed at housing developments, it is relevant to this proposal in terms of high density city centre living considerations and the residential amenity tests. The majority of the design requirements are set by the Tall Building SPG.

The relevant requirements of the Residential Design Guide include:

- *Maximise density in accessible location* – as indicated above the, site is in a highly accessible location. It is well served by public transport, walkable to the city centre and a cycle ride to the various university areas. The Residential Design Guide sets the objectives of maximising densities in accessible locations. The proposed density based on 725 bedrooms on a 0.43 ha site is 1686 bed spaces per hectare (note that this is different to the usual measure of dwellings per hectare).

Another way of expressing the density would be the number of 145 studio flats and 105 cluster flats per hectare which equates to 581 'units' per hectare. Whilst this is clearly a high density, this assessment of the scheme demonstrates that there are no significant impacts and that the proposal has significant regeneration benefits. The design guide also sets the requirement to avoid cramped living environments in high density developments and the proposal does this successfully through the design with outward facing street elevations and a well-proportioned private courtyard at first floor level. Furthermore every room in the proposed development has floor to ceiling windows to maximise the natural lighting and feeling of openness.

- *Legible and welcoming entrances* – a key requirement for all forms of development is that the entrances are easy to locate, and are safe and welcoming. This can be ensured by facing the entrances onto streets and public realm areas and also by emphasising the entrances as part of the architectural design. The proposed main student entrance will be from a glazed lobby facing Alexandra Road this leads up to first floor common facilities and will be highly visible and legible. This is supplemented by additional student entrances that relate to the stair and lift cores. Two of these additional entrances face the streets around the site, however the direct entrance to the tower was originally proposed to be accessed off the rear service area which is neither legible or welcoming. Therefore the relocation of this entrance to face High Street has been amended in the final drawings.

### **Townscape and Visual Impact**

A Townscape and Visual Impact Assessment (TVIA) has been submitted with the application and provides an analysis of the potential townscape and visual effects of the proposed development. The assessment considers the townscape character of the site and surrounding area, its sensitivity to change, the scale of the change from the proposed development and the impact of that change.

It is considered that the existing uses and buildings on the site do not contribute positively towards the quality of the townscape, and their removal has potential to improve the townscape character. The built form and architectural design will create a vibrant and attractive frontage, and the built form of the lower blocks will redefine both the Alexandra Road and Orchard Street frontages. Whilst the 21 storey tower will provide a new landmark at this key public transport gateway to the city. The design and articulation of the elevations will represent a more positive townscape with active frontages and would therefore would considerably improve the townscape character of the site.

The visual assessment has been undertaken with reference to 8 representative views which were agreed with the Applicant's Design Team to assess the visual impacts and these are considered below. It should be noted that the visual testing shows the massing only – the grey blocks represent the accurate envelope of the proposed tower but does not show the actual architectural detail. This is a recognised way of assessing visual impact and the DAS includes perspective images of the proposed architecture.

- View 1: Junction of Alexandra Road and Orchard Street. At present, this view focusses on the surface car park that takes up much of the site with a glimpsed view to the rail station. The proposal would improve this view through the introduction of significant built form that redefines the street edge and the tower would act as a marker for the rail station.

The proposed splayed corner feature will relate to the tower of the old Police Station (new Llys Glas). The nature of the change to the view would be high, however, the change to visual amenity is considered to be beneficial.

- View 2: High Street. Only the tower will be visible looking south up High Street. This will be visible above the lower street element of Oldway House. The new tower would be taller than Alexandra House and would be a significant positive addition as a separate tower of slender and elegant design. It will help lead the eye up High Street to mark the rail station. The view of the tower would be read in conjunction with the existing height and massing of Alexandra House and the nature of the change is considered to be medium and the nature of the change is considered to be beneficial to receptors of this view.
- View 3: Ivey Place. This view represents the view of the tower on leaving the rail station. Currently the view is of a poorly maintained Victorian building and a public art hoarding along with the car park. There is an open aspect to Mayhill and Mount Pleasant, but this is not an important view. The tower would significantly enclose the station forecourt. It would replace the open aspect with a high quality building of slender and elegant design that reinforces the sense of arrival. This would result in a substantial change to the view experienced when existing High Street Rail Station, and the nature of this change is therefore high but the new development is considered to have beneficial change to the visual amenity of the area.
- View 4: Parc Tawe Link Road. This view is dominated by the monolithic bulk of Alexandra House/ Oldway House. There are longer views to Mayhill which are framed by the Urban Village towers on the Strand to the left and the Matthew Street flats to the right. The new tower would be a bold addition to this, significantly taller and more slender than Alexandra House/ Oldway House. It will break the Mayhill skyline and will be a bold addition to the built skyline of the city. The roof profile sloping from south up to north follows the incline of the skyline beyond. It can also be seen how the tower would become the focal point of a cluster of tall buildings. The nature of the change to this view is medium but the development would form a high quality addition to the view and therefore the change to visual amenity would be beneficial.
- View 5: Pentre Guinea Road. The views looking west across the river valley are a feature of the key approach. Currently the view to Mayhill and Mount Pleasant is framed by Alexandra House/ Oldway House to the left and the new student development on the former Unit Superheaters site by the river to the right. The new tower will be a bold addition to this view, projecting well above the Mayhill skyline and above Alexandra House and would be clearly visible from Pentre Guinea Road. The nature of the change would be medium and the tower would create a new landmark to the city skyline and the change to visual amenity would be beneficial.
- View 6: Firm Street. This view is representative of the multitude of public and private views to the site from the higher ground to the west. Currently these views look down onto the existing roofscape and further afield to Kilvey Hill and across Swansea Bay.



From this side, the tower and urban scale block will be visible. It can be seen that the urban block element sits comfortably with the general city centre scale and whilst the tower break the distant skyline it is a bold and positive addition. Again the slenderness of the tower can be appreciated especially in the context of Alexandra House/ Oldway House. Again the nature of the change would be medium and the tower would create a new landmark to the city skyline and the change to visual amenity would be beneficial.

- View 7: Southern Tawe Bridge. This is a key gateway to the city for vehicles from the east. It is also representative of views from the river corridor and the SA1 area. Like the views described above, the bulk of Alexandra House/ Oldway House can be clearly seen along with the Mayhill skyline and the Matthew Street flats to the right. The recent Urban Village towers on the Strand can also be seen and these help to break up the visual bulk of Alexandra House/ Oldway House. Again the proposed tower would significantly break the skyline in this view but is considered to be a bold and positive addition. Furthermore the slender profile means that much of the Mayhill skyline is still visible to either side of the tower. The proposed development would result in a medium degree of change but again the proposals would create an attractive new landmark and the change to visual amenity would be beneficial.
- View 8 Neath Road. Whilst this view is approximately 1km from the site, it is tested because Neath Road lies within the Vivians Town Conservation Area. In this view the bulk of Alexandra House is clearly visible on the distant skyline and the proposed tower would also be visible as a taller more slender structure. This helps to mark the city centre and is considered to be a positive feature when viewed from this Conservation Area. Having regard the distance from this view the change to visual amenity would be negligible.
- Further views from within the closer Alexandra Road conservation area are considered in the Heritage section of this report.

Although not tested by the applicants, the view from the waters of Swansea Bay looking towards the city centre (as shown on page 13 of the Tall Building Strategy SPG) with Swansea valley beyond will also be important. Again the tower will be visible as a bold addition within the city core. The slender south elevation will be a key aspect of this view and will help to mark the city core. The development would be visible from a number of viewpoints and the applicants townscape and visual impact assessment confirms that the visual effect is neutral or beneficial depending on the view and this is not disputed.

#### **Impact on residential amenity**

Policy EV1 of the UDP states that development should not result in a significant detrimental impact on local amenity in terms of visual impact, loss of light or privacy, disturbance and traffic movements. Policy EV40 of the UDP states that development proposals will not be permitted that would cause or result in significant harm to local amenity because of significant levels of air, noise or light pollution.

The closest residential units are located to the rear of Mariner Street. Residential apartments are also located to the west of the A4118 (the closest being approximately 25 metres from the site). The application has been accompanied by a Daylight and Sunlight Assessment.

The results of the Assessment show that overall the proposed scheme will have a limited impact on existing buildings to the south and west of the site, however, the results show a reduction in daylight factor within the upper floors flats on Mariner Street to the north as a result of the proposed scheme. The assessment acknowledges that a reduction in daylight level in adjacent buildings is to be expected with a development of this scale within a city centre urban environment.

In terms of residential amenity, the residential design guide sets out tried and tested considerations to assess the impact on residential amenity of existing residents around the site. The main considerations in this regard are the upper flats to the north and the existing three storey flats to the west on the opposite side of New Orchard Street but the development will also be visible from homes on the elevated hill side.

- Overlooking* – the proposed student accommodation will be some 27.5-29m from the windows of the existing flats on the west side of New Orchard Street. This relationship is across New Orchard Street which is effectively a dual carriageway. The residential design guide sets out an overlooking distance across streets of 10m as this is considered to be a public area where less privacy is expected by residents. Therefore the relationship across New Orchard Street is more than sufficient to ensure adequate privacy for the existing flats in an urban location. This takes into account the taller nature of the new development opposite (6 storeys) and allows for the potential views from the student development down to the flats as well as directly across the street. The proposed development will be some 8.5-10.5m from the windows of the cottage and flat to above the Mariner Street Barbers Shop to the north on the opposite side of the street. The residential design guide indicates that the minimum separation of windows across a street should be 10m (p56). The proposal generally achieves this separation on Mariner Street but the separation is less than 10m at the east end and whilst this will impact on the privacy of these units, it is considered acceptable on balance given the significant regeneration benefits of the proposal.
- Overshadowing* – there is existing overshadowing of the flats to the west from Alexandra House in the morning. The sunlight and day light analysis includes hour by hour assessment for 21<sup>st</sup> March in accordance with BRE guidelines. This demonstrates that the proposals will create additional overshadowing of the flats to the west during winter months from early-mid morning (no shadowing from lunch time onwards during winter months and no shadowing during summer months). This is considered typical of an urban context. The right to light assessment provided as part of the application considers the daylighting impacts within the flats to the west facing the development site and confirms that daylighting levels with these are still within the relevant BRE guidelines. The main shadowing effect is on the small number of existing homes to the north on the opposite side of Mariner Street (it should be noted that the submitted Daylight and Sunlight assessment wrongly identifies the floors above, the sandwich shop, Burns Gym and the former travel agents as flats whereas these floors are office space, some of which is vacant. Also it doesn't highlight that the flats above the Class Barbers benefit from outlook to the east, south and west).

The information confirms that the existing cottage and flat above the Mariner Street Barbers Shop will be in shadow for much of the day and that the daylighting levels within the rooms facing the site will all drop below the BRE guidelines and will have to rely on artificial lighting. Whilst this impact is noted, it is considered acceptable on balance given the relatively small number of units affected and the significant regeneration benefits of the proposal. The study also confirms that the daylighting levels within the student rooms are mostly within the BRE guidelines. However some of the units are affected by shading during parts of the day. This is not continuous and is offset by full height floor to ceiling windows to maximise the light and sense of openness.

- *Overbearing* - The design concept has sought to focus the scale (22 storey tower) at the opposite end of the site adjacent the station away from the existing flats to the west. Whilst the flats will lose their open aspect over the current car park, there is no right to the view, and the relationship of the proposed 6 storey scale across the dual carriageway to the slightly elevated three storey flats with pitched roof is considered acceptable in an urban context. There will be a much more significant impact on the handful of units to the north on the opposite side of Mariner Street. However this is not considered unacceptable in an urban context, furthermore the former cottages at the east end are already subject to an overbearing impact from the flank wall of the existing café building that is to be demolished.

In summary, the proposals are considered to be generally compliant with the requirements of the adopted residential design guide and policies EV1 criterion (iii) and EV40 of the UDP. The amenity impacts on the residential units to the north on the opposite side of Mariner Street are noted but considered acceptable on balance given the urban context and significant regeneration benefits of the proposal.

### **Highways, traffic, car parking, access and pedestrian movements**

PPW aims to reduce the need to travel, especially by private car, by locating development where there is good access by public transport, walking and cycling. It also supports the locating of development near other related uses to encourage multi-purpose trips and reduce the length of journeys.

Policy AS1 of the UDP requires that new development associated with housing, employment, shopping, leisure and service provision is located in areas that are currently highly accessible by a range of transport modes, in particular public transport, walking and cycling.

Policy AS2 states that new development should be designed to:

- promote the use of public transport and facilitate sustainable travel choices;
- provide suitable facilities and an attractive environment for pedestrians, cyclists and other non-motorised modes of transport;
- Allow for the safe, efficient and non-intrusive movement of vehicles, and
- Comply with the principles of accessibility for all.

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Policy AS5 also requires development proposals to consider access requirements for pedestrians and cyclists. Policy AS6 states that parking provision to serve development will be assessed against adopted maximum parking standards to ensure that proposed schemes provide appropriate levels of parking for private cars and service vehicles. Account will also need to be taken of the need to provide facilities for the parking of motorcycles and cycles.

A Transport Statement has been submitted in order to assess the impact of the development. The vehicular access to the service access and the 13 car parking spaces will be obtained from Mariner Street which is a one way street running from High Street to Alexandra Road. The site is located in an extremely sustainable location being opposite Swansea rail station and along a major bus route and so has excellent access to public transport both bus and rail and a number of local amenities within a short walk. The Transport Statement Assessment indicated that the Highway Network could accommodate the additional traffic generated by the proposal.

### Car Parking

The student accommodation will generate negligible traffic due to the lack of parking facilities provided. It is proposed, however, to require the implementation of a parking management plan through a Section 106 Agreement link to the tenancy agreements which will be required to ensure that students taking up residence do not own cars as there is no parking provided for this purpose. This is discussed below.

The Head of Transportation refers following consultation to the newly adopted Swansea Central Area Regeneration Framework regarding car parking which acknowledges that developments within the city centre will not be able to provide car parking and will be supported where they will make a significant regeneration impact. In such circumstances, developers will be expected to make contributions towards transportation initiatives to enhance alternative modes of transport or off-site parking provision secured through a Section 106 Agreement. As indicated the student accommodation is designed to be 'car-free' and the 13 car parking spaces are provided for servicing, by management and disabled use. This approach is considered to be acceptable where adequate support measures are put in place to prevent cars being brought to the site, and to secondly enhance walking and cycling measures to support the alternative forms of transport. To ensure that this car free arrangement works satisfactorily and does not cause overspill parking problems there is a need to ensure that students do not have cars, and that alternatives are in place. This will be secured via a Section 106 Planning Obligation which will tie the student residents into agreeing not to bring cars to the site. It is envisaged that if a student fails to comply with his tenancy agreement then as a worst case scenario that the tenant would be evicted. This arrangement will be controlled through the parking management plan.

The management of the car parking will be required for pick up /drop offs and the High street multi storey car park would also be available for visitors and/or pick up/drop off purposes at the beginning or end of term. Additionally, to avoid any parking in nearby residential areas (by for example visitors etc.) a sum of £30,000 has already been secured via the Development Agreement with the Council. This can be held for a period of 30 years and can be used to implement residents parking or traffic regulation orders as and when needed in any affected area.

The Council has also entered into a separate legal agreement with Network Rail to mitigate for the loss of parking on the existing Mariner Street car park site Network Rail and utilize spaces in the High Street MSCP which the Head of Transportation has confirmed is currently under utilised.

#### Pedestrian and Cycle Access

It is proposed that pedestrian and cycle facilities are to be enhanced by the development. A sum of £160,000 has been agreed with the developer in line with the Council's Supplementary Planning Guidance on Highways contributions. There are two main items that this will fund:

- a) Diagonal pedestrian crossings on the junction on High Street/Alexandra Road junction- estimated scheme utilizing existing kerb lines £35,000, and
- b) Completion of missing links and /or upgrades to the cycle network on Orchard Street. – a contribution of £125,000 towards the missing link on Orchard Street.

It is proposed to provide 204 cycle parking spaces within the development which is considered appropriate and would encourage students to use this sustainable mode of transport.

#### Public Transport

The site is currently well served by a number of frequent bus services along High St. and the Head of Transportation indicates that it is not considered that there are any improvements needed to improve the frequency given the existing high levels of service provision. The site is also conveniently located opposite Swansea Rail station.

#### Highways Infrastructure

As indicated the developer has agreed to make contributions of £160,000 towards works to upgrade the cycle and pedestrian facilities in the area. The redevelopment of the whole site will require new footways and public areas and this will need to be undertaken by a Section 278 agreement if the developer wants to keep the footways etc as adopted highways as they currently are. The plans indicate that the footways are to be laid out to tie into the public areas surrounding the proposed building envelope.

#### Conclusions

The Transport Statement indicates that the development will not result in a material increase in car usage and associated congestion, subject to the mitigation measures proposed and a robust tenancy agreement to prevent car ownership is secured in a Section 106 Planning Obligation. The Section 106 Planning Obligation will also secure the financial contributions of £160,000 as outlined above for the upgrade works to the pedestrian and cycle facilities. These contributions required are considered to be necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to the development having regard to the tests set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010. Planning conditions will also be imposed require all highway works to be completed to Highway Authority Standards and Specification and the implementation of a Travel Plan. Subject to these measures and conditions the application is considered to comply with the aims and requirements of policies AS1, AS2, AS5 and AS6 of the UDP.

### **Impact on archaeology and cultural heritage**

#### Archaeology

The planning application is accompanied by an Archaeological Appraisal in order to identify the nature, extent, character and condition of the archaeological resource within the site. The assessment has identified no recorded archaeological features within the site or its immediate vicinity. However, the site is located to the north of the medieval town walls but there is potential for unrecorded archaeological remains to occur within the site, although the extent to which these deposits have been disturbed by previous phases of construction is unclear. The Appraisal concludes that the potential archaeological constraints can be appropriately addressed through a programme of archaeological works to be undertaken as a planning condition.

Glamorgan Gwent Archaeological Trust (GGAT) consider that the submitted appraisal goes some way to identifying the archaeological potential of the proposed development area, however the conclusions drawn in this report do not effectively consider the impact of the proposed development on the archaeological resource nor the implications of the discovery of any archaeological resource on development. GGAT have therefore advised that the applicants should be requested to commission the required archaeological work and that the planning application this should be deferred until a report on the archaeological evaluation has been submitted. It is appreciated that the Archaeological Appraisal indicates the potential for unrecorded medieval archaeological remains within the site, which may have been disturbed by previous development.

Whilst the concerns raised by GGAT are noted the submitted Archaeological Appraisal proposes a programme of archaeological works to be undertaken as a condition of the planning approval. It is considered that a condition expressly worded and imposed to ensure that no development in connection with the planning permission be undertaken until a programme of archaeological work has been submitted and agreed by the local planning authority would be reasonable in this instance.

#### Cultural Heritage

Policy EV1(xi) of the UDP states that new development shall have regard to the desirability of preserving the setting of any listed building. Policy EV2 (vi) states that new development must have regard to the physical character and topography of the site and its surroundings by avoiding detrimental effects on the historic environment. Policy EV6 seeks to protect, preserve and enhance Scheduled Ancient Monuments and their settings as well as unscheduled archaeological sites and monuments and their settings. Policy EV9 relates to Conservation Areas and states that development within or adjacent to a Conservation Area will only be permitted if it would preserve or enhance the character or appearance of the conservation area or its setting.

Within 500m of the application site there are 3 ancient monuments, 19 listed buildings, 3 conservation areas and 3 buildings of local interest. Therefore the applicant has provided a Heritage Impact Assessment to assess the impacts on these designated heritage assets.

It should be noted that many of the heritage assets within 500m of the site have no visual relationship to the scale of the proposed development so the effect is considered to be neutral. This applies to:

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- Swansea Original Castle (this is a scheduled ancient monument for archaeological reasons)
- Mount Pleasant Hospital conservation area
- Ragged School (LB517) – this is incorrectly identified in the HIA as being of local interest only
- Albert Hall (LB099)
- Windsor Lodge (LB119)
- Former Grammar school mount pleasant (LB072)
- Offices of community and industry (LB120)
- Technical college building (LB121)
- Mount Pleasant Baptist Chapel (LB115/116/117)
- Bethesda Chapel (LB90)
- Kings Arms (LB109)
- Unitarian Church (LB112)
- Former BBC building (local interest)

With regard to the following listed buildings and buildings of local interest, there will be a visual relationship with the proposal especially the tower and the individual impacts are considered below:

- Swansea Castle (Grade I and scheduled ancient monument) – the proposed tower will be visible from elevated parts of Swansea Castle such as the turret and northern windows to the great hall (at first floor level). The proposed tower will also be visible from part of the castle courtyard looking along Worcester Place. However given the distance involved and intervening urban development visible from the castle such as the bulk of Alexandra House/ Oldway House, the relationship to the new tower is considered to be neutral. CADW have been consulted on the proposal having regard to their statutory responsibility with regard to the desirability of preserving the setting of an ancient monument. The Heritage Impact Assessment concludes that the upper storeys of the proposed building will be visible from the scheduled monuments (Swansea Castle (GM012), Original Swansea Castle (GM441,.) which will be *from some distance and within the context of intervening city centre developments*. CADW agree with the assessment of the potential impact of the proposed development on the setting of the above listed Scheduled Monuments. In their opinion, the proposed building will be visible from the Scheduled Monuments, but is unlikely to affect interpretation or understanding of the monuments and will have a negligible impact upon their settings.
- Glynn Vivian (Grade II\*) – the site is viewed in context of the streetscene to front of this listed building which is the cultural hub for the city. The proposal will be visible from the pavement area outside the new gallery entrance. This view will comprise the lower urban scale block which will reinstate the street edge and lead the eye round to the tower which marks the rail station. This would complete the civic vision for this area dating from Victorian times and therefore is considered to enhance the setting of this listed building. The site is not visible from any rooms within the original listed building due to the intervening form of the Foyer building (former Working Mans Club).

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- Ebenezer Chapel (Grade II\*) – this chapel and attached buildings lies to the north of the site. The upper floors of the proposal will be visible from the street outside the chapel but this is not a designed view and is only possible due to low scale of post war poor quality warehouses along south side of street. There are no views from chapel to site because the internal focus is to the north to pulpit and the southern windows are obscure glazed. There are currently glimpsed views of the chapel gable across the surface car park and this will be lost due to the development. However this is an incidental view that will be replaced by a high quality development. Therefore the impact is considered to be neutral.
- Former Central Police Station (Grade II) – there will be a direct visual relationship with the corner of the proposed development opposite the existing clock tower of former police station. The proposed development is sufficiently far away to not be overly dominant, but will create a modern corner building that encloses the space, reinstates the historic building line and in turn enhances the setting of this listed building. Therefore the proposal is considered to enhance the setting of this listed building.
- Former Working Man's Club, now Foyer (Grade II) – the site is viewed in the context of the streetscene to the front of listed building. The frontage of the listed building will be visible obliquely in the foreground of views to the site. The development will also be visible from side windows to rooms within the listed building. The proposed development is sufficiently far away to not be overly dominant, but will create a modern corner building that encloses the space, reinstates the historic building line and in turn enhances the setting of this listed building.
- Palace Theatre (Grade II) – the proposed tower will be visible over the roofscape to south when viewed from the pavement adjacent to the Palace. There is no key vista from the inside the building, however the roof of the Palace is widely visible from the north and in some views this will overlap with the proposed tower behind. This is all considered to be a neutral impact typical of an urban location.
- Castle Cinema (Grade II) – the tower is viewed in context of the streetscene to the front of the listed building on Worcester Place. There are no views from the side of the listed building as the north elevation is windowless and was originally a part wall. This is all considered to be a neutral impact typical of an urban location.
- Matthew Street church (Grade II). Whilst the proposed tower will not be visible from the streetscene to the front of the church nor from the church itself, it will be visible from the church yard to the rear over the immediate roofscape and this is considered to be a neutral relationship.
- Bush Hotel (Grade II demolished). Although this former pub was demolished in 2013 it is still classified by Cadw as a listed building. Permission has been granted for the façade to be rebuilt as part of the 'Urban Quarter' development using salvaged materials. The proposed tower will be viewed above the street block of Oldway House from the front of the reconstructed listed building. This is all considered to be a neutral impact typical of an urban location. The relationship is the same for the Elysium which is a building of local interest that will have streetscene views to the tower.



- Swansea Rail Station (local interest). There will be a direct relationship between the proposed tower and the rail station building and forecourt area. Currently the view to the west on exiting the station is of poor quality low scale Victorian buildings and the open aspect of the surface car park. This would be replaced by the proposed 22 storey tower with commercial units at ground floor level. Whilst this would be a considerable increase in scale it is considered to be a significant enhancement on the existing buildings and is appropriate to mark the station as a key gateway within the city. The design of the tower with vertical cladding bands coming down to ground will be a key factor to ensure a slender design in contrast to the monolithic mass of the existing Alexandra House. The proposed tower would also be visible from the carriage windows on approach to the station and the platform areas without canopies. This is considered to be beneficial to reinforce the sense of arrival.

The main heritage impact will be the effect on the Alexandra Road Conservation Area. This was designed in 1986 primarily due to the on account of the cluster of civic buildings that form part of an 'impressive curve along the Grand Boulevard'. It was also designated for the juxtaposition of the civic buildings and earlier slum dwellings that represented the evolution of the city and efforts to enhance the gateway to the city back in the Victorian period. Although the site lies outside the conservation area, it does have a direct visual relationship. Currently the view to the site from the conservation area is of a poor quality surface car park and remnant Victorian buildings. It is therefore currently a fractured and poor quality townscape. In contrast the proposal would effectively reinstate the building line of the grand boulevard linking the Victorian civic buildings such as the Glynn Vivian to the rail station in a contemporary manner. The south west corner of the proposed urban scale block will deflect the view along Alexandra Road and the proposed tower will be visible along the length of Alexandra Road as a bold marker without being overly dominant on the conservation area. These visual impacts are shown in the visuals contained in the HIA addendum which includes a view from outside the entrance to the gallery which will open later in 2016. Whilst this is significant change on the edge of the conservation area it is considered to be enhance the townscape of the Alexandra Road Conservation Area in the spirit of the original civic aspirations. There would be no impact on the former slum dwelling aspects of the Conservation Area. In conclusion, whilst the proposals will be widely visibly and of a contemporary nature, they would be neutral to beneficial in terms of the relationship to heritage assets.

### **Flood risk and Drainage**

The Flood Risk Assessment and Drainage Strategy confirm that the site is entirely within a Flood Category Zone A and therefore has a low chance of flooding. The site is currently 95% impermeable and drains to the existing adopted combined sewer system to the north and east of the site. The Drainage Assessment has determined that the most appropriate method for the surface water management associated with the proposed scheme is to discharge to the public sewer system, although soakaway/infiltration techniques cannot be completely discounted until a site investigation has been undertaken. The design of the surface water drainage to serve the scheme will have no net effect on the existing sewer infrastructure capacity. The proposed development incorporates a green/sedum roof and a courtyard landscaped area therefore surface water runoff rates may in fact reduce. With regards to foul water flows, it is assumed that the existing foul water flows from the site unrestricted to one or more of the existing combined sewers adjacent to the site.

The proposed on-site surface and foul water drainage systems to serve the scheme will be designed as separate systems and will not combine before connecting into the public sewer in accordance with current Building Regulations Part H. The Drainage Assessment concludes that the proposed development can be delivered in accordance with the requirements of the Local Authority and current Building Regulation requirements, subject to detailed design. Dwr Cymru Welsh Water and the Council's Drainage Engineers raise no objections in this regard.

#### **Pollution and ground contamination**

A Noise and Vibration Assessment has been prepared to accompany the application which has considered how the proposed site will be impacted by road traffic noise and railway noise and has also had regard to noise from the developed site in terms of mechanical service plant. This concludes that the proposed building would be located in a relatively noisy location. However, subject to the installation of acoustic glazing and controls on the mechanical ventilation system then the noise levels would be within an acceptable level.

An Air Quality Assessment has been undertaken and the conclusions are that air quality at potential future locations of relevant exposure for short-term (commercial use) and long-term (student residential use) averaging periods at the proposed development are predicted to be below the relevant Air Quality Assessment Levels. The operational phase of the scheme is not considered to lead to an adverse impact on air quality given that the development will result in an overall decrease in vehicle trips to and from the application site. The impact on air quality during the construction phase may be mitigated against in order to reduce any impact.

A Phase 1 Geoenvironmental Desk Study and Coal Mining Risk Assessment has been submitted. A preliminary assessment of the likely ground conditions within the development area indicates that the development will require a deep foundation solution such as piles down to the underlying rock. The site is considered to be at low risk of historic coal workings. The risk of significant contamination being present on the site is considered to be moderate based on the previous unknown site uses.

#### **Waste Storage**

Policy R16 states that proposals for major new developments will be required to incorporate adequate and effective waste management facilities. The supporting text states that when assessing proposals for major new developments, the provision of waste management facilities for the collection, recycling and other management of all waste likely to be generated must be included. The building accommodates residential and commercial refuse facilities at ground floor on the rear of the building which allows refuse vehicles to pick up along Mariner Street. It has therefore been demonstrated that sufficient provision is made for refuse and recycling waste that will be generated by the student accommodation and commercial units.

#### **Impact on ecology**

An Ecological Appraisal has been undertaken in order to assess habitats within and close to the site and to determine the presence of any protected species. The site is considered to be low suitability for use by bats and birds and other protected species. NRW have expressed concerns that insufficient information has been submitted to assess the possible impact on bats and advised that further surveys be undertaken.

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A further bat survey has been undertaken and concluded that there are no constraints to roosting bats on the site.

### **Conclusion**

The proposal makes efficient use of an underutilised brownfield parcel of land which is in accordance with PPW's aspiration for the redevelopment of previously developed land. The site is not considered environmentally valuable and therefore there is no detriment to the natural environment. It has been demonstrated that the proposal accords with planning policy and that it comprises sustainable development as it provides social and economic benefits with limited environmental impacts. It has also been demonstrated that the scale and massing of this development is acceptable in this location given its sustainable location.

The tower will be a bold addition to the city skyline near the train station and symbolises the successful regeneration of High Street. The 725 student rooms and high quality commercial space will generate significant levels of footfall and add a substantial boost to the diversification of High Street. The proposals mend the urban block and incorporate a slender tower of bold design with distinctive sloping roof profile. The proposals have been subject to independent expert scrutiny by the Design Commission for Wales and they support the scheme. The site is close to many heritage assets and the proposals will have a consistently beneficial relationship so these precious buildings.

Having regard to the policy framework set out in the City and County of Swansea Unitary Development Plan (Adopted November 2008), Supplementary Planning Guidance and National Policy and Guidance in the form of Planning Policy Wales and Technical Advice Notes and on balance of all material considerations it is considered that the development is acceptable.

### **RECOMMENDATION:**

**APPRVE subject to the conditions indicated below and the applicant entering into a Section 106 Planning Obligation in respect of the following clauses:**

1. **Car Parking Management in accordance with Management Plan**
  - a. The residents of the development shall be registered students only attending a Swansea based educational establishment
  - b. The Owner shall not permit any student accommodation unit to be occupied other than by persons who prior to the commencement of Occupation have entered into a tenancy agreement in writing which contains a tenant's obligation not to keep or use a motorized vehicle within one mile of the boundary of the student accommodation (unless otherwise permitted within a public car parking facility such as High Street MSCP).
  - c. The owner shall not permit any student accommodation unit to be occupied or continue to be occupied by any person who does not comply with the tenant's obligation.
  - d. The Owner shall upon written request from the Council produce to the Council evidence of the Owner's compliance with the parking restriction.

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**2. Highway Infrastructure**

Financial contributions to upgrade works to the pedestrian and cycle facilities £160,000 within the vicinity of the development site. The contributions to be made at an agreed point in the development and tied into the beneficial occupation of any of the units. The Pedestrian crossing works (£35,000) to be completed prior to beneficial occupation of any part of the development, and the cycling contribution to be tied into the occupation of the student accommodation.

**3. Air Quality Monitoring**

PM10 (particulate matter) Ebam unit (approximately £8,000) to measure the air quality impact on the proposed residents / commercial users.

**4 Section 106 Management and Monitoring Fee**

Costs incurred against the management of the obligation based on 2% of the value of the obligations = £3,360.00.

**If the Section 106 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, EV3 and HC17 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: [AL\_00\_001\_P1, AL\_01\_001\_P2, AL\_20\_001 - 008\_P2 (Floor Plans), AL\_27\_001\_P1 Roof Plan, AS\_20\_001 - 003\_P1 Sections, AE\_00)OO1 - 004\_P2 Elevations / Sections, AE\_00\_005 3D Views, W152064\_SK\_19-22 Access Movements, 11149\_L01 -LO5 Landscape, Verified Montage - VM1 - VM8 (x 2) before and after - plans received 18 March, 2016]

Reason: To define the extent of the permission granted.

3 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).

4 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).

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- 5 Samples of all external finishes together with their precise pattern and distribution on the development shall be submitted to and approved by the Local Planning Authority in writing prior to the development of superstructure works and shall be consistent with the Material Strategy within the Design and Access Statement Addendum. Composite sample panels shall be erected on site and the approved sample panel shall be retained on site for the duration of the works, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

- 6 Prior to the commencement of any superstructure works, details at an appropriate scale shall be submitted to and agreed in writing by the Local Planning Authority:

- Typical window unit;
- Typical external door within its opening;
- Shopfront;
- A sectional elevation indicating the juxtaposition of various facing materials and how typical junctions are to be detailed.
- Corner and soffit details of the cladding materials including fixing details.

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

Reason: In the interests of visual amenity.

- 7 Visual transparency shall be retained into each retail / commercial unit in accordance with a Shopfront Code, to be submitted to and approved by the Local Planning Authority prior to the occupation of any of the units. The Code shall apply to the shopfront zone which shall extend 3 metres to the rear of each shopfront.

Reason: To ensure active, attractive and transparent shopfront which will maintain and enhance vitality at street level and avoid dead retail frontages.

- 8 Notwithstanding the provisions of the Town and Country Planning (Control of Advertisement) Regulations, no advertisement shall be displayed on any external face of the building or affixed or displayed on the inside of any shopfront without the express consent of the Local Planning Authority. Advertisements shall be affixed to an internal fitting as indicated on the submitted plan, the details of which shall be agreed pursuant to conditions 5 and 6 of this permission, and an appropriate application for Advertisement Consent.

Reason: To ensure a consistent advertisement approach is adopted for the development which respects the simple architectural form of the building (which specifically does not provide for external fascia signage) and does not detract from the visual amenity of the area.

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- 9 Notwithstanding any detail shown on the approved plans, details of all wind mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The proposed mitigation measures shall be referenced to the wind microclimate assessment and shall be implemented in accordance with the approved scheme and retained thereafter to serve the approved development.  
Reason: In the interests of visual amenity and to ensure that the wind mitigation measures create an acceptable wind microclimate in and around the development.
- 10 Notwithstanding the details shown on any approved plan, unless otherwise agreed in writing by the Local Planning Authority, precise details of the location, extent, design and finish of all visible external ventilation shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any superstructure works.  
Reason: In the interests of visual amenity.
- 11 Unless otherwise agreed in writing by the Local Planning Authority, prior to the beneficial occupation of any Class A3 unit, a method of ventilation and fume extraction shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.  
Reason: To prevent any nuisance from fumes and / or cooking odours to the occupiers of neighbouring premises.
- 12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking or amending that Order), Part 24 of Schedule 2 shall not apply.  
Reason: The development hereby approved is such that the Council wish to retain control over any future development being permitted in order to ensure that a satisfactory form of development is achieved at all times.
- 13 Unless otherwise agreed in writing by the Local Planning Authority and notwithstanding the details shown on any approved plan, no superstructure works shall commence until a scheme for the hard and soft landscaping of the site has been submitted to and approved in writing by the Local Planning Authority. 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.

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- 14 Unless otherwise agreed in writing by the Local Planning Authority, no development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.  
Reason: To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.
- 15 All works to the Highway (footway and carriageway) shall be undertaken under a section 278 agreement with the Highway Authority. This will include resurfacing of the footways on all frontages to High Street, Alexandra Road, Orchard Street and Mariner Street.  
Reason: In the interests of highway safety.
- 16 Vehicular servicing of the development along Mariner Street shall be in accordance with details to be submitted to and approved in writing by the Local Planning Authority and the kerb line on the north eastern junction point on High Street needs to be realigned to allow the footway to be widened to 2 metres.  
Reason: In the interests of highway safety.
- 17 The development shall be carried out in accordance with a travel plan to be submitted to and agreed in writing by the Local Planning Authority prior to any beneficial use of the development commencing.  
Reason: In the interests of sustainability and to prevent unacceptable highway congestion.
- 18 Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement of construction works a Construction Pollution Management Plan (CPMP) should be submitted to and approved in writing by the LPA. The CMP shall include the following:
- a) Demolition/Construction programme and timetable
  - b) Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas etc
  - c) Traffic scheme (access and egress) in respect of all demolition/construction related vehicles;
  - d) An assessment of construction traffic generation and management in so far as public roads are affected, including provisions to keep all public roads free from mud and silt;
  - e) Proposed working hours;
  - f) Principal Contractor details, which will include a nominated contact for complaints;
  - g) Details of on site lighting (including mitigation measures) having regard to best practicable means (BPM);
  - h) Details of on site dust mitigation measures having regard to BPM;

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- 18
- i) Details of on site noise mitigation measures having regard to BPM;
  - j) Details of on site vibration mitigation measures having regard to BPM;
  - k) Details of waste management arrangements (including any proposed crushing/screening operations); and
  - l) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice to be served by Principle Contractor on Local Authority.

Items g) - l) inclusive need to take particular account of the potential for statutory nuisance from site related activities.

The development shall be implemented in accordance with the approved CPMP.

Reason: To enable the developer to present a coherent plan addressing all environmental pollution issues likely to impact on the public.

- 19
- Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement of construction works a Site Waste Management Plan should be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved Site Waste Management Plan.

Reason: To enable the developer to present a coherent plan addressing all environmental pollution issues likely to impact on the public.

- 20
- Unless otherwise agreed in writing by the Local Planning Authority, no development shall commence until 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 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.

- 21
- Foul water and surface water discharges must be drained separately from the site and no surface water shall be allowed to connect (either directly or indirectly) to the public foul sewerage system. No land drainage run-off will be permitted, either directly or indirectly, to discharge into the public sewerage system.

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

- 22
- Unless otherwise agreed in writing by the Local Planning Authority, prior to the beneficial use of the development a scheme shall be submitted to and approved in writing by the Local Planning Authority that adequately restricts the flow of sound energy through party walls and floors between the commercial and residential class uses within the development. The scheme supplied shall achieve a minimum DnT,w - (Ctr) of 50dB for the ceiling/floor between the commercial and residential uses and be verified by the appropriate testing methodology upon completion.



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22 Reason: To protect the proposed residential use against noise emanating from the commercial activity on the ground floor

23 Prior to occupation of any part of the development a scheme shall be submitted to and approved in writing by the Local Planning Authority to provide the following:

All habitable rooms exposed to external road traffic noise in excess of 63 dBA Leq 16 hour (free field) during the day (07.00 to 23.00hrs) or 57 dBA Leq 8 hour (free field) at night (23.00 to 07.00 hours) shall be subject to sound insulation measures. These measures should ensure that all such rooms achieve an internal noise level of 35 dBA Leq 16 hour during the day and 30 dBA Leq 8 hour at night as set out in BS 8233:2014 Guidance on sound insulation and noise reduction for buildings.

The submitted scheme shall ensure that habitable rooms subject to sound insulation measures shall be provided with mechanical ventilation units so that future residents can keep their windows closed. No habitable room shall be occupied until the approved sound insulation and ventilation measures have been installed in that room.

Reason: To protect the proposed residential use against noise arising from the existing traffic use of the area.

24 Prior to beneficial use of the development a scheme shall be submitted to and approved in writing by the Local Planning Authority to provide the following:

All building services plant noise shall be designed to achieve a rating level (dBLArTr), , that does not exceed the representative night time background sound pressure level (LA90,15min) in accordance with BS 4142:2014. Methods for rating and assessing industrial and commercial sound.

Reason: To protect the existing and proposed residential uses against noise from building services plant.

25 Prior to beneficial use of the development 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.

Reason: To protect the proposed and neighbouring residential use against noise emanating from such units.

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26 Prior to the commencement of development (unless otherwise agreed by the Local Planning Authority) a Phase 2: Detailed Investigation shall be submitted which 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 the Patrick Parsons Phase 1 Report, mariner Street, Swansea (N16053)

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.

27 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.

Reason: To ensure that the safety of future occupiers is not prejudiced.

28 Prior to the commencement of demolition/construction works on the application site a Dust Management Plan (DMP) shall be submitted to and approved in writing by the Local Planning Authority. The DMP is to include the Mitigation Measures set out in Table 5-4 of The Air Quality Assessment, Mariner Street Student Accommodation, Swansea (N16053).

Reason: To ensure minimal nuisance impact on local residents/ businesses from dust arising from construction activities.

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- 29 Prior to the commencement of any works on the site a Piling Assessment report shall be submitted to and approved by the Local Planning Authority. The report shall set out the different types of piling methods that could be utilised at the site; along with consideration of the noise and vibration effects that the operation may have upon surrounding land uses and the mitigating measures that may be utilised.

Reason: To protect the residential and commercial land uses from noise and vibration within the surrounding area.

### INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (UDP Policies EV1, EV2, EV3, EV4, EV5, EV6, EV9, EV13, EV33, EV35, EV36, EV38, EV40, EC3, EC4, EC6, HC1, HC11, HC17, R16, AS1, AS2, AS5, AS6, CC1 & CC2)
- 2 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 [mark.jones@swansea.gov.uk](mailto:mark.jones@swansea.gov.uk) , tel. no. 01792 636091. In particular, prior to any works commencing a Construction Traffic Management Plan will be required to be agreed with the Highway Management Group.

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ITEM 2

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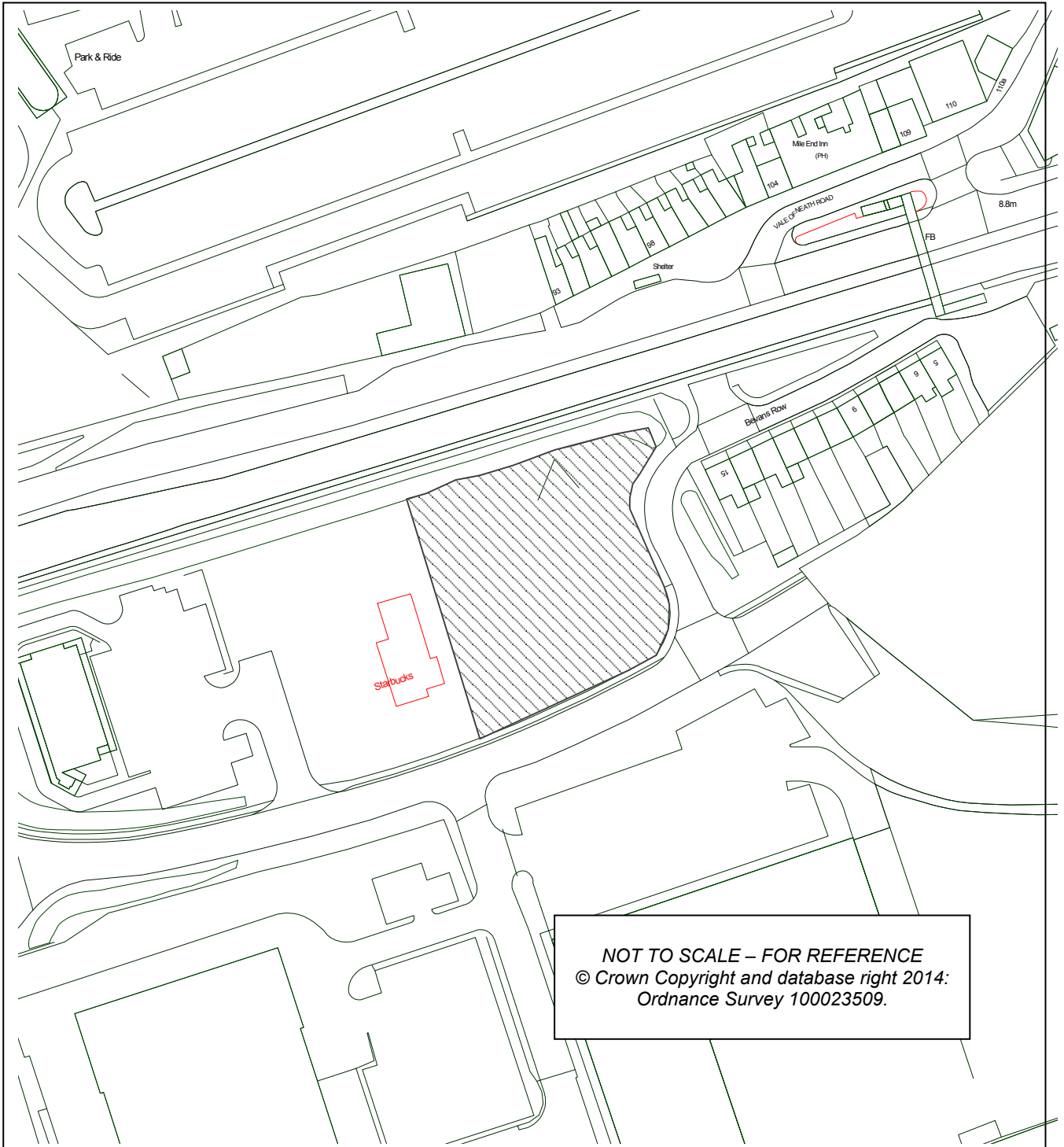
WARD:

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



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### **BACKGROUND INFORMATION**

**This application was DEFERRED FOR A SITE VISIT at the Planning Committee on the 10<sup>th</sup> May 2016 in order to assess public concerns.**

### **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)

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- 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 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)<br>Decision: *HGPC - GRANT PERMISSION CONDITIONAL<br>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<br>Decision: *HRP - REFUSE PERMISSION<br>Decision Date: 06/03/2001 |
| A00/6088       | Erection of an internally illuminated fascia sign and 2 No. internally illuminated freestanding pole signs<br>Decision: Withdrawn<br>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<br>Decision: Refuse<br>Decision Date: 12/12/2000                              |
| 2005/1528      | Construction of single storey foodstore with associated car parking and landscaping<br>Decision: Refuse<br>Decision Date: 31/01/2006  |
| 2006/1710      | Construction of single storey foodstore with associated car parking and landscaping<br>Decision: Refuse<br>Decision Date: 23/11/2006  |

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ITEM 2 (CONT'D)	APPLICATION NO.	2015/2223
2014/1729	Construction of drive through retail coffee house (Class A3) Decision: Perm Subj to S106 Agree Decision Date: 22/05/2015	
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. 8 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.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

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

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.



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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. 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.

### 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. 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.

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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. 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.

It has been requested that the contribution be reserved for improvement of the Fabian Way Park and Ride roundabout which is adjacent to the development site in order to improve sustainable transport in the area. The improvement of the Park and Ride site will go some way to offsetting the traffic increases that will arise from this new use. Such a contribution is considered reasonable having regard to the impacts arising from the new development.

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'.

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### Response to Consultations

Notwithstanding the above 8 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.

### 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, EV40jones 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. The contribution shall be reserved for improvements of the Fabian Way Park and Ride Roundabout adjacent to the development site.**
- **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.

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- 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.
- 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.

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- 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. 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.

- Continued -



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11 Phase 1 report: Desk Top Study

this shall:

- \* Provide information as to site history, setting, current and proposed use.
- \* Include a conceptual site model to establish any potentially significant pollutant linkages in the source-pathway-receptor human health and environmental risk assessment.
- \* Identify if further investigation or remediation is required.

In the event that the Local Planning Authority is then of the opinion that further investigation/ information is required the applicant shall submit a detailed site investigation [Phase 2] report to the Local Planning Authority, viz:

Phase 2: Detailed Investigation

this shall:

- \* Provide detailed site-specific information on substances in or on the ground, geology, and surface/groundwater.

Provide for a more detailed investigation [Human Health Risk Assessment] of the site in order to confirm presence or absence of, and to quantify, those potentially significant source-pathway-receptor pollutant linkages identified in Phase 1.

Note; where any substance should be encountered that may affect any controlled waters the applicant, or representative, must contact the 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.

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ITEM 2 (CONT'D)

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- 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.

- 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.

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**INFORMATIVES**

3 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV3, EV33, EV35, AS1 and AS6.

4 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.

5 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.

6 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.

7 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).

8 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)

- 6 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.

#### 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.

- 9
- 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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ITEM 3

APPLICATION NO.

2015/1938

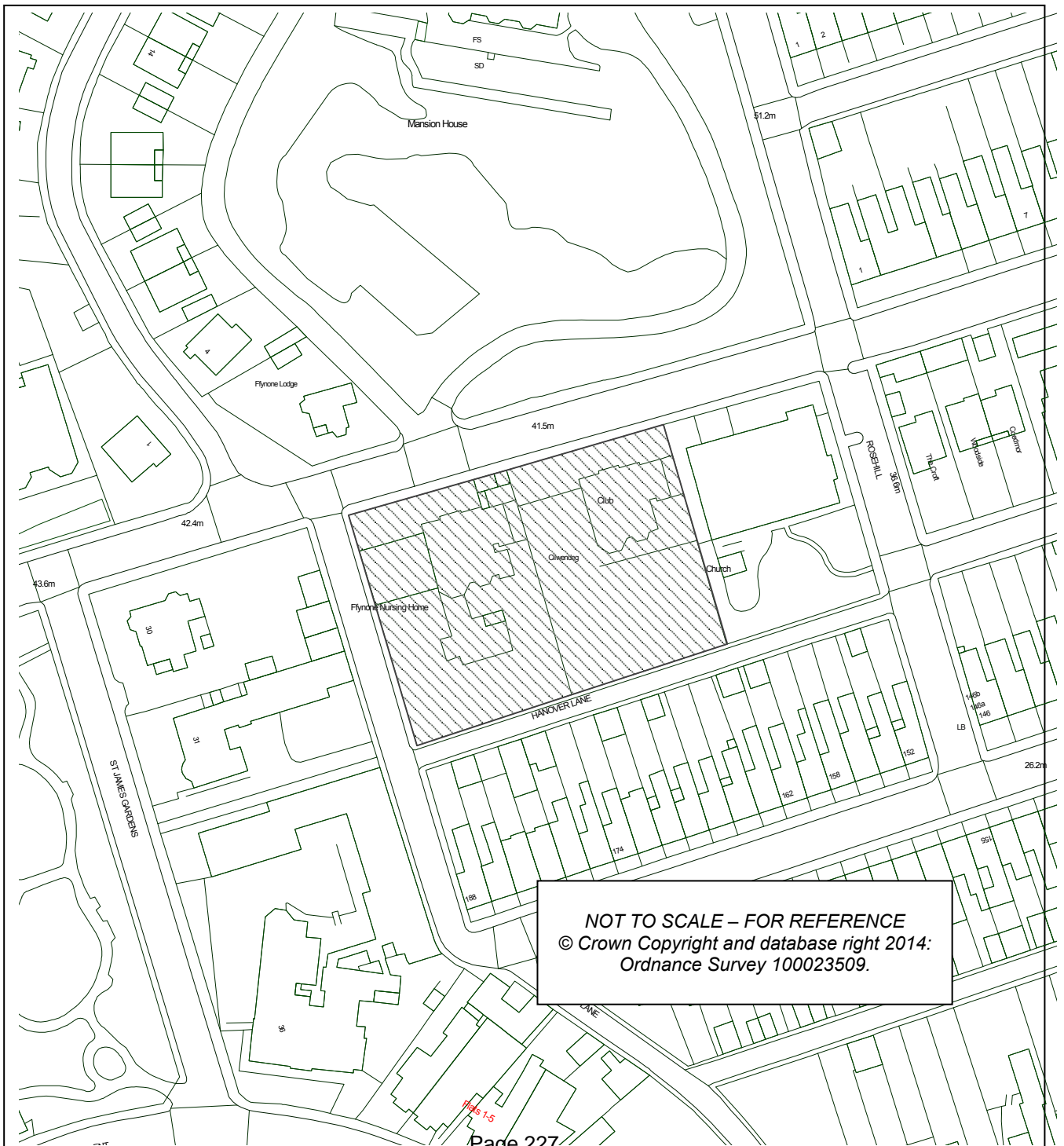
WARD:

Uplands

**Location:** Former Wings/RAFA Club & Uplands Nursing Home (Llwynhelyg and Cilwendeg Houses), Ffynone Road, Uplands, Swansea, SA1 6BT

**Proposal:** Demolition of sections of existing buildings to facilitate side extension, link extension and conversion of existing buildings to provide 24 apartments, construction of a pair of detached two storey coach houses to provide a total of 8 apartments, with associated works, landscaping and car park provision.

**Applicant:** Con Moloney



## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 3 (CONT'D)

APPLICATION NO.

2015/1938

### **BACKGROUND INFORMATION**

**THIS APPLICATION IS REPORTED TO COMMITTEE FOR DETERMINATION AS IT REACHES THE THRESHOLD OF 20 OR MORE RESIDENTIAL UNITS.**

### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
Policy 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 EV9	Development within or adjacent to a Conservation Area will only be permitted if it would preserve or enhance the character and appearance of the Conservation Area or its setting. (City & County of Swansea Unitary Development Plan 2008)
Policy HC1	Allocation of housing sites for 10 or more dwellings. (City & County of Swansea Unitary Development Plan 2008)
Policy 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 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 EV4	New development will be assessed against its impact on the public realm. (City & County of Swansea Unitary Development Plan 2008)
Policy EV12	The character of lanes and public paths that contribute to the amenity, natural and historical qualities of an area will be protected. (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)

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ITEM 3 (CONT'D)

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- 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 AS6 Provision of car parking in accordance with adopted standards. (City & County of Swansea Unitary Development Plan 2008)

### SITE HISTORY

#### App No.

#### Proposal

- 2005/1438 Construction of a three storey side extension, three storey link extension to existing nursing home/ RAFA club, conversion of existing building as extended to form 24 self contained apartments, construction of two detached coach houses to accommodate eight self contained apartments together with parking and landscaping (amendment to planning permission 2003/2060 granted on 6th July 2004)  
Decision: Grant Permission Conditional  
Decision Date: 30/05/2008
- A00/1844 DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF TWO 5 STOREY BLOCKS OF 36 FLATS TOGETHER WITH LANDSCAPING AND PROVISION OF 45 CAR PARKING SPACES  
Decision: Withdraw  
Decision Date: 21/02/2001
- 2003/2060 Construction of a three storey side extension, three storey link extension to existing Nursing Home/ RAFA Club, conversion of existing building as extended to form twenty four self contained apartments, construction of two detached coach houses to accommodate four, self contained apartments and a pair of semi detached dwelling houses together with parking and landscaping  
Decision: Grant Permission Conditional  
Decision Date: 06/07/2004
- 2013/0834 Variation of condition 1 of planning permission 2005/1438 granted on 30th May 2008 to extend the period of time to commence works for a period of two years  
Decision: Approve Conditional (S73)  
Decision Date: 21/10/2013

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2014/1535      Variation of condition 1 of planning permission 2005/1438 granted on 30th May 2008 and 2013/0834 granted on 21st October 2013 to extend the period of time to commence works for a period of two years  
Decision: Approve Conditional (S73)  
Decision Date: 10/12/2014

### RESPONSE TO CONSULTATIONS

The application was advertised on site and in the local press as a development within the Conservation area. EIGHT LETTERS have been received which are summarised as follows:-

- Generally support the proposed redevelopment; this site has remained in deteriorating condition for far too long.
- Concerns over retention of trees on perimeter of site. Would like to see all significant trees retained.
- Architecturally the drawings appear understated for the Ffynone and would like more stonework features incorporated into the facades of the new build sections. I am not sure such large areas of white render are sympathetic to the type of architecture in the existing conservation area.
- Concerned to see that the size of the building will increase the current building size reducing green space/garden space of these properties.
- Has there been a bat and protected species survey for this site.
- Concerns about amount of car parking provision for residents.
- Ffynone Road is already difficult because of current parking.
- Design looks concrete jungle like, not good for conservation area.
- Height of building is far too large. It will damage the appearance and character of the area.
- Insufficient parking space.
- The only access is onto Bullins Lane which is narrow.
- We support the proposed enhancements. The design retains the existing North and East Elevation. Consideration should be given to incorporating some of the existing stone work from the demolished south elevation in the new build. New bays on south side hipped as the existing.
- Soundproofing – the building next door is used for worship, weddings and community and conference activities.
- The access should be set back to ensure vehicle access on site rather than road.
- Proposal is overbearing and out of character with the Ffynone Conservation Area.
- Concerns about stability of the front facades which are to be retained.
- The retaining wall at the south side should be retained unaltered.
- Current frontage to Ffynone Road should be repaired and retained.
- Window surrounds should be bath stone.
- Developer should be made liable for repairs to local roads.
- Site access is not suitable.
- A return should be added to the walls of the vehicle access gateway onto Bullins Lane, and the gates moved sufficiently far into the site that delivery vans would be parked completely off the road.
- Can a condition be imposed for a full survey of the site and file with appropriate archives. This would ensure a lasting record of the buildings.



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- The detail of this application fall short of previous assurances and proposals.
- Implications to the locality during construction.
- All contractor parking should be provided on site.

**Glamorgan Gwent Archaeological Trust (GGAT)** – The proposal will require mitigation.

We do not have any objections to the granting of the application on archaeological grounds. However, it is our opinion that the buildings are of historic importance therefore, a full record focussing on the affected parts of the structure both by the means of a descriptive, drawn and photographic record should be made, prior to any works being undertaken.

In order to ensure that the work is undertaken we recommend that a condition based on the model suggested by the Association of Local Government Archaeological Officers in their document *Analysis and Recording for the Conservation and Control of Works to Historic Buildings* should be attached to any planning consent granted by your Members. This condition is worded: -

*No site works shall be undertaken until the implementation of an appropriate programme of building recording and analysis has been agreed with the local planning authority, to be carried out by a specialist acceptable to the local planning authority and in accordance with an agreed written specification.*

The justification for the imposition of the condition would therefore be: -

*As the building is of architectural and cultural significance the specified records are required to mitigate the impact of the development.*

**Designing out Crime Officer** – Comments for Secured by Design

**Welsh Water Dwr Cymru** – No objection subject to informatives.

**Authority's Ecologist** – No objection subject to conditions as recommended by NRW.

**Authority's Drainage Engineer** – No objection subject to conditions

**Highway Observations** – No objection subject to conditions.

**NRW** – Recommend that planning permission should only be given subject to conditions. On the basis of the information provided, we are of the view that the proposed development is likely to give rise to the need for a licence application. However, we do not consider that the development is likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range subject to conditions.

## APPRAISAL

### Introduction and Background Information

Planning permission was granted on the 30<sup>th</sup> May, 2008, at the former Wings/RAFA Club & Uplands Nursing Home for the Construction of a three storey side extension, three storey link extension to the existing nursing home/RAFA club, conversion of existing building as extended to form 24 self contained apartments, construction of two detached coach houses to accommodate 8 self contained apartments together with parking and landscaping (Planning permission 2005/1438 refer).

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This planning permission was an amendment to a similar development granted planning permission under application ref. 2003/2060 granted on the 6<sup>th</sup> July, 2004.

The planning permission granted under planning ref. 2005/1438 in 2008 was subject to the standard time limit condition and a number of other conditions.

Planning permission 2013/0834 was granted on 21<sup>st</sup> October 2013 to extend the period of time to commence development for a further year.

Planning permission 2014/1535 was granted on 10<sup>th</sup> December 2014 to extend the period of time for a further two years to commence works.

There is therefore a long planning history of approvals for a similar scheme for 24 self contained apartments and two detached coach houses to accommodate 8 self contained apartments at this planning application site. Furthermore, planning permission Ref: 2005/1438 extended for a further two years Ref:2014/1535 is a live planning permission and a material consideration.

### **Material Change in Planning Circumstances**

There have been a number of material changes in circumstances since the granting of the original planning permission 2003/2060 and 2005/1438 in particular.

Firstly, the prevailing development plan has changed from the Swansea Local Plan Review No.1 to the City & County of Swansea Unitary Development Plan (UDP), which was adopted in November 2008. The UDP comprises two parts, Part 1 and 2. Part 1 sets out the broad vision and aspirations for development and conservation together with the overall strategy for pursuing them. Part 2 translates these goals and objectives into more detailed policies. The main UDP policies relevant to this application are Policies EV1, EV2, EV3, EV4, EV9, EV12, EV30, HC1, HC2, and AS6.

In particular, UDP Policy EV9 requires that development within or adjacent to a conservation area should preserve or enhance the character and appearance of the area and new development in such locations must also be of a high standard of design, and meet a number of specified criteria. Policy HC2 supports proposals for infill housing development within the urban area provided they meet certain criteria. These policies are reinforced by Policies EV1, EV2, and EV4 which require that new developments relate satisfactorily to local context, protect the amenities of the surrounding area, having regard to visual and residential amenity and highway safety, take into account existing features such as trees, and integrate effectively with adjacent spaces and the public realm. Policy EV12 seeks to protect the character of lanes and public paths that contribute to the amenity, natural, and historical qualities of an area that will be protected. Policies EV3 and AS6 require that proposals provide access and facilities for all and provide adequate off street car parking.

Having regard to the above policy framework, it is considered that the current UDP and National Planning guidance is therefore supportive in principle to the proposed redevelopment of the site for residential development at the application site. Furthermore, the site is specifically allocated as a Housing site for 10+ dwellings in the development plan under Policy HC1.

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Policy HC3 - Under the provisions of the City and County of Swansea Unitary Development Plan 2008 there is now a requirement under Policy HC3 for affordable housing provision in areas where a demonstrable lack of affordable housing exists. In most parts of the Plan area such negotiations will focus on sites on 1ha or more or phases of such development.

This application site has a long history of residential approvals and has an extant permission where there was no requirement for affordable housing or planning obligations. In addition, the developer has submitted information to clarify the exceptional build costs involved in the re-development viability of this site due to the development cost associated with retaining the existing facades of Cilwendeg and Llwyn Helyg as part of the Conservation Area requirement.

The supporting information in the Design and Access Statement (page 8) sets out the constraints as follows: ...The new development makes a positive contribution plus retains the character of the area and specifically the retaining and incorporation of the existing pennant stone facades to Ffynone Road. The exceptional costs listed were not envisaged at the time of purchase (approx. 10 years) which would render the redevelopment of this site unviable as originally envisaged. Additional development and construction costs for retaining and including the existing facades within the development amount to approximately £386,000 for these elements alone.

Having regard to the above, and given that the site is an allocated housing site under Policy HC1, has an extant planning permission for a similar scheme (Ref:2014/1535), the history of the application site for housing and the viability constraints, it is not considered reasonable to require an element of affordable housing provision for this proposal which seeks amendments to an extant permission.

### **Conservation Area Review**

It should also be noted review of the Ffynone Conservation Area has been completed and was adopted as Supplementary Planning Guidance on 12<sup>th</sup> January 2016. The general consensus from the public during the consultation period for the review was that these buildings need to be brought back into beneficial use to address issues of anti-social behaviour and the condition of the properties. Within the Ffynone Conservation Area – Character Appraisal and Management Plan these buildings are highlighted in Chapter 5: Character Areas, para.5.5...*'These two privately owned buildings are completely derelict and planning permission was granted in December 2014 to extend the time period to implement and existing development proposal on the site by a further 2 years'*. Para.5.8 of the document goes on to note that issues in this area of the Conservation Area include .....*'the very poor condition of the former Ffynone Nursing Home and the former RAFA Club in Ffynone Road which are subject to approved development proposals yet to be implemented'*

The document goes on to note in Chapter 6: Issues and Opportunities, para.6.5 ...A number of sites for enhancement have been noted. These include;

- The former Ffynone Nursing Home and former RAFA Club in Ffynone Road.

In Chapter 8: Recommended Actions, para 8.29 refers specifically to the former Ffynone Nursing Home and former RAFA Club in Ffynone Road and notes that .... *'for the local community, the continued and deliberate neglect of these two important buildings is the most important 'issue' in Ffynone & Uplands Conservation Area today'*.

### **Main Issues**

The main issues for consideration are whether the proposal is acceptable at this site, having regard to the previous planning approvals and extant planning permission, without compromising the character and appearance of the conservation area, and environment of the existing site, whilst respecting the character of the street scene and surrounding area, the amenity of residents of neighbouring properties, and highway safety in the locality. There are in this instance no additional overriding considerations arising from the provisions of the Human Rights Act.

### **Description**

The application site is the former Wings/RAFA club and Uplands Nursing Home, Ffynone Road, Uplands. The houses (which were historically known as Llwyn Helyg and Cilwendeg as carved into the gate posts) are unlisted buildings of local importance within the Ffynone Conservation Area. These buildings are situated in their own extensive and walled grounds, with the Mansion House to the north on the opposite side of Ffynone Road, and the Lifepoint Centre bounding the site on the east. The western boundary of the site is formed by Bullins Lane, and the southern boundary by Hanover Lane.

The pair of buildings on the site are almost identical stone faced Victorian villas, which have the potential to make a strong contribution to the streetscene on Ffynone Road, and are typical of the detached urban villa residences of the mid 19<sup>th</sup> Century. At the Ffynone Road frontage their building height is 2 storeys, whereas the rear elevations are 3 storeys in height, reflecting the profound north to south slope of the site. Whilst both buildings have previously been extended, they are currently in a very dilapidated condition and the whole site has been subject to increased vandalism and other forms of anti-social behaviour, resulting in problems associated with health and safety, crime and the fear of crime and the general deterioration of the area's appearance. The area of land to the rear of the buildings consists partly of a hard-standing car park and a garden which has recently been cleared of heavy overgrowth and invading trees and vegetation. There are a number of mature trees within the site, some of which are protected by Tree Preservation Orders in addition to Conservation area protection, and are considered to contribute to the visual amenity of the Conservation area.

The frustration of the local community at the condition of the buildings and wider site coupled with the lack of action over many years with regard to these two unlisted Victorian buildings in the Ffynone Conservation Area is understandable. Whilst the lack of any past action by the owner is not a material planning consideration, the viable redevelopment of the site and bringing forward a scheme which will make a 'positive' contribution to the special interest and character of the Ffynone & Uplands Conservation Area is acknowledged. The longer the buildings remain vacant they will continue to deteriorate and become dangerous structures leading to the eventual demolition of these buildings, to the significant detriment of the surrounding area and neighbouring properties.

### **The current proposal**

The proposed development includes:

24 apartments and 2 blocks of mews/coach house style cottages with 4 units in each providing a total of 32 residential units overall.

12 covered car parking spaces with 26 external car parking spaces providing a total of 38 car parking spaces within the curtilage of the site.

The site falls relatively steeply from North to South with a level difference of approximately 6 metres between the north and south boundaries. Two existing retaining walls run west to east to create level terraces which split the site into three separate levels. The ridge levels of the main existing buildings are to be left unchanged. These act as the highest point of the development. All new build ridge heights are lower than the existing ridges. This is evident in the proposed feature gable to Ffynone Road elevation which has a lower ridge than existing facades either side. All new build elements are set back from the existing facades. This is in order to appear subservient so the new build elements will read as separate elements when viewed from the street.

### **Design and Conservation Area Team Leader Comments**

As set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 a Conservation Area is defined as 'an area of 'special architectural and historic interest, the character or appearance of which it is desirable to preserve or enhance'. Section 72 of the Act specifies that in making a decision on an application for development in a conservation area, special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area. This consultation response identifies the relevant features of the conservation and considers the proposals against the statutory test for Conservation Areas.

There were originally three identical detached two storey villas onto Ffynone Road with three stories to the rear overlooking Swansea Bay. They were put to different uses with Llwyn Helyg (west end) becoming the Ffynone Nursing Home and Cilwendeg (east end) becoming the RAFA club with the third house demolished in the 1950s for the Synagogue (this is now the Life Point Church)

The Ffynone Conservation Area Review was adopted as Supplementary Planning Guidance in January 2016 and is a material planning consideration. As detailed earlier in this report the document highlights that this part of the conservation area is characterised by large detached buildings set in generous grounds, therefore these buildings are important elements of character but their derelict condition is a major concern.

The existing derelict buildings are not listed but they are certainly of local importance. Whilst they are not architecturally distinct they do form features of this part of the Ffynone Conservation Area which is characterised by large detached houses in spacious grounds with mature trees. Their main contribution to the conservation area character is the frontages onto Ffynone Road. The rear elevations are visible outside the conservation area.

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Whilst comparison will be made with the scheme approved under planning application 2005/1438 that was last renewed in 2014 for a period of 2 years, it should be noted that it further survey work has been carried out and the earlier scheme was not accurately drawn.

The principle of a part retention/ residential conversion and part new build/ extension is supported on this site within an established community with access to a range of local facilities/ public transport provision.

This site has been the subject of positive pre-application discussions. The application is accompanied by a survey of the existing buildings and rendered eye level perspective views of the proposals.

The previously approved scheme (Ref: 2005/1438) that has an extant permission until 2016, comprised new linking development between the retained buildings, new extension alongside Bullins Lane and two new mews blocks in the rear of the site. The revised scheme proposes the retention of the front (north) elevations to Ffynone Road including the subservient side elements and the gables. Whilst this represents less retention than the previous scheme, the new elements have a comparable visual richness to offset the loss of the original elements and are sensitive to both the retained elements and the conservation area character. The roofs to the retained elements will be rebuilt to the original pitch and ridge height along with the historic chimneys. The restoration of the Ffynone road elevation includes stonework repairs and new timber sliding sash double glazed windows. The applicant has provided a structural assessment of the existing buildings which indicates that they are capable of propping and retention as part of a new development and this can be ensured by condition.

The proposed linking new build element between the retained stone facades is subservient being set below the existing eaves and ridge level. It is also set back from the main building line. In this manner the linking element manages to preserve the independence of the original stone faced elevations and is sympathetic to the character of large detached houses. The proposed side extension along Bullins Lane turns the corner in a positive manner using fenestration and the architecture. There is a clear front and back with the south elevation being subservient.

The design of the new street elevations proposes predominantly render which is appropriate given the other rendered properties in the conservation area under a slated roof. Natural stone window surrounds are proposed. The windows in the new elements are proposed to be double glazed aluminium frames which is acceptable although the colour can be agreed by condition. The design of the new build elements has a level of articulation and visual richness that is appropriate to the retained elements and context.

The main change from the previous approved application is the completely new rear elevation. Whilst this will result in the loss of some unlisted historic fabric, the proposed rear (south) elevation is sympathetic to the original appearance. It is broken into three elements with pitched roofs to either side and new rear bays below finished in natural pennant stone, whilst the centre section has a more contemporary appearance with projecting flat roof and inset glazed top floor (this is hidden from Ffynone Road by the slated roof slope). It is considered that this approach makes the most of the opportunity (namely the expansive southern views over Swansea Bay), whilst remaining sensitive to the conservation area context.

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This is a similar approach to the former Mumbles Conservative Club which is an unlisted building of local interest in the Mumbles Conservation Area; in this example permission was granted for conversion to flats with the front elevation retained and a new structure to the rear.

The rear elevation will be visible from outside the conservation area looking up from lower areas particularly along Swansea Bay. The articulation described above will break this elevation down and from a distance it will be read as three separate buildings.

The proposed residential use integrates well with Ffynone Road with four separate legible pedestrian entrances into separate stair cores (this includes the reuse of the pair of original entrances). There is also a separate pedestrian access from the lower level parking basement.

The existing stone wall along Ffynone Road/ Bullins Lane/ Hanover Lane is proposed to be retained and repaired which is welcomed to preserve a feature of the conservation area. However the drawings do not reflect the current changes in wall height, so details of works to the retained wall should be required by condition.

The flats are mainly dual aspect, accessed by stair clusters without the need for internal corridors. This means that they look in both directions onto Swansea Bay and Ffynone Road which is beneficial for natural surveillance and a lively streetscene.

At the rear of the site, the undercroft parking is concealed by a podium upstand. This is very similar to the approved scheme and the detail now indicates that the podium would be faced with natural pennant stone. The perceived height of this stone wall is kept to the minimum by the glass balustrade on top.

The mews cottages that formed part of the previous approved application are retained along the southern boundary. Whilst there will be a considerable height difference between the development to the north and the mews, this is similar to the previous approved scheme and reflects the hierarchy of main dwellings and out buildings. The area between the podium and mews cottages provides additional parking which is accessed from the entrance off Bullins Lane and the courtyard is softened by planting. Refuse collection/ storage is in a screened area behind the wall off Bullins Lane so there is no need for service vehicles to enter the site.

Amended plans were submitted in December 2016 to address a number of issues raised and the following amendments were made which comprise briefly:

### **South elevation**

- Rear gables altered to lead hip roofs
- Bays amended to have full height windows
- Additional two storey bays added to living room windows
- Bays finished in new pennant stone with bathstone dressings
- Overall this improves the reference to the existing character and increases the quality of the scheme.

**North elevation**

- The entrance to the new build linking element has been reduced in projection and detailed to reflect the existing gables.
- This makes the new build less dominant and more contextual

These amendments are considered acceptable.

A further set of amended plans were received in January 2016 and the latest amendments show the existing gable profile and ridge height correctly and provide mitigation for protected species as part of the design proposals.

**Visual Amenity**

In conclusion, and as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 a Conservation Area is defined as 'an area of 'special architectural and historic interest, the character or appearance of which it is desirable to preserve or enhance'. Section 72 of the Act specifies that in making a decision on an application for development in a conservation area, special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area. This consultation response identifies the relevant features of the conservation and considers the proposals against the statutory test for Conservation Areas.

It is considered that the proposed scheme would *preserve* the character of the Ffynone and Uplands Conservation through the retention of the street elevations of the unlisted villas, along with the existing stone boundary walls and many of the mature trees. The conservation area would be *enhanced* through these derelict buildings being brought back into use and through sensitive new build that is subservient to the existing buildings whilst making the most of the elevated outlook over Swansea bay. Therefore approval is recommended subject to the conditions.

**Residential Amenity**

With regard to the impact of the proposal on residential amenity, it is not considered that the nature and use of the proposal will result in any increased detriment to the amenities of the nearest residents of the surrounding area over and above that of the approved extant planning permission for this application site (Ref: 2005/1438), and especially having regard to the former commercial use of these properties and the continuing dereliction of the buildings and current abuse and vandalism of the site, which has a significant impact on the visual amenities of the street scene and the resultant disturbance and concerns to local residents. It is not considered that the scale, design, and layout of the scheme will have any significant demonstrable adverse physical or visual impact or overlooking/loss of amenity to neighbouring properties, given the separation distances and orientation of the proposed development, that would be so harmful to warrant a recommendation of refusal. Whilst it is acknowledged that there will be an increase in traffic and pedestrian movements to this location, this is not considered to be to such a degree that it will cause a harmful loss of amenity through increased noise or disturbance to the surrounding residential properties. It must be acknowledged that there is a history of planning approvals to residential use at this site and the need to ensure that the site is re-developed into a viable and sustainable active use is vital to the visual amenity of the Conservation Area and to ensure that the security of the area and amenity of the existing residents is safeguarded. On this basis, it is considered that the proposal complies with development plan policy.



### **Highway Safety**

There is a history of planning permissions on the site and the principle of residential use has already been established.

A total of 36 car parking spaces are being provided which is sufficient to provide one per residential units. Cycle storage is also included. Access improvements are proposed at the point of vehicular access including the introduction of a visibility splay and a sliding gate. There are minor works required on the adopted highway to facilitate this and these will be required to be completed under a section 278 Agreement with the Highway Authority. The gate is set back a suitable distance to allow a car to be off the highway so as not to obstruct the flow of traffic on Bullins Lane. Additional pedestrian access points are available.

The parking area will not be offered up for adoption and will remain in private ownership. Given the planning history of the site, the Head of Transportation and Engineering raises no highway objection subject to conditions.

### **Impact on protected trees**

An arboricultural report has been submitted to support the application and the Authority's Tree Officer visited the site. It is acknowledged that trees will have to be removed to facilitate the development and the majority of the trees on the site are self-set sycamores. The approved scheme also necessitated the removal of trees.

Along the front wall the copper beech T4 and lime T9 are to be retained. The majority of the trees are going to have to be removed to facilitate the development, most are self-set sycamores. Along the front wall the copper beech T4, Pine T8 and the lime T9 are to be retained.

The large cypress trees within the site are being removed as the ground levels are being lowered to build the mews cottages. The line of semi-mature sycamores along the rear boundary is contributing to the damage to the wall and is going to be removed.

Mitigative planting can be controlled by an appropriate condition requiring a landscaping plan.

### **Response to Consultations**

The letters received raise comments of both support and concerns. The main objections and concerns relate to the scale, massing and design, the proposed layout, in addition to concerns on parking issues and the impact on the existing condition of the road network. Further concerns relate to potential noise and disturbance and the impact on visual amenity of the street scene and the Conservation Area. All the issues raised in the letters received have been noted and these concerns are addressed in the main body of this report. It is noted that concerns have also been raised into disturbance and disruption during demolition and construction works. However, this is an inevitable short term situation experienced with all development and is more properly controlled through separate legislation. Highway issues have been considered and the Head of Transportation has raised no highway objection. The current condition of the highway and damage to the highway is again controlled under separate legislation.

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The concerns relating to recording the building and access to the developer by private individuals is a matter to be discussed with the land owner. GGAT have requested a condition be attached to any grant of planning permission for '*an appropriate programme of building recording*'.

### Conclusion

It is considered that the level of development and resultant density of residential units at this site meets current national planning policy objectives for the re-use and redevelopment for residential use. There is a history of planning approvals at this site and planning permission is still live for a similar scheme. Overall it is considered that the proposed redevelopment and re-use of this site will bring tangible benefits to the community of Ffynone, and ensure that this derelict site is brought back into a viable and sustainable residential use. Moreover, it is considered that the proposed scheme would *preserve* the character of the Ffynone and Uplands Conservation through the retention of the street elevations of the unlisted villas, along with the existing stone boundary walls and many of the mature trees. The conservation area would be *enhanced* through these derelict buildings being brought back into use and through sensitive new build, in accordance with development plan policy. Therefore approval is recommended subject to the conditions.

### RECOMMENDATION

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

- 1 The development hereby permitted shall begin not later than five years from the date of this decision.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.

- 2 The development shall be carried out in accordance with the following approved plans and documents: P00:Existing Topographical Survey/Site plan; P01 RevP02: Existing ground floor plan & elevations, Llwyn Helyg; P02 RevP02: Existing ground floor plan & elevations, Cilwendeg; P05 RevP02: Proposed site plan; P06 RevP02: Proposed floor plans levels 0, Car park & 1; P07 RevP02: Proposed floor plans levels 2 & 3; P08 RevP02: Proposed floor plans levels 4 & 5; P09 RevP02: Proposed floor plans levels 6 & 7; P10 RevP02; Proposed elevations north & east; P11 RevP02: Proposed elevations south & west; P12 RevP02: Proposed section A-A & B-B; P13 RevP02: Proposed section C-C & D-D; P20 RevP02: Proposed Plans & elevations - Mews Cottages, received 29th January 2016, Design & Access Statement and appendices, received 21st September 2015 (refer to revised drawings received 29th January 2016), Protected Species Survey, February 2016, Version 3 (David Clements Ecology), received 23rd March 2016

Reason: To define the extent of the permission granted.

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- 3 No development shall take place without the prior written approval of the Local Planning Authority of a scheme for the landscaping of the site which must ensure the retention of protected trees as indicated in Planting/Soft Landscaping Scheme date July 2015 by Cardiff Treescapes (DAS Appendix 3). 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.

- 4 No development or other operations shall take place except in accordance with the guide on "The Protection of Trees on Development Sites" attached to this planning permission. No trees, shrubs, or hedges shall be felled or cut back in any way, except where expressly authorised by the landscaping scheme as approved by the Local Planning Authority until two years after the completion of the development. Any trees, shrubs or hedges removed without such authorisation, or dying, or being seriously damaged or diseased before the end of that period shall be replaced by plants of a size and species as may be agreed with the Local Planning Authority.

Reason: To secure the protection of trees growing on the site whilst the development is being carried out.

- 5 Prior to commencement of demolition works, details must be submitted to and approved in writing by the local planning authority of the methodology to support the retained elevations whilst work is underway. All works shall be undertaken in accordance with the approved details.

Reason: To ensure the integrity and stability of the retained structure is not compromised in the interest of visual amenity, general amenity and public safety.

- 6 No site works shall be undertaken until the implementation of an appropriate programme of building recording and analysis has been submitted to and approved in writing by Local Planning Authority. All works shall be carried out by a specialist acceptable to the Local Planning Authority and in accordance with the approved scheme.

Reason: As the building is of architectural and cultural significance the specified records are required to mitigate the impact of the development.

- 7 The development shall be implemented and retained in accordance with the mitigation measures/recommendations of the Survey for bats and nesting birds dated February 2016 carried out by David Clements Ecology Ltd: as described in the Section 5 entitled: Mitigation Features of the bat report and drawings FR-LAW-XX-00-2EL-AR/P10/P02 Plan 5: Mitigation Plans North and East Elevations and FR-LAW-XX-00-2EL-AR/P11/P02 Plan 6: Mitigation Plans South and West Elevations

Reason: In order to ensure that the development complies with the Conservation (Natural Habitats & c) Regulations (2010), and to secure the protection of Listed European Protected Species on site.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 3 (CONT'D)

APPLICATION NO.

2015/1938

- 8 No works shall be undertaken until a method statement for works to excavate the basement/underground areas has been submitted to and approved in writing by the local planning authority. The Method Statement will include, but not exclusively, methods for sensitive site clearance, sensitive clearance of access into the underground areas to permit access by the licensed bat ecologist(s), internal inspection/surveys of the basement/underground areas for the presence of bats. All works shall be undertaken in accordance with the approved Method Statement.
- Reason: In order to ensure that the development complies with the Conservation (Natural Habitats & c) Regulations (2010), and to secure the protection of Listed European Protected Species on site.
- 9 Prior to works commencing on the basement/underground area, if any evidence of bat use is found during the inspection of the basement/underground areas, mitigation measures appropriate for the bat species present, the level and nature of use by bats to be submitted and approved in writing by the Local Planning Authority.
- Reason: In order to ensure that the development complies with the Conservation (Natural Habitats & c) Regulations (2010), and to secure the protection of Listed European Protected Species on site.
- 10 Prior to the commencement of the development hereby approved, a lighting scheme for the site shall be submitted to and agreed in writing by the local planning authority to ensure that lighting measures do not conflict with bat mitigation. This should include measures to maintain dark corridors and to avoid disturbance to bat flight paths. The lighting scheme shall be implemented in accordance with the agreed scheme and shall be maintained and retained as such at all times.
- Reason: In order to ensure that the development complies with the Conservation (Natural Habitats & c) Regulations (2010), and to secure the protection of Listed European Protected Species on site.
- 11 No development shall take place until the Local Planning Authority has received and approved in writing a licence issued to the developer/applicant by Natural Resources Wales pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations (2010) authorizing the specified activity/development to commence.
- Reason: In order to ensure that the development complies with the Conservation (Natural Habitats & c) Regulations (2010), and to secure the protection of Listed European Protected Species on site.
- 12 A composite sample panel of all external finishes shall be erected on the site and approved in writing by the Local Planning Authority prior to the commencement of the development hereby approved. The scheme shall be implemented in accordance with the approved details and the sample board as approved shall be retained on site until completion of the development.
- Reason: In the interests of visual amenity.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 3 (CONT'D)

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2015/1938

- 13 Prior to the commencement of work, a methodology for the cleaning/ repair/ repointing of the retained masonry shall be submitted to and approved in writing by the Local Planning Authority. This shall include a sample area of the proposed work. All works shall be undertaken in accordance with the approved Methodology.

Reason: In the interests of visual amenity.

- 14 Notwithstanding the details shown in the approved plans and the design intent details included in the Design and Access Statement, no development shall take place until large scale details of the following have been submitted to and approved in writing by the local Planning Authority. All works undertaken shall be completed in accordance with the approved details:

- Juliet balcony, doors and opening
- New entrance doors and surrounds
- Eaves, verges, parapets and copings
- Ballustrades including fixings
- New vehicle entrance gates
- All vents/ flues
- Rainwater goods
- Typical windows in their openings

Reason: In the interests of visual amenity.

- 15 No development shall take place until the developer has prepared and submitted a scheme for the comprehensive and integrated drainage of the re-developed 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 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.

- 16 Prior to the beneficial occupation commencing, the car parking areas including garages shall be laid out in accordance with the approved plans and shall be retained as such in perpetuity.

Reason: In the interests of highway safety and to retain parking for residents within the curtilage of the site.

### INFORMATIVES

- 1 Any works to the access on Bullins Lane to be undertaken via a section 278 agreement with the Highway Authority.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 3 (CONT'D)

APPLICATION NO.

2015/1938

- 2 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 mark.jones@swansea.gov.uk, tel. no. 01792 636091
- 3 A full record focussing on the affected parts of the structure both by the means of a descriptive, drawn and photographic record should be made, prior to any works being undertaken. This survey to be undertaken to a Level 2 (English Heritage 'Understanding Historic Buildings: A Guide to Good Recording Practice' 2006). The completed record should then be deposited in a suitable repository, such as the West Glamorgan Archives or the Historic Environment Record to enable access by future historians.
- 4 Prior to any works commencing on site, a Construction Traffic Management Plan shall be submitted to and approved in writing by the local planning authority. The approved management plan shall be implemented and adhered to at all time unless otherwise agreed in writing by the Local Planning Authority.
- 5 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 and the approved scheme shall be implemented and adhered to at all times.
- 6 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application:EV1, EV2, EV3, EV4, EV9, EV12, EV30, HC1, HC2, and AS6.
- 7 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
- 8 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).
- 9 Please note that research currently underway is indicating that NWRU pose a significant and avoidable risk to bats and furthermore that using such membranes in bat roosts runs the risks of impairing the ability of the underlay to function properly. Natural Resources Wales (NRW) wishes to advise you that the use of this underlay in bat roosts is therefore unlikely to be granted a licence, if required. A product that has a long and proven track record of suitability in bat roosts is bitumastic underfelt (Type 1F BS747), and NRW recommends the use of this material in bat roosts. NRW therefore advises that if the roof is to have access for bats included, that this informative is attached.

- 10 Bats and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2010 (as amended). Where bats are present and a development proposal is likely to contravene the legal protection they are afforded, the development may only proceed under licence issued by Natural Resources Wales, having satisfied the three requirements set out in the legislation. A licence may only be authorised if:
- i. the development works to be authorised are for the purpose of preserving public health or safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.
  - ii. There is no satisfactory alternative and
  - iii. The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.
- Paragraph 6.3.7 of Technical Advice Note 5: Nature Conservation and Planning (TAN5) states that your Authority should not grant planning permission without having satisfied itself that the proposed development either would not impact adversely on any bats on the site or that, in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied.
- Please note that any changes to plans between planning consent and the licence application may affect the outcome of a licence application.
-

**PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016**

ITEM 4

APPLICATION NO.

2016/0086

WARD:

Mawr

**Location:** Land at Cefn Betingau Farm, Morriston, Swansea, SA6 6NX

**Proposal:** Construction of solar farm without compliance with condition 8 of planning permission 2013/0865 requiring planting of hedgerow to sub-divide fields 9 & 10.

**Applicant:** Mr Fernando Lloret





## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 4 (CONT'D)

APPLICATION NO.

2016/0086

### **BACKGROUND INFORMATION**

This application was reported to Planning Committee on 10<sup>th</sup> May 2016 for decision as the site area exceeds the development threshold set out in the Council Constitution. Committee deferred consideration of the application to allow a site visit to be undertaken.

In line with the comments on the update sheet provided at last Committee, the description of the proposal has been updated to clarify the nature of the proposal.

### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
Policy 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,

- Continued -

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 4 (CONT'D)

APPLICATION NO.

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- Policy R11
- (ii) The scale, form, design, appearance and cumulative impacts of proposals can be satisfactorily incorporated into the landscape, seascape or built environment and would not significantly adversely affect the visual amenity, local environment or recreational/tourist use of these areas,
  - (iii) There would be no significant adverse effect on local amenity, highways, aircraft operations or telecommunications,
  - (iv) There would be no significant adverse effect on natural heritage and the historic environment,
  - (v) The development would preserve or enhance any conservation areas and not adversely affect listed buildings or their settings,
  - (vi) The development is accompanied by adequate information to indicate the extent of possible environmental effects and how they can be satisfactorily contained and/or mitigated,
  - (vii) The development includes measures to secure the satisfactory removal of structures/related infrastructure and an acceptable after use which brings about a net gain where practically feasible for biodiversity following cessation of operation of the installation.

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

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 4 (CONT'D)	APPLICATION NO.	2016/0086
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	
2014/1055/DO C	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	

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 4 (CONT'D)

APPLICATION NO.

2016/0086

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

**This application is reported to Committee for decision as the site area exceeds the development threshold set out in the Council Constitution.**

### 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.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 4 (CONT'D)

APPLICATION NO.

2016/0086

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. It should be further noted that part of field 9, which originally had planning permission for the siting of solar panels, is now considered too wet and as a result, will be kept undeveloped. This will further reduce the cumulative impact of the solar panels, and thus the need to provide the hedge.

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.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 4 (CONT'D)

APPLICATION NO.

2016/0086

### 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.
- 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.

**PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016**

ITEM 5

APPLICATION NO.

2016/0177

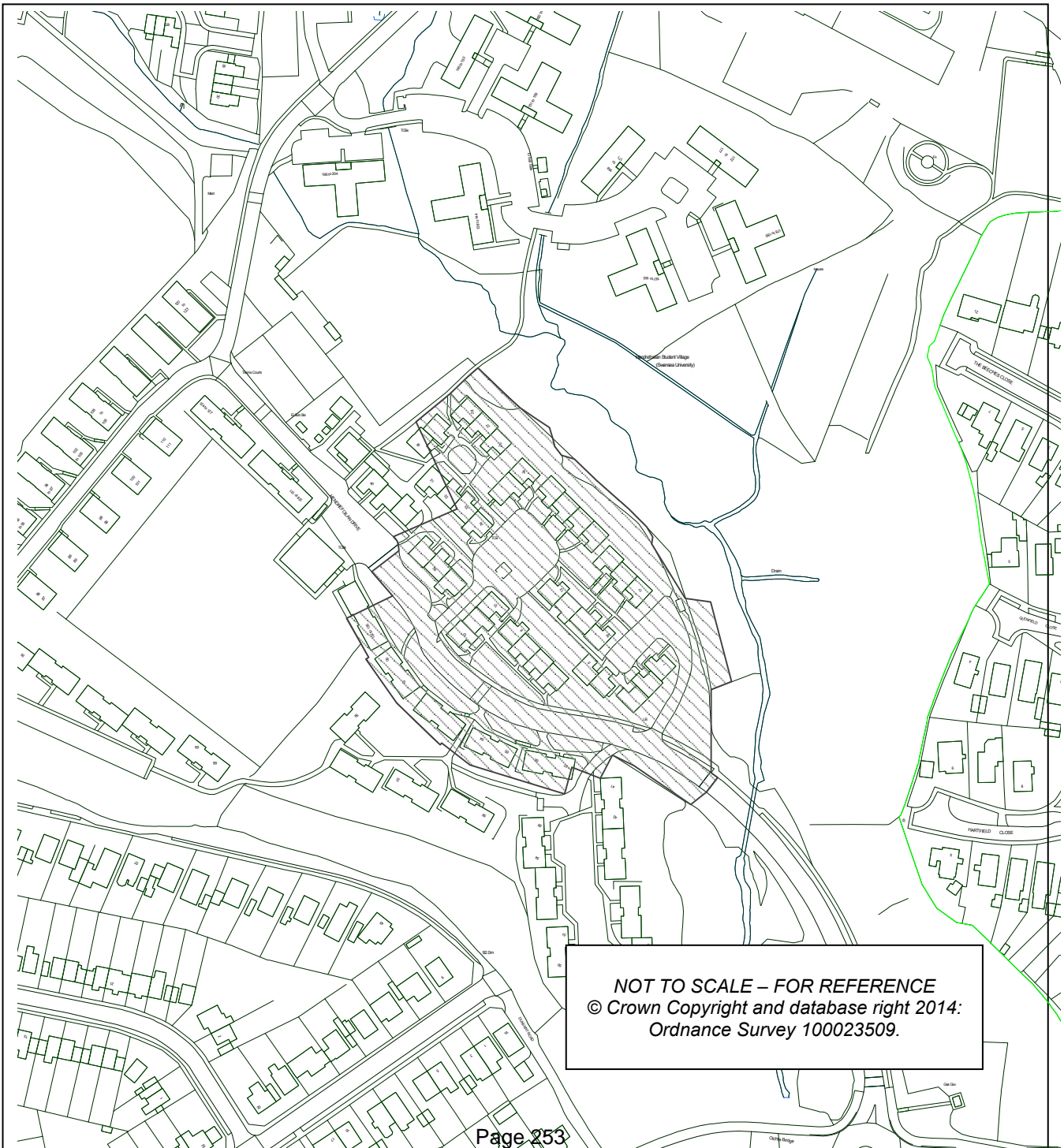
WARD:

Killay North

**Location:** Hendrefoilan Student Village Hendrefoilan Drive Killay Swansea SA2 7PG

**Proposal:** Construction of 43 no. two / three storey dwellings and associated access, infrastructure, engineering works, public open space and landscaping (Details of access, appearance, landscaping, layout and scale pursuant to conditions 2, 5, 6, 8 & 16 of the outline planning permission 2014/1192 approved 6th January 2016)

**Applicant:** St Modwen Homes Limited



**BACKGROUND INFORMATION**

a. Relevant Planning Policies

**Swansea Unitary Development Plan**

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

Policy EV2 The siting of new development shall give preference to the use of previously developed land and have regard to the physical character and topography of the site and its surroundings.

Policy EV3 Accessibility criteria for new development.

Policy EV11 Development that would harm the character or setting of registered Historic Parks or Gardens or the character of Historic Landscapes will not be permitted.

Policy EV24 Within the greenspace system, consisting of wildlife reservoirs, green corridors, pocket sites and riparian corridors, the natural heritage and historic environment will be conserved and enhanced.

Development proposals which would be likely to likely to have a significant adverse effect on the greenspace system or which do not provide for appropriate compensatory or mitigation measures will not be permitted.

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

Policy EV33 Planning permission will only be granted where development can be served by the public mains sewer or, where this system is inadequate, satisfactory improvements can be provided prior to the development becoming operational

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

Policy EV35 Surface water run-off

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

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



## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 5 (CONT'D)

APPLICATION NO.

2016/0177

- Policy EV40 Development proposals will not be permitted that would cause or result in significant harm to health, local amenity because of significant levels of air, noise or light pollution.
- Policy HC2 Proposals for housing developments within the urban area will be supported where the site has been previously developed or is not covered by conflicting plans policies or proposals.
- Policy HC3 In areas where a demonstrable lack of housing exists, the Council will seek to negotiate the inclusion of an appropriate element of affordable housing on sites which are suitable in locational / accessibility terms and where this is not ruled out by exceptional development costs
- Policy HC11 Higher Education Campus development will be permitted subject to a defined set of criteria. Expansion of student accommodation at Hendrefoilan Student Village together with enhanced social and support facilities will be permitted through:  
(a) Redevelopment and intensification of the existing accommodation, and  
(b) Limited additional development on the 'Quadrant Site'.
- Policy HC17 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 the individual development
- Policy HC24 All new housing development will be required, where the level and nature of open space provision in the locality is inadequate to meet the needs of the future occupiers of the development proposed together with the needs of existing population in the locality, to:  
i) Make provision for areas of open space either within the site or at an appropriate location in relation to the development, or  
ii) Contribute towards the provision or improvement of existing off-site facilities in the locality through a commuted payment  
  
Developers will be required to make appropriate arrangements for the management of these areas.
- Policy AS1 New developments (including housing) should be located in areas that are currently highly accessible by a range of transport modes, in particular public transport, walking and cycling

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 5 (CONT'D)

APPLICATION NO.

2016/0177

- Policy AS2 Design and layout of access to new developments should allow for the safe, efficient and non intrusive movement of vehicles
- Policy AS4 Creation or improvement of public access routes will be encouraged
- Policy AS6 Parking provision to serve developments will be assessed against adopted maximum parking standards to ensure appropriate levels of parking

### National Planning Policy

#### Planning Policy Wales (Edition 8 Jan 2016)

Supports in principle the redevelopment of 'brownfield' sites for new development.

#### Technical Advice Note 12: Design

#### Supplementary Planning Guidance

Places to Live: Residential Design Guide (January, 2014)

#### b. Relevant Planning History

2014/1192 Demolition of the existing student accommodation and other University buildings and comprehensive residential re-development of the site, with access road infrastructure, public open space, woodland planting and associated works (outline with all matters reserved)  
Planning Permission 6 Jan. 2016 following the completion of a Section 106 Planning Obligation to the effect:

\* Education – a single payment of £650,000 is to be made to fund a 2 class extension to Hendrefoilan Primary School. The payment will be made before the occupation of the 51<sup>st</sup> home on the site

\* Affordable housing – 10% of the homes on site will be affordable (according to prevailing definitions). These will comprise a mix of 2 and 3 bed homes and will be offered to the nominated RSL/Council at 70% of Open Market Value or ACG (whichever is lower). Phasing to be agreed but the working proposition is that 70% of the affordable homes will be delivered by the time 50% of the market housing is complete, and all of the affordable will be provided before 70% of the market housing is complete.

\* Transport – A sum of £20,000 is to be paid before the occupation of the 51<sup>st</sup> dwelling towards improvements to the traffic lights at the Gower Road/Wimmerfield Road junction.

2016/0277 Demolition of existing student accommodation (units 1-16, 24-35 and 60-67) (application for Prior Notification of Proposed Demolition) – Demolition Approved 16 March, 2016

c. Response to Consultations

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

**Natural Resources Wales –**

We note the provision of the document entitled; '*Hendrefoilan, Phase 1: Drainage Strategy (Ref: R/C161034/001)*,' dated January 2016, by Hydrock Consultants Limited. Ultimately the drainage system design is a matter for the Local Authority Engineers and we advise that they are consulted with regards to the discharge of condition 16. We also leave the discharge of conditions 2, 5, 6 and 8 to the discretion of the Local Authority.

**Dwr Cymru Welsh Water** – No problems are envisaged with the Waste Water Treatment Works for the treatment of domestic discharges from this site. Request that conditions be included within any planning permission granted to ensure no detriment to existing residents or the environment and to Welsh Water assets.

**Council's Drainage Engineer** – We have reviewed the updated Drainage Strategy and Addendum ref C161034/N001 and recommend that the site be developed and built in accordance with the drainage network for phase 1.

**Council Ecologist** - As far as ecology goes I think we could discharge the conditions other than we will need to see a copy of the bat licence prior to any work starting.

**Highway Observations –**

1 Background

1.1 Outline consent was recently granted for up to 300 dwellings on this site. This is the detailed first phase of development for 43 dwellings.

2 Layout

2.1 The site benefits from an existing access road and main access is to utilise that which exists. New roads are proposed to serve the dwellings from the existing 'spine road' and this phase indicates a new cul-de-sac and some frontage development along the spine road.

2.2 The layout conforms to modern standards and is indicated to accord with advice in Manual for Streets, with 20 of the dwellings being served from a combination of shared surface road and shared private drive. The remainder of the dwellings will front the spine road.

2.3 All dwellings are provided with on-site parking in accordance with adopted standards through a combination of garage and driveway parking.

2.4 The applicant has submitted a Section 38 drawing thereby indicating an intention to offer roads within the site for adoption. Plans are not sufficiently detailed for this purpose but a separate procedure exists under the Highways Act to secure adoption and the developer will be required to use that procedure.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 5 (CONT'D)

APPLICATION NO.

2016/0177

3 Recommendation

3.1 I recommend no highway objection subject to the following;

i. All roadworks being constructed to adopted standards in accordance with approved details.

ii. The shared private drive for Plots 21-24 being provided with turning facilities in accordance with amended details to be submitted and approved.

Note: The Developer must contact the Highway Management Group, The City and County of Swansea, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work. Please contact the Senior Engineer (Development), e-mails to mark.jones@swansea.gov.uk, tel. no. 01792 636091

### APPRAISAL:

Outline planning permission for the demolition of the existing student accommodation and other University buildings and the comprehensive residential re-development of the site, with access road infrastructure, public open space, woodland planting and associated works was granted 6 Jan. 2016 following the completion of a Section 106 Planning Obligation (Ref:2014/1192). The outline permission was approved with all matters reserved but the development envisaged a development of approx. 300 homes and the accompanying Indicative Development Framework Plan illustrated the design principles for the site, the access road infrastructure, retained woodland areas with an integrated network of pedestrian linkages and areas of public open space.

The outline permission has therefore established the principles of the development and this current application seeks reserved matters approval for the for first phase of the development involving the construction of 43 no. two / three storey dwellings and associated access, infrastructure, engineering works, public open space and landscaping details together with details pursuant to conditions 2 adherence to Outline DAS), 5 (external finishes), 6 (levels), 8 (access road) & 16 (surface water strategy) of the outline planning permission 2014/1192 approved 6th January 2016).

The 43 houses include a range of terraced, semi-detached and detached houses in a mix of 2, 3, 4 and 5 bedroomed houses including 4 no. affordable units constituting a 10% provision in accordance with the Section 106 Planning Obligation. The development is laid out along the primary spine road and the secondary road to the north with the houses are orientated to front onto the streets to ensure they respond positively to the street and provide natural surveillance, with the principle of providing a strong, formal frontage along the primary route and a less formal arrangement along the secondary road.

### Main Issues

The main issues for consideration in relation to this proposal relate to:

- Urban design ;
- highway layout
- Other technical issues

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

### **Urban Design**

In terms of considering the design and layout of the proposed development, Policy EV1 of the UDP requires new development to accord with 11 specified objectives of good design, in particular, new development should be appropriate to its local context in terms of scale, height, massing, elevational treatment, materials, and detailing, layout, form, mix and density. Additionally, criteria xi of EV1 states that new development should have regard to the desirability of preserving the setting of any listed building. Whilst Policy EV2 states that the siting of new development should give preference to the use of previously developed land over greenfield sites and should have regard to the physical character and topography of the site and surroundings by meeting specified criteria relating to siting and location.

Approximately half of the 18 hectare site is currently used as student village accommodation with the remainder covered by woodland, a large section of which is protected by Tree Preservation Orders. The vehicular access from Gower Road provides a hierarchical route through the site with local access roads permeating through it. The site topography has determined the layout of the student development, and is steeply sloping in certain areas, which poses several challenges to its redevelopment. The mature woodland areas provide a significant characteristic of the site. Additionally, there are several watercourses which run through the site and woodland areas. The existing road layout, site topography and the mature woodland areas have dictated the Indicative Development Framework Layout. The existing vehicular access from Gower Road is retained as the primary access and the existing spine road through the site and the mature woodland areas would be largely retained.

Condition 1 to 2014/1192 reads:

*The proposed development shall be implemented in accordance with the approved Design and Access Statement (7559 - Document Revision 9) and the Indicative Development Framework Plan (7559 SK100 C) which set out the vision, objectives, urban design principles and development strategy for the site. The Design and Access Statement establishes the general site layout and masterplan, accessibility and movement, scale, amount of development, building concept, infrastructure, environmental sustainability and structural landscaping principles of the proposed development.*

*Reason: To ensure that the site is comprehensively developed to a high standard of sustainable urban design in accordance with National and Local Planning Policy advice and Guidance.*

The urban design principles of the layout within this is phase 1A area are largely consistent with the principles in the outline Design and Access Statement (DAS) / Indicative Framework, however, the submitted DAS with this reserved matters submission acknowledges that a number of changes have been made in response to the site's detailed opportunities and constraints, in particular, with regard to the layout of the secondary road network and the topography. Whilst the road hierarchy is retained with the central 'spine' link through the site, the secondary road to the north has been created to reflect the topography of the site.

This is essentially a cul-de-sac and terminates in a private drive and the DAS indicates that this layout provides a less formal / softer edge to the woodland. The proposed layout largely allows the existing woodland to be retained incorporating existing mature trees. The main change is that the houses along the secondary road now back onto the woodland along the northern boundary rather than face onto it, and the main reason for this is cited for ecological reasons with regard to bat activity.

The detailed layout seeks to comply with the Swansea Residential Design Guide in terms of required separation distances between properties in order to avoid overlooking and physical overbearing issues. The site sections indicate the fall on the site from north-west to south-east and the layout seeks to accommodate the topography by integrating a slope in the rear gardens in order to minimise retaining features and overshadowing. Due to the topography of the site it is proposed to construct a number (12) of 3 storey properties along the southern side of the proposed primary 'spine road'. Seven of the three storey dwellings will incorporate an integral garage and would accommodate a small first floor terrace on the front elevation. These split level dwellings would incorporate a retaining wall / structure to the rear of the dwellings due to the site topography which would provide a level access to the rear garden from first floor level. The design of the three storey townhouses incorporating the integral garage will diminish the quality of the street scene along the primary road frontage, however, having regard to the requirement to provide adequate car parking and the acknowledgement of the site topography, on balance the proposed house type is accepted.

It is stated that the proposed palette of materials are intended to add character and a sense of place within a contemporary residential development whilst respecting the context of the site's surroundings. The material palette consists of a mix of natural stone, off-white render, red brick and slate grey roof tiles with white window profiles and black rainwater goods. The mix and disposition of the external finishes are generally considered to be acceptable and similarly the contemporary house type designs are generally welcomed at this location. The boundary treatment would consist of a mixture of brick / stone walling where fronting onto areas of public open space with timber fencing along more private boundaries. The front gardens would be enclosed with dwarf walls / railings to provide public / private definition of space.

### **Highways and traffic issues**

The proposed access to serve this first phase of 43 dwellings will be obtained from the existing access road in accordance as envisaged in the outline permission and a new road is proposed to serve the dwellings from the existing 'spine road' and this phase indicates a new cul-de-sac and some frontage development along the spine road. The Head of Transportation confirms that the layout conforms to modern standards and is indicated to accord with advice in Manual for Streets, with 20 of the dwellings being served from a combination of shared surface road and shared private drive with the remainder of the dwellings fronting onto the spine road.

The dwellings will be provided with on-site parking in accordance with adopted standards through a combination of garage and driveway parking. The Head of Transportation raises no highway objection subject to all roadworks being constructed to adopted standards in accordance with approved details and provided that the shared private drive serving Plots 21-24 being provided with an approved turning facility which can be controlled through a planning condition.

**Condition 16 – Surface Water Strategy**

The existing surface water drainage system comprises a number of individual small catchments, each served by an existing piped drainage network outfalling directly into the ordinary watercourses on site. The application is accompanied by a Phase 1 drainage layout and drainage strategy. It is proposed to utilise the existing surface water outfall catchments and the strategy ensures there will be no increase in surface water offsite following the development which will be achieved through the integration of SuDs into the drainage network. The Council's Drainage Engineer has reviewed the updated Drainage Strategy and recommends that the site be developed and built in accordance with the drainage network for phase 1.

**Conclusion**

The first phase of this development will generally relate well to the Indicative Development Framework Plan whilst acknowledging that the changes in the layout having responded to the detailed site opportunities and constraints whilst retaining the key design principles of the central spine link and retention of the woodland areas. Approval is therefore recommended.

**RECOMMENDATION**

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

- 1 The development shall be carried out in accordance with the following approved plans and documents: [8169 PL31 (2), 8169 PL1, PL2, PL03, PL05 - PL 07, 8169 10 - 12, 8169 20 - 31; 161034 skc001, 005A, SKC006A, SKC000B, SKC0010B - 11B & 15B, C161034, 1792 01 -03A, Garage plans - plans received 1 February, 2016].

Reason: To define the extent of the permission granted.

- 2 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).

- 3 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).

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 5 (CONT'D)

APPLICATION NO.

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- 4 Notwithstanding the details indicated in the application, the shared private drive serving plots 21-24 shall be constructed to a width of 4.5m and shall incorporate a turning facility in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

- 5 Notwithstanding the details in the application, the precise disposition and pattern of the external finishes to be used on the house types within the first phase of the development shall be agreed in writing by the Local Planning Authority prior to the commencement of development. Composite sample panels shall be erected on site and the approved sample panel shall be retained on site for the duration of the works, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

### INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (UDP Policies EV1, EV2, EV3, EV11, EV24, EV30, EV33, EV34, EV35, EV36, EV38, EV40, HC2, HC3, HC22, HC17, HC24, AS1, AS2, AS4 & AS6)
- 2 The Developer must contact the Highway Management Group, The City and County of Swansea, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work. Please contact the Senior Engineer (Development) , e-mails to [mark.jones@swansea.gov.uk](mailto:mark.jones@swansea.gov.uk), tel. no. 01792 636091
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PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 6

APPLICATION NO.

2016/0692

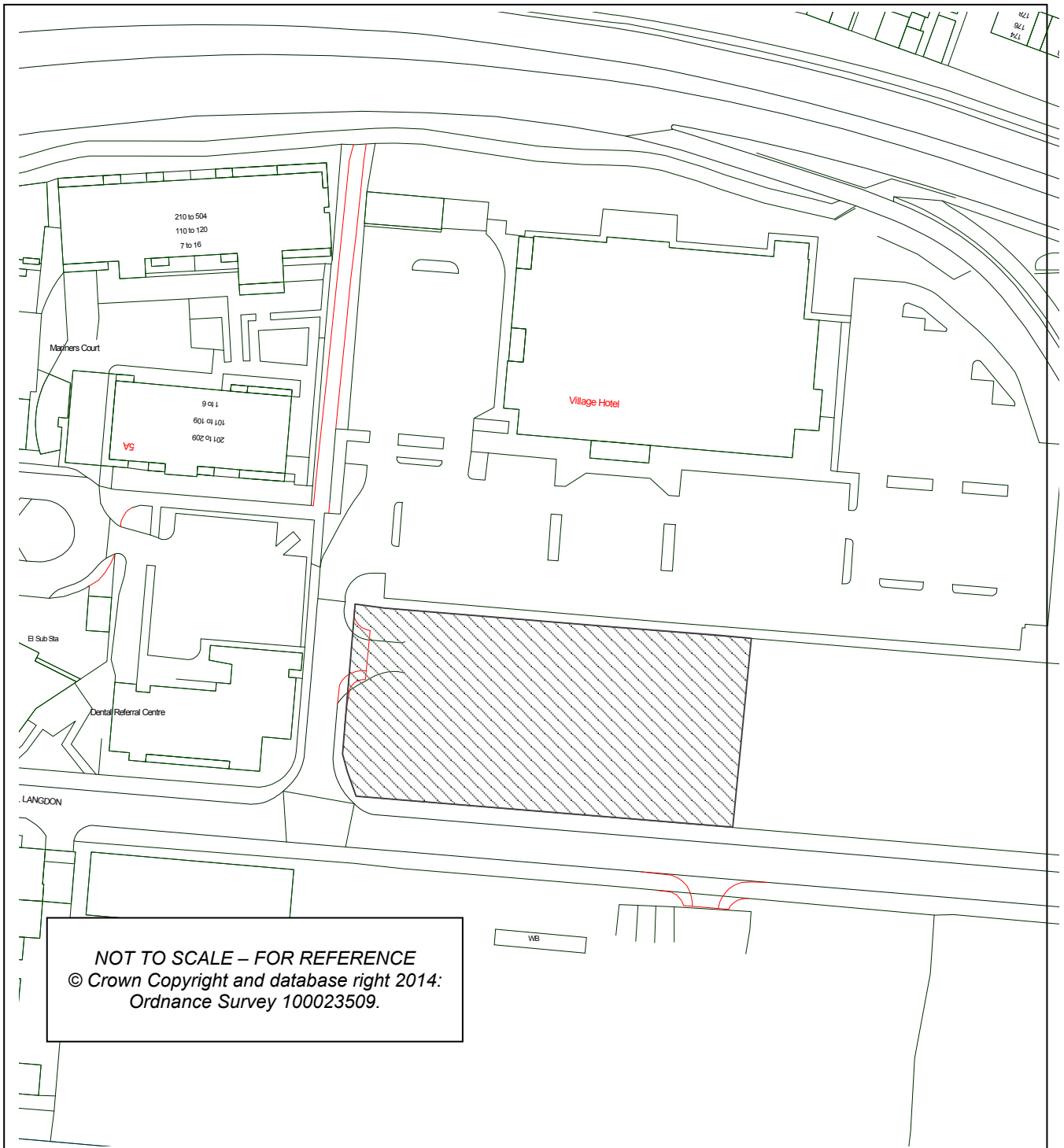
WARD:

St Thomas

**Location:** Plot D7, Langdon Road, Swansea

**Proposal:** Construction of 23 no. four & three storey townhouses with associated access, car parking and landscaping works

**Applicant:** Mr Jonathan Hale



**BACKGROUND INFORMATION**

**PLANNING POLICIES**

**National Planning Guidance**

Planning Policy Wales (PPW) (Edition 8 January 2016)

Technical Advice Note 12 – Design

**Swansea Unitary Development Plan**

Policy EV1 New development shall accord with a defined set of criteria of good design.

Policy EV2 The siting of new development shall give preference to the use of previously developed land and have regard to the physical character and topography of the site and its surroundings.

Policy EV3 Proposals for new development and alterations to and change of use of existing buildings will be required to meet defined standards of access.

Policy EV4 New development will be assessed against its impact on the public realm.

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 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.

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.

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.

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.

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 6 (CONT'D)

APPLICATION NO.

2016/0692

Policy EC1 SA1 Strategic Mixed use Site

Policy EC2 A major redevelopment area identified at SA1 Swansea Waterfront for mixed employment and residential development together with supporting leisure, tourism, community use and ancillary services

Policy HC1 Land allocated in SA1 Swansea Waterfront for housing

Policy HC3 Affordable Housing

Policy AS1 Accessibility - Criteria for assessing location of new development.

Policy AS2 Accessibility - Criteria for assessing design and layout of new development.

Policy AS5 Accessibility - Assessment of pedestrian and cyclist access in new development.

Policy AS6 Provision of car parking in accordance with adopted standards.

### **Supplementary Planning Guidance:**

Port Tawe and Swansea Docks - Supplementary Planning Guidance (12th September 2002).

SA1 Swansea Waterfront Design and Development Framework (August 2004).

Places to Live: Residential Design Guide (January, 2014)

### **RELEVANT PLANNING HISTORY**

2002/1000 Mixed use development comprising employment (Use Class B1, B2) residential (C3), retail (A1), commercial leisure (D2), food and drink (A3), hotel (C1), and educational (D1/C3) uses, car parking, associated infrastructure (including new highway access and pedestrian overbridge), hard and soft landscaping  
Planning permission 19 August, 2003 subject to the completion of a Section 106 Agreement

2002/0743 Construction of highway infrastructure including cycle ways, footways, drainage and service  
Planning Permission July, 2002

2008/0996 Variation of Conditions 1 (review of phasing programme), 2 (land use masterplan), 3 (review of urban design framework), 5 (development capacity), 7 (scale, nature, distribution and design of Class A3 and commercial leisure uses), 14 (air quality), 16 (noise and vibration), 20 (waste management and recycling), 21 (ecology and wildlife) and 27 (archaeology) of outline planning permission 2002/1000 granted on 19th August 2003)  
Planning Permission 11 Oct. 2010

## PLANNING COMMITTEE – 7<sup>TH</sup> JUNE 2016

ITEM 6 (CONT'D)

APPLICATION NO.

2016/0692

2015/1584

Application under Section 73 to vary the Outline Permission for the SA1 Waterfront Development to facilitate the implementation of the revised masterplan proposals for the 'Swansea Waterfront Innovation Quarter' - principally varying Conditions 1 (review of phasing programme), 2 (land use masterplan), 3 (review of urban design framework), 5 (development capacity), 7 (scale, nature, distribution and design of Class A3 and commercial leisure uses), and other conditions to the Section 73 application 2008/0996 (granted 11 October, 2010) which previously varied the original outline planning permission 2002/1000 (granted 19 August 2003)  
Planning Permission May, 2016

### RESPONSE TO CONSULTATIONS

The application was advertised on site and in the local press. No responses were received from neighbouring occupiers or other third parties.

**NRW** – We have concerns in relation the proposed development and recommend that it should only proceed if the conditions outlined in this letter are attached to any planning permission that your Authority may be minded to grant.

#### Contaminated Land

We note from the application form that the site is listed as being contaminated, but the information available to NRW in relation to this aspect is extremely limited and lacks the details that we would usually expect on an application for a site of this kind. As a result we advise the following

#### Condition

Prior to the commencement of development approved by this planning permission (*or such other date or stage in development as may be agreed in writing with the Local Planning Authority*), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

1. A preliminary risk assessment which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

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ITEM 6 (CONT'D)

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Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

### Reasons

Natural Resources Wales considers that the controlled waters at this site are sensitive and contamination is known/strongly suspected at the site due to its previous industrial uses as a dock yard.

### Verification Report Condition

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

### Reasons

To demonstrate that the remediation criteria relating to controlled waters have been met, and (if necessary) to secure longer-term monitoring of groundwater quality. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

### Monitoring Condition

Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.

### Reasons

To ensure that longer term remediation criteria relating to controlled waters have been met. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.

### Unsuspected Contamination Condition

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

### Reasons

Given the history of the site it is considered possible that there may be unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated.

### Piling Condition

Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater.

ITEM 6 (CONT'D)

APPLICATION NO.

2016/0692

Reason

There is an increased potential for pollution of controlled waters from inappropriate methods of piling.

Informative / Advice for the Applicant

Natural Resources Wales recommends that developers should:

1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
2. Refer to Environment Agency document; '*Guiding Principles for Land Contamination*' for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, such as human health.
3. Refer to Groundwater protection: Principles and practice (GP3).

Flood Risk

The site is entirely located in Zone B on the Development Advice Map associated with TAN15. We would advise that site levels and proposed development levels are assessed against the latest information on predicted tidal flood levels over a 100 year lifetime of development to ensure resilient construction and safe access / egress.

Pollution Prevention & Waste Management

The biggest risk in relation to pollution, occurs during construction and we would remind the applicant/developer that the responsibility for preventing pollution rests with those in control on the site. Works should therefore be carefully planned, so that contaminated water cannot run uncontrolled into any watercourses (including ditches).

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

We would also recommend that a Site Waste Management Plan (SWMP) is produced. Completion of a SWMP will help the developer/contractor manage waste materials efficiently, reduce the amount of waste materials produced and potentially save money. Guidance for SWMPs are available from the DEFRA website: ([www.defra.gov.uk](http://www.defra.gov.uk)).

We acknowledge that a SWMP may be something best undertaken by the contractor employed to undertake the project. Furthermore, we note that these documents are often '*live*' and as such may be best undertaken post permission.

To conclude, we advise that the proposed development should only proceed if the conditions outlined above are attached to any planning permission that your Authority may be minded to grant.

**Drainage Engineers** - We have reviewed the submitted application and recommend that the standard surface water condition be appended to any permission given.

**Glamorgan Gwent Archaeological Trust** – proposal will require archaeological investigation. A condition should be attached to ensure that the archaeological resource is investigated and where necessary protected.

**Head of Environment, Management and Protection** – no objection subject to conditions in respect of unsuspected contamination and Construction Pollution Management Plan (CPMP).

ITEM 6 (CONT'D)

APPLICATION NO.

2016/0692

**Highway Observations** – Construction of 23 no. four & three storey townhouses with associated access, car parking and landscaping works

Amended site plans dated 24/05/16. Inadequacies previously notified have now been addressed.

This proposal is part of the SA1 development site that has been granted outline consent. The traffic impact of SA1 was considered at the outline stage and this current proposal has provided a transport statement in support of the detail for this site.

The site has a single point off an unadopted road which serves as the vehicular access to the Village Inn. The accident statistics submitted show that there are no obvious areas that give rise to highway safety concerns, and the majority of accidents recorded are related to human error and not any design flaw within the Highway layout.

Parking provision is provided at 2 spaces per residential unit and 6 spaces for visitor use and these levels accord with the adopted standards. A sustainability matrix has been submitted as part of the application to demonstrate that two spaces per plot is an appropriate level for the 3 and 4 bedroom units given the proximity to local amenities.

Traffic movements are estimated at 10 trips in the morning peak and 12 trips in the afternoon peak hour and this takes into account the sites accessibility and mixture of apartments and dwellings. The impact on the Strategic Highway Network is therefore minimal.

Autotrack runs have been submitted to show that the site can be adequately serviced by a refuse or emergency vehicle and a hammerhead is included to facilitate this movement. The hammerhead is supported by a retaining wall and whilst this is a private access it will be open for public to pass and repass – similarly with the car park of the Village Hotel, and as such the Highways Authority will need to approve the design. An informative can be added to cover this aspect.

The internal site layout is acceptable in safety terms but is otherwise not suitable for adoption as parts of the layout do not comply with this Council's standards, particularly with regard to pedestrian movements. The roads within the site therefore will need to remain privately maintained, which is an option open to Developers as an alternative to having the roads adopted. A private management company will therefore be responsible for the estate in perpetuity.

I recommend no highway objection subject to the following;

1. 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.

2. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority.

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ITEM 6 (CONT'D)

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[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].

3. Permitted development rights being removed with respect to the garages.

4. All front boundaries to be kept below 1m in the interests of visibility.

### Note 1: Management and Maintenance of Estate Streets

The applicant is advised that to discharge this condition, that the local planning authority requires a copy of a completed agreement between the applicant and the local highway authority under Section 38 of the Highways Act 1980 or the constitution and details of a Private Management and Maintenance Company confirming funding, management and maintenance regimes.

Note 2: The Developer must contact the Highway Management Group , The City and County of Swansea , Penllergaer Offices, c/o The Civic Centre , Swansea SA1 3SN before carrying out any work . Please contact the Team Leader (Development) , e-mails to [mark.jones@swansea.gov.uk](mailto:mark.jones@swansea.gov.uk) , tel. no. 01792 636091

### Note 3 - Retaining Wall Informative

Under the provision of the Highways Act 1980, the approval of the Highway Authority must be obtained for the construction of any retaining wall that is both within 4 yards of a highway and over 4ft 6ins (1.37m) in height.

Under the provision of the West Glamorgan Act 1987, the approval of the Highway Authority must be obtained for the construction of any retaining wall that exceeds 1.5m in height.

## APPRAISAL

The application seeks full planning permission for residential development of 23 units comprising of 16 four storey town houses along the Langdon Road frontage and 7 three storey town houses to the rear with associated vehicular and pedestrian access, car parking, landscaping and associated works at SA1 Swansea Waterfront, Swansea. The site is located between the northern side of Langdon Road and the Village Hotel and comprises land incorporated within Plot D7 of the SA1 Swansea Waterfront Masterplan.

The application site is a cleared site and has been regraded to form a development platform with a site area of 0.37 hectares. The site has a general fall of approximately 2 m from the rear onto Langdon Road and the level change across the site would be absorbed across the site with the rear boundary enclosed with a retaining wall.

The general layout concept has been designed to respond to the form of recent built and approved developments along the southern and northern sides of Langdon Road with the provision of frontage development to Langdon Road with a central access around a communal courtyard with the rear elevation of the townhouses to the rear looking over the Village Hotel car park.



The site will have a vehicular access point from the existing access road off Langdon Road with a connection through the courtyard which provides a potential link to the adjoining development plot. It is proposed to construct 16 no. four storey townhouses along Langdon Road and 7 no. town houses to the rear. As indicated the townhouses are designed to provide a strong street frontage to Langdon Road with the townhouses to the rear accessed from the communal courtyard. The respective blocks will look over a central courtyard car parking area. The primary materials would comprise reconstituted slate roofs and facing brickwork / render. A total of 52 car parking spaces (two per dwelling) are proposed including 6 visitor spaces. Full details of the application are as per the accompanying plans and design and access statement.

### **Material Planning Considerations**

As detailed above, planning permission was originally granted in August 2003 for a mixed-use development of SA1 Swansea Waterfront, including residential Class C3 use. (Planning application 2002/1000 refers). The general land use principle within SA1 has therefore been established and further support is given to the principle of a major redevelopment area at SA1 for mixed employment and residential development together with supporting leisure, tourism, community uses and ancillary services by Policy EC2 of the adopted UDP.

The main issues for consideration in this instance relate to:

- Compliance with prevailing Development Plan Policy and Supplementary Planning Guidance
- Affordable Housing
- Visual Impact, Design and Residential Amenity
- Highway Safety and Transportation
- Drainage and Flood Risk
- Ground Contamination

There are in this instance no additional overriding issues for consideration under the provisions of the Human Rights Act.

### **Development Plan Policy**

An application submitted under section 73 of the 1990 Act to vary Conditions 1, 2, 3, 5, 7, 14, 16, 20, 21, and 27 of outline planning permission 2002/1000 was approved on the 11th October 2010 (planning application 2008/0996 refers). The application was made principally to allow changes to the timing of the programme of phasing, for a review of the approved Land Use Masterplan and the Design and Development Framework to take place at appropriate intervals and also to allow for a revision to be made to the total development capacities for SA1 and for the capacity levels to be set by an addendum Environmental Statement. Condition 2 of the outline planning permission as varied requires development to accord with the SA1 Swansea Point Masterplan (April 2010). Any departures from the approved Masterplan (Figure A2.1) are to be considered on their merits having specific regard to the provisions of the adopted City & County of Swansea Unitary Development Plan Policy EC2 and relevant and related policy.

The approved Swansea Waterfront masterplan (Figure A2.1) indicates that Plot D7 is allocated for medical / health usage and with an indicative 4 storey height as being the appropriate scale.

The development of the Beacon Health Centre and Dental Referral Centres are considered to have satisfied the demand for medical / health usage within the Swansea Waterfront Masterplan area and consequently, it is considered that an alternative use such as residential needs to be considered. Having regard to the transitional location of the site with a higher density built form to the east (Institutions / hotel / apartments) and townhouses to the east, it is considered that development of an appropriate scale should be achieved. Therefore it is considered that the proposed residential use is acceptable in principle in land use and the scale of the four storey townhouses along the Langdon Road frontage would be appropriate in general scale and massing terms. Moreover, the site is part of the housing land allocation in SA1 Swansea Waterfront under for Policy HC1.

### **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.

However, within respect to the SA1 Swansea Waterfront mixed use development area, the Section 106 Planning Obligation completed in August, 2003 under the original outline planning permission 2002/1000 requires a phased programme of affordable housing up to a total of 10% of the total number of residential units within the Development. The completed residential development to date has been in accordance with this requirement, albeit the approved developments have not all incorporated a planning restriction to this effect and have been reliant on the Registered Social Landlords (RSL) developments to meet this requirement. This has been a deliberate policy objective in order to allow the private market housing to achieve a higher design quality.

It is considered appropriate that this current proposal makes a 10% affordable housing provision in accordance with the SA1 Swansea Waterfront Section 106 Planning Obligation requirement rather than the Council's Planning Obligations Supplementary Planning Guidance (SPG) would which normally expect that 25 – 30% of all dwellings will be affordable housing. This position would be consistent with the decision to provide 10% affordable housing on the adjacent development on Plots D8 / E1 (ref: 2015/0030) reported and the approved development on Plot E2 / E3a (ref: 2015/1107). Securing a 10% affordable housing provision would contribute to the delivery of the phased programme of the overall affordable housing provision within the SA1 development and would accord with the aspirations of Policy HC3 which seeks to negotiate the inclusion of an appropriate element of affordable housing. It is appropriate that this is tied to the planning permission via a Section 106 Planning Obligation.

### **Visual Impact, Design and Residential Amenity**

In considering the specifics of the scheme, Policy EV1 of the UDP requires new development to accord with 11 specified objectives of good design whilst Policy EV2 states that the siting of new development should give preference to the use of previously developed land over greenfield sites and should have regard to the physical character and topography of the site and surroundings by meeting specified criteria relating to siting and location.

Within the context of the overall development, the proposal further strengthens the approach to this eastern area of SA1 providing contemporary sustainable models of family housing. The general layout concept comprising two parallel blocks with a primary frontage onto Langdon Road around a central parking courtyard is welcomed. The scale of the development is appropriate to the context of the overall SA1 development. The groups of townhouses provide a strong presence to Langdon Road.

The four storey townhouses creates a strong frontage onto Langdon Road which is enlivened by front doors, full height windows, coloured render panels, render variations and projecting Juliette balconies. The townhouses would be set back off Langdon Road with modest front gardens with the front boundary treatment consisting of a low level (1000mm) black galvanised steel railings which will provide a clear definition between public and private ownership. This approach would strengthen Langdon Road as an active residential street with a domestic character as opposed to the more formal and commercial character which can be found at the western end.

The design of the access road will avoid extensive areas of tarmac and to visually reduce the perception of a car dominated environment, it is proposed to use appropriate paving. Additionally, the car parking areas around the periphery of the courtyard would incorporate a permeable concrete block surface. The precise material and detailing may be approved through conditions.

The proposed palette of materials consisting of predominantly brick, white render together would be line with the wider SA1 development, and would provide a sense of place in keeping with the 'dockland' character whilst responding to the contemporary nature of the wider SA1 development. The precise palette of materials can be addressed by the standard materials condition. Overall, the design of the development is appropriate to its context and would provide a good mix of building forms with well-articulated elements.

Further relevant criteria of Policy EV1 is that new development does not result in a significant detrimental impact on local amenity in terms of visual impact, loss of light or privacy, disturbance and traffic movements. In this respect it is considered that the size and design of the development proposed would not unacceptably impact on any existing residential development within SA1. Moreover it is considered that the approved SA1 Masterplan provides sufficient comfort that the current proposal can be successfully integrated into the scheme as a whole without undue detriment to future occupants. In terms of future occupants within the development itself, it is considered that that the design and layout is such that the proposal would result in a good standard of residential amenity.

Overall the proposed development is considered to be of an acceptable standard of design that would fulfil the design objectives for sustainability, sense of place and community. The contemporary design approach is well-suited to its SA1 context. Having regard to the foregoing, it is considered that proposal is in accordance with the requirements of UDP Policy EV1. Furthermore, as per the provisions of Policy EV2 the site utilises previously developed land and the nature of the development is such that it would not result in conflict with the criteria forming part of that policy.

Policy EV3 of the UDP requires new development proposals to provide access and facilities for all; provide satisfactory parking in accordance with Council adopted design standards; contribute to a high quality public realm by improving pedestrian linkages with adjoining spaces and attractions and be accessible to pedestrians, cyclists and users of public transport. In this respect the Design and Access Statement confirms that the development will be designed using inclusive design principles to provide ease of access for all and will be in full compliance with Part M of the Building Regulations. Langdon Road is generally level, whilst levels within the site have been set to ensure that gradients are acceptable for wheelchair use without the need for ramps. It is the intention that Langdon Road will have a regular bus service whilst at present bus services are available approximately 300 metres to the West on Langdon Road. The proposed development is sustainably located close to the centre of Swansea on a brownfield site and is well linked by shared cycle and pedestrian routes. The proposal is therefore considered to be in accordance with the requirements of Policy EV3.

Policy EV4 of the UDP relates to public realm. In this respect, the proposed active residential use for Langdon Road is considered to provide a good degree of active frontage to that key area of public realm. The proposal is therefore considered to be in accordance with the provisions of Policy EV4 of the UDP. As stated, a condition is however recommended to provide appropriate control of the precise design of the hard/soft landscaping scheme and means of enclosing the site, as well all other aspects of the development's interface with adjoining areas of public realm.

### **Highway Safety and Transportation**

As indicated above, the development will be served with a single vehicular access off the service road from Langdon Road and the Head of Transportation indicates that adequate visibility will be provided. The site is also well served by public transport (from Fabian Way) and access would also be available to the local and national cycle network.

The development will provide a total of 52 car parking spaces with each townhouse allocated 2 spaces, with a provision of 6 visitor parking spaces. This is considered to be an appropriate level of parking provision in the context of the Council's car parking standards, the site's sustainable location and the likely car ownership levels across the development as a whole. Having regard to the site's proximity to the City Centre, its accessibility by a range of transport modes and the provision made to encourage pedestrian and cycle access/use, it is considered that the proposal satisfactorily accords with UDP Policies AS1 (new development proposals), AS2 (design and layout), AS5 (walking and cycling) and AS6 (parking).

The Head of Transportation indicates that whilst the internal road layout is acceptable in safety terms it is not suitable for adoption and is therefore likely to remain privately maintained and an appropriate condition is recommended in order to ensure satisfactory management and maintenance of the non-adoptable areas.

### **Drainage and Flood Risk**

The submitted engineering layout indicates the existing sewer easement which traverses the site and which influences the layout and alignment of the pedestrian access to the north and the vehicular access from Langdon Road. The layout also indicates the provision of the adoptable foul and surface water sewers and connections onto Langdon Road. This indicates that the application site is fully serviced with a foul drainage connection on Langdon Road.

The surface water will be connected to the existing SA1 infrastructure which discharges into the Prince of Wales Dock. Subject to the imposition of appropriate drainage conditions, it is considered that the proposal would be in accordance with the requirements of UDP Policies EV33 (sewage disposal), EV34 (protection of controlled waters) and EV35 (surface water run-off). The wider SA1 Flood Consequences Assessment indicates that the extreme flood event for the 1 in 1000 (0.1%) is 6.82m. The survey indicates that the site frontage has an existing site level of between 9.74 – 10.04 and therefore there is no flood risk across the site.

### **Ground Contamination**

Policy EV38 indicates that development proposals on land where there is a risk from contamination 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 water, or the natural and historic environment. A Geo Environmental Report has been submitted with the application. There are known land remediation issues to be addressed and suitable conditions are imposed accordingly. Additionally, conditions are imposed relating to the requirements for a Construction Management Pollution Plan and Site Waste Management Plans to be implemented.

### **Conclusion**

In conclusion it is considered that the proposed development is acceptable when assessed against the provisions of Development Plan policy, adopted Supplementary Planning Guidance and the approved Design and Development Framework for SA1. There are considered to be no additional issues arising from the provisions of the Human Rights Act and approval is therefore recommended.

### **RECOMMENDATION**

**APPROVE, subject to the conditions indicated below and the applicant entering into a Section 106 Obligation to provide 10 % (2 units) of the total number of residential units within the development as affordable housing.**

**The units are identified as house type CA on plots 18 and 19 and will be offered to the nominated RSL / Council in respect of Intermediate Housing Units at no more than 70% ACG / or in respect of Social Rented Units at no more than 42% ACG. The phasing of the development must not allow more than 50 % occupation of the market housing units until such time as the affordable homes have been completed.**

**If the Section 106 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 Policy HC3 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.

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- 2 The development shall be carried out in accordance with the following approved plans and documents: [1501-30, 1501-31, 1501-33 -47, 1501-51, 1501-53 plans received 4 April, 2016; Langdon Aerial 1, Langdon Shots 1 - 4 received 25 April, 2016; 1501 -32 Rev A, 1501-48 Rev A, 1501-49 Rev A, 1501-560 Rev A, 1501-52 Rev A - amended plans received 24 May, 2016]

Reason: To define the extent of the permission granted.

- 3 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).

- 4 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).

- 5 Notwithstanding the details shown on any approved plan, samples of all external finishes, including windows and doors and the precise pattern and distribution of the external finishes shall be submitted to and approved by the Local Planning Authority in writing prior to the development of superstructure works. The development shall be implemented in accordance with the approved details. Composite sample panels shall be erected on site and the approved sample panel shall be retained on site for the duration of the works, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

- 6 Prior to the commencement of super structure works, details at an appropriately agreed scale of the following shall be submitted to and agreed in writing by the Local Planning Authority:

- Typical window unit within its opening;
- Typical external door within its opening;
- Metal Window Surrounds;
- A sectional elevation indicating the juxtaposition of various facing materials and how typical junctions are to be detailed;
- Details of the location, extent, design and finish of all visible external ventilation;
- Balconies / balustrades / privacy screens;
- Canopies;
- Rainwater goods.

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

Reason: In the interests of visual amenity.

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- 7 Notwithstanding the details shown on any approved plan, the precise design, extent and height of all means of enclosure within and around the development shall be submitted to and approved in writing by the Local Planning Authority. The means of enclosure shall be built in accordance with the approved details.  
Reason: In the interests of visual amenity and general amenity.
- 8 Notwithstanding the details shown on any approved plans, no superstructure works shall take place without the prior written approval of the Local Planning Authority of a scheme for the hard and soft landscaping of the site. The scheme shall include details of all external lighting, any external structures and the external surfacing to vehicular and pedestrian circulation and car parking areas within the communal areas and 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.
- 9 Unless otherwise agreed in writing by the Local Planning Authority, the proposed parking area hereby approved/illustrated on the submitted plan shall be:  
(i) porous or permeable; or  
(ii) constructed to direct run-off water from the hard surface to a porous or permeable area or surface within the curtilage of the dwellinghouse; and  
(iii) be permanently maintained so that it continues to comply with the requirements of paragraph (i) and (ii).  
Reason: In the interests of sustainability.
- 10 Before the development hereby permitted is commenced, details of the levels of the residential buildings, site access road in relation to the adjoining land and highways together with any changes proposed in the levels of the site shall be submitted to and agreed by the Local Planning Authority in writing.  
Reason: To ensure that the work is carried out at suitable levels in relation to the highway and adjoining land having regard to drainage, gradient of access, and the amenities of adjoining occupiers.
- 11 Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:  
1. A preliminary risk assessment which has identified:  
- all previous uses  
- potential contaminants associated with those uses  
- a conceptual model of the site indicating sources, pathways and receptors  
- potentially unacceptable risks arising from contamination at the site.

- Continued -

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- 11      2. A site investigation scheme, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.  
3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.  
- Continued -  
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.  
Any changes to these components require the express consent of the Local Planning Authority.  
The scheme shall be implemented as approved.  
Reason: It is considered that the controlled waters at the site are of high environmental sensitivity, being a Secondary Aquifer and contamination is known / suspected at the site due to its previous industrial uses.
- 12      Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.  
Reason: Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.
- 13      Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.  
Reason: To ensure that longer term remediation criteria relating to controlled waters have been met. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.



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

Reason: Given the size/complexity of the site it is considered possible that there may be unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated.

- 15 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater.

Reason: There is an increased potential for pollution of controlled waters from inappropriate methods of piling.

- 16 No development approved by this permission shall be commenced until a Construction Pollution Management Plan detailing all necessary pollution prevention measures for the construction phase of the development shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent pollution of controlled waters and the wider environment.

- 17 No development approved by this permission shall be commenced until a Site Waste Management Plan (SWMP) has been produced and submitted in writing for approval by the Local Planning Authority. The development shall be constructed in accordance with the approved SWMP.

Reason: To ensure waste at the site is managed in line with the Waste Hierarchy in a priority order of prevention, re-use, recycling before considering other recovery or disposal option.

- 18 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales) (or any order revoking and re-enacting that order with or without modification), no developments under the provisions of Schedule 2, Part 1, Classes A, B, C, D, E, F, G & H and Part 2, Classes A, B, and C shall be carried out without the benefit of planning permission.

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

- 19 The integral garages on House types A, B, C & D shall be constructed with a clear internal dimension of 6 metres by 3 metres and shall be retained for the parking of vehicles and purposes incidental to that use and shall not be used as or converted to domestic living accommodation.

Reason: To ensure adequate on site car parking provision in the interests of highway safety, and residential and visual amenity.

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- 20 No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.  
Reason: To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.
- 21 Unless otherwise agreed in writing by the Local Planning Authority, no development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how foul water, surface water and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SuDS) for surface water drainage and/or details of any connections to a surface water drainage network. The development shall not be brought into beneficial use until the works have been completed in accordance with the approved drainage scheme, and this scheme shall be retained and maintained as approved unless otherwise agreed in writing by the Local Planning Authority.  
Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment and to minimise surface water run-off.
- 22 Foul water and surface water discharges must be drained separately from the site and no surface water shall be allowed to connect (either directly or indirectly) to the public foul sewerage system. No land drainage run-off will be permitted, either directly or indirectly, to discharge into the public sewerage system.  
Reason: To prevent hydraulic overloading of the public sewerage system and pollution of the environment.
- 23 Notwithstanding the details indicated in the application, no part of the development hereby approved shall be occupied until the road layout of the internal site access road including car parking, street lighting and the vehicular access spur into the development, have been submitted to and approved in writing by the Local Planning Authority. The road and parking layout shall be completed in accordance with the approved plans.  
Reason: In the interests of highway / pedestrian safety and visual amenity.
- 24 The development shall be carried out in accordance with a travel plan to be submitted to and approved in writing by the Local Planning Authority prior to any beneficial use of the development commencing. The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary.  
Reason: In the interests of sustainability and to prevent unacceptable highway congestion.

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- 25 Prior to the occupation of any part of the development, the proposed arrangements for the future management and maintenance of the proposed internal site access road, car parking areas, circulation areas and areas of communal space / landscaping within the development shall be submitted to and approved by the Local Planning Authority. The management and maintenance scheme shall be implemented in accordance with the approved scheme.

Reason: In order to ensure that the non-adoptable areas within the development are satisfactorily managed and maintained.

### INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (UDP Policies EV1, EV2, EV3, EV4, EV33, EV34, EV35, EV38, EV40, EC1, EC2, HC1, HC3, AS1, AS2, AS5 & AS6)
  - 2 With regard to ground contamination Natural Resources Wales recommends that developers should:
    1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
    2. Refer to Environment Agency document; Guiding Principles for Land Contamination for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, such as human health.
    3. Refer to Groundwater protection: Principles and practice (GP3).
-