

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, 6 June 2017

Time: 2.00 pm

Chair: Councillor Paul Lloyd

Membership:

Councillors: P M Black, L S Gibbard, M H Jones, E J King, M B Lewis, R D Lewis, C Richards, A H Stevens, D W W Thomas, L J Tyler-Lloyd 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.
1 Apologies for Absence.	
2 Disclosures of Personal and Prejudicial Interests. www.swansea.gov.uk/disclosuresofinterests	
3 Minutes. To approve & sign the Minutes of the previous meeting(s) as a correct record.	1 - 4
4 Items for Deferral / Withdrawal.	
5 Application to Register Land Known as Parc Y Werin, Gorseinon, Swansea as a Town or Village Green.	5 - 104
6 Public Rights of Way - Application for a Public Path Diversion Order to Footpath Number 4 at Brynmaen Farm in the Community of Mawr.	105 - 113
7 Public Rights of Way - Application for a Public Path Diversion Order Relating to Part of Footpath No.1 at Voylart Close, Dunvant.	114 - 119
8 Determination of Planning Applications under the Town & Country Planning Act 1990.	120 - 337
9 Planning Committee Appeal Decisions.	338 - 356

Next Meeting: 4 July 2017

A handwritten signature in black ink that reads "Huw Evans". The signature is written in a cursive style with a large initial 'H'.

**Huw Evans
Head of Democratic Services
Tuesday, 30 May 2017**

Contact: Democratic Services - 636923

CITY AND COUNTY OF SWANSEA

MINUTES OF THE PLANNING COMMITTEE

HELD AT COUNCIL CHAMBER, GUILDHALL, SWANSEA ON TUESDAY,
4 APRIL 2017 AT 2.00 PM

PRESENT: Councillor P Lloyd (Chair) Presided

Councillor(s)	Councillor(s)	Councillor(s)
C Anderson	P M Black	M H Jones
E T Kirchner	P B Smith	M Thomas
D W W Thomas	T M White	

Apologies for Absence

Councillor(s): L J Tyler-Lloyd

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

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

74 **MINUTES.**

RESOLVED that the Minutes of the Planning Committee held on 7 March 2017 be approved as a correct record.

75 **ITEMS FOR DEFERRAL / WITHDRAWAL.**

None.

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

A series of planning applications were presented on behalf of The Head of Planning & City Regeneration.

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

RESOLVED that the undermentioned planning applications **BE APPROVED** subject to the conditions in the report/and or indicated below:

#(Item 1) Planning Application 2017/0138/FUL – Bishops Walk, Morriston

A visual presentation was given.

Mr S Ostad (objector) addressed the Committee.

Miss A Barnett (applicant) addressed the Committee.

Councillor R Francis-Davies (Local Member) addressed the Committee in respect of the application.

#(Item 2) Planning Application 2016/3322/FUL – 28 Kinley Street, St Thomas

A visual presentation was given.

Councillors J A Hale & C E Lloyd (Local Members) addressed the Committee and spoke against the application.

#(Item 3) Planning Application 2017/0313/FUL – 8A Brynmill Crescent, Brynmill

A visual presentation was given.

Report updated as follows:

Information requested from the applicant in relation to the former use of the property as a HMO for 6 people.

The applicant has updated the submitted existing and proposed plans due to an error on the drawing in relation to the existing floor plans. The drawing now shows 6 bedrooms as existing to reflect its former use. There are no other changes on the drawing.

Photographs have been provided of the property which had been stripped back at the time of survey which shows evidence of hand basins being in each of the bedrooms.

The Councils HMO Team has confirmed the former use of the property stating: We have records from 2001 that show the house was previously owned by Family Housing Association.

It was privately owned and occupied as an HMO in 2004 as on 13 December 2004, the house was registered as an HMO under the then Housing Act.

On 1 July 2006 the existing HMO registration was pass-ported to an HMO licence with the change in Housing Act legislation and the introduction of HMO licensing. The licence expired on 12th December 2009. At the time the house was licensed for 7 people.

We know that the house was vacant in 2011 and 2012, but have no more up to date records on occupancy. We have had telephone calls from a couple of people who were considering buying it in the last couple of years.

Amendment to Condition 2 :

The development shall be carried out in accordance with the following approved plans and documents: Site Location Plan, Existing and Proposed plans (2054-17-001-B) received on 4 April 2017.

Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

#(Item 4) Planning Application

A visual presentation was given.

Councillors J A Hale & C E Lloyd (Local Members) addressed the Committee and spoke against the application.

Report updated as follows:
2 additional notes of objection received.

(**Note:** Members requested that the current procedure relating to the signatures/addresses required for valid Petitions be re-examined)

77 **PLANNING APPLICATION 2013/0617 - LAND SOUTH OF GLEBE ROAD, LOUGHOR, SWANSEA.**

The Team Leader on behalf of the Head of Planning & City Regeneration presented a report which outlined the previous decision of the Committee regarding the granting of residential development of 92 dwellings at the above location subject to Section 106 agreement, the details of which were detailed in the report.

Copies of the original planning committee report were appended for information.

Councillor R Smith (Local Member) addressed the Committee in respect of the application.

Report Updated as follows:
Appendix B(Original Action Sheet 10/11/15) missing from circulated report.
Correct Appendix B distributed for Members, prior to the meeting.

He further reported on the notification from the applicant's advisors outlining their difficulties in meeting the affordable housing aspect of the S106 agreement. They had indicated that unless a lower affordable housing contribution could be agreed, the scheme will not be financially viable, and will not proceed.

Officers had reviewed the evidence submitted and following negotiations with the applicant and Housing Department a revised provision of 15% affordable housing had been proposed. This proposal is subject to future review should market conditions improve and would be reassessed at the time when an application for reserved matters is submitted.

RESOLVED that

The application be approved subject to the applicant entering into a S106 Planning Obligation to provide:

- 15% of affordable housing on the site; comprising a 50/50 mix of 2 and 3 bedroom properties provided at 42% ACG, of social rented tenure and DQR compliant. The design and specification of the AH should be of equivalent quality to those used in the Open Market Units
- An education contribution of £100, 000

- A highways contribution of £92,100;
- Management plans for the future maintenance and management of the attenuation ponds and the maintenance, management and public access to the public open space and the play areas;
- Monitoring fees shall be paid in accordance with the requirements of the Council's adopted SPG entitled "Planning Obligations" (2010).
- A reassessment of the financial viability of the scheme upon the submission of any reserved matters application, and the level of AH provided being revised (where appropriate) in accordance with the results of the reassessment;

And in accordance with the conditions set out in the previously accepted recommendation (contained within the report attached as Appendix A).

The meeting ended at 3.38 pm

CHAIR

Report of the Head of Legal, Democratic Services and Business Intelligence

Planning Committee – 6 June 2017

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

Purpose:	To inform the Planning Committee of the recommendation of the Inspector
Policy Framework:	None
Statutory Tests:	Section 15 Commons Act 2006
Reason for the Decision:	The Authority has a statutory duty to determine the Application
Consultation:	Legal, Finance, Planning and Local Members
Recommendation(s):	It is recommended that: 1) the application for the above registration be REFUSED; 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.
Report Author:	Sandie Richards
Finance Officer:	James Moore
Legal Officer:	Tracey Meredith
Access to Services Officer:	Phil Couch

1.0 Introduction

1.1 The Council has received an application from Mr. James Dunckley and Ms Claire Lewis (the Applicants) under section 15(2) of the Commons Act 2006 in respect of land known as Parc y Werin, Gorseinon, Swansea. The application seeks to register the land as a Town or Village Green. A plan of the land in question appears as Appendix 1.

1.2 The land subject to the application is owned by the Council. The Council in its capacity of owner of the land is the Principal Objector to the application.

1.3 The application site consists of two adjacent blocks of land, with distinctly different original acquisition history. As set out by the Inspector (at paragraphs

11.22 and 11.25 of his report) very approximately the eastern or north eastern two thirds of the present Parc y Werin (including the area of the bowling greens outside the current application site) was initially acquired by the present Council of the City and County of Swansea's predecessor on a long lease dated 31st December 1921. The south-western (very approximately) one third of the present application site was acquired freehold by the present Council's predecessor by an indenture dated 30th December 1924, as part of a very much larger area of land. The Inspector refers to these areas of land as the "1921 land" and the "1924 land" respectively and considers them separately where the "*as of right*" aspect of the application is concerned. A plan showing the demarcation of the two separate areas of land is included as Appendix 2.

1.4 A number of other representations, both for and against the application were also received by the Commons Registration Authority and were considered by the Inspector.

2.0 History of the Application

2.1 As reported to the Planning Committee on 4th October 2016, Mr. Alun Alesbury, Barrister-at-Law, the Inspector appointed to consider the application advised that there were issues of fact and law in dispute between the Applicants and Principal Objector and that it would be appropriate to hold a non-statutory inquiry.

2.2 A public inquiry took place on 14th to 16th February 2017 at Canolfan Gorseinon Centre to consider the application.

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 as landowner.

3.2 Mr. Alesbury is a recognised expert in this area of law and has been appointed on numerous occasions to hold public inquiries in relation to village green applications both by the City and County of Swansea and other local authorities throughout England and Wales.

4.0 The Role of this Committee

4.1 The Inspector's findings are not binding on this Committee. It is for the Committee to reach its own determination on the matters of fact and law arising as a result of the application.

4.2 It is for this Committee to determine the application fairly, putting aside any considerations for the desirability of the land being registered as a Town or Village Green or being put to other uses. In particular, the planning history of the application is not relevant for the purposes of this application.

4.3 However, the Inspector has had the opportunity to assess the evidence of all parties, both on oath at a public inquiry, by perusal of documentation

submitted by the parties and by carrying out a site visit. Furthermore, the Inspector has considered all the evidence in light of the legislation and relevant case law. It is therefore not appropriate for this Committee to re-open issues regarding the quality of the evidence unless they have extremely strong reasons to do so.

5.0 The Legal Tests to be Satisfied

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

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

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

and

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

5.3 The test can be broken down as follows:

“a significant number of the inhabitants . . . “

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

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

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

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

Use ‘as of right’ is use without permission, secrecy or force. The key issue in user ‘as of right’ is not the subjective intentions of the users but how the use of the land would appear, objectively, to the landowner. Use is ‘as of right’ if it would appear to the reasonable landowner to be an assertion of a right. Permission by the landowner, perhaps in the form of a notice on the land,

would mean that the use is not 'as of right'. Equally use by force, such as where the user climbs over a fence or other enclosure to gain access to the land would not be use 'as of right'.

5.6 If the use of the land is not sufficient in terms of frequency or regularity to reasonably bring it to the attention of a landowner, then it may be a secret use and have direct consequences upon it. Another example of secret use could be where the use takes place exclusively under the cover of darkness such that it would not be reasonable to expect a landowner to become aware of it.

5.7 *"in lawful sports and pastimes on the land . . ."*

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

5.8 *"for a period of at least 20 years . . ."*

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

6.0 Burden and Standard of Proof

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

6.2 This Committee must be satisfied based on the evidence and the Inspector's report that **each** element of the test has been proven on the balance of probabilities. In other words, it must be more likely than not that each element of the test is satisfied.

7.0 The Inspector's Findings

7.1 The Inspector addresses each of the elements of the test in his report dated 8th May 2017 (which is attached as Appendix 3) and these are set out below.

7.2 *"A significant number of the inhabitants"*

This part of the test is addressed in paragraph 11.6 of the Inspector's report. He concludes that the land has been used over many decades by a significant number of the inhabitants.

7.3 *". . . of any locality . . ."*

This criteria is considered in paragraph 11.7 of the Inspector's report. He concludes that Gorseinon is a valid 'locality' for the purposes of section 15 of the Commons Act 2006.

7.4 “indulged . . . in lawful sports and pastimes on the land”

The Inspector concludes (at paragraph 11.8) that local Gorseinon people have used the entire area of application land for lawful sports and pastimes over the whole of any relevant 20 year period.

7.5 “for a period of at least 20 years”

This criteria is considered in paragraphs 11.9 to 11.14. In particular, the Inspector refers to evidence presented at the inquiry regarding the locking and unlocking of the park gates. However, he states that the practice had ceased before November 1995. Consequently, the requisite 20 year requirement is made out.

7.6 “as of right”

The Inspector considers at some length in his report (starting at paragraph 11.15 onwards) whether the application land has been used ‘as of right’ as is required by section 15 of the Commons Act 2006 or whether it has been used ‘by right’ or with permission which could be revoked by the landowner. Particular reference is made to the Supreme Court case of *R (Barkas) –v- North Yorkshire County Council [2015] AC 195, [2014] UKSC 31*.

He considers the “1921 land” and the “1924 land” separately in his recommendations at paragraphs 11.32 to 11.58 and paragraphs 11.59 to 11.83 respectively.

The 1921 Land

The 1921 land was acquired by the Council for the express purposes of setting up a ‘public walk or pleasure ground’ or recreation ground on the land concerned. The Inspector notes (at paragraph 11.33) that by 1932 (if not before that) Parc y Werin had been formed as a ‘pleasure ground’ because Llŵchwr UDC secured byelaws governing Parc y Werin as a pleasure ground.

However, by 1944 Llŵchwr UDC acquired the freehold to the land free from incumbrances, with the 1921 lease merging into the freehold, so that the specific lease terms about use and laying out as public walks or recreation ground ceased to exist.

Consequently, the applicants argued that because the land was thereafter held for general purposes, it was no longer a public park or pleasure ground for local people to use ‘by right’ and that if they carried on using it, they were now doing so ‘as of right’. However, the Inspector takes the view (at paragraph 11.44) that the Council did not show any indication of an intent to change the use of the land as a park/recreation ground after 1944.

The Inspector also considers (at paragraph 11.51) the importance given by the Applicants to the decision of the Lliw Valley District Council in the 1970s to permit the temporary stationing of up to 6 caravans for residential use, as a

temporary measure while some houses were being repaired or renovated on an area within the Northern part of Parc y Werin.

The Inspector takes the view (at paragraph 11.58) that the temporary stationing of the caravans did not mean that Lliw Valley had ‘appropriated’ any of the 1921 land away from the park/recreation ground use to a temporary housing use. He concludes (at paragraph 11.56) that in his judgment the 1921 land has **not** been used “as of right by local people”.

The 1924 Land

The 1924 land was acquired by the Swansea Rural District Council as part of a very much larger purchase of land pursuant to a housing scheme under the Housing Acts of 1890 to 1919 for the provision of “houses for the working classes”. The Inspector takes the view that the facts and history of the land is similar to that considered by the Supreme Court in the *Barkas* case.

In that case the recreation ground had been provided on what had originally been ‘housing land’. The Inspector finds (at paragraph 11.79) that it cannot be plausibly argued that the local public using the deliberately provided 1924 land part of Parc y Werin were doing so as trespassers ‘as of right’. In his judgment they were doing so ‘by right’ or by permission of the owning authority.

8.0 Arguments of Statutory Incompatibility

- 8.1 In paragraphs 11.84 to 11.106 the Inspector considers the argument put forward by the Principal Objector that registration of the land as a town or village green would be incompatible with the statutory purposes for which the land was held. In particular, it was purported by the Principal Objector that the land had been appropriated in July 2015 for education purposes.
- 8.2 Having considered the evidence, the Inspector (at paragraph 11.93) is “entirely unsatisfied that the purported appropriation was carried out properly or effectively” and has “very strong reservations about the effectiveness of that as an appropriation at all.”
- 8.3 He commends to the Commons Registration Authority that statutory incompatibility is not a sound basis for rejecting the applicants’ application. However, this point does not have any effect on the Inspector’s overall conclusions and recommendation based on the arguments as between ‘by right’ and ‘as of right’ use of this land by local people.

9.0 Overview Points Made by the Inspector

- 9.1 In paragraphs 11.107 and 11.114 of his report the Inspector makes overall observations regarding the application. He discusses the need to hold a public inquiry and expresses the view that it is not the role of Commons Registration Authorities to seek to make up for perceived deficiencies in the general law as to the protection from changes to parks, recreation grounds and open spaces in the care and ownership of Local Authorities for other uses.

10.0 Final Conclusions and Recommendations

- 10.1 The Inspector's conclusions and recommendations are set out in paragraphs 11.115 and 11.116 of his report.
- 10.2 He concludes that the Applicants have not succeeded in making out the case that any part of the application site should be registered pursuant to section 15(2) of the Commons Act 2006. In particular, they have failed to establish that any part of the land was used 'as of right' for the requisite purposes or period, within the legal meaning of that expression.
- 10.3 The Inspector recommends that no part of the application site should be added to the Register of Town or Village Greens under Section 15 of the Commons Act 2006.

11.0 Equality and Engagement Implications

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

12.0 Financial Implications

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

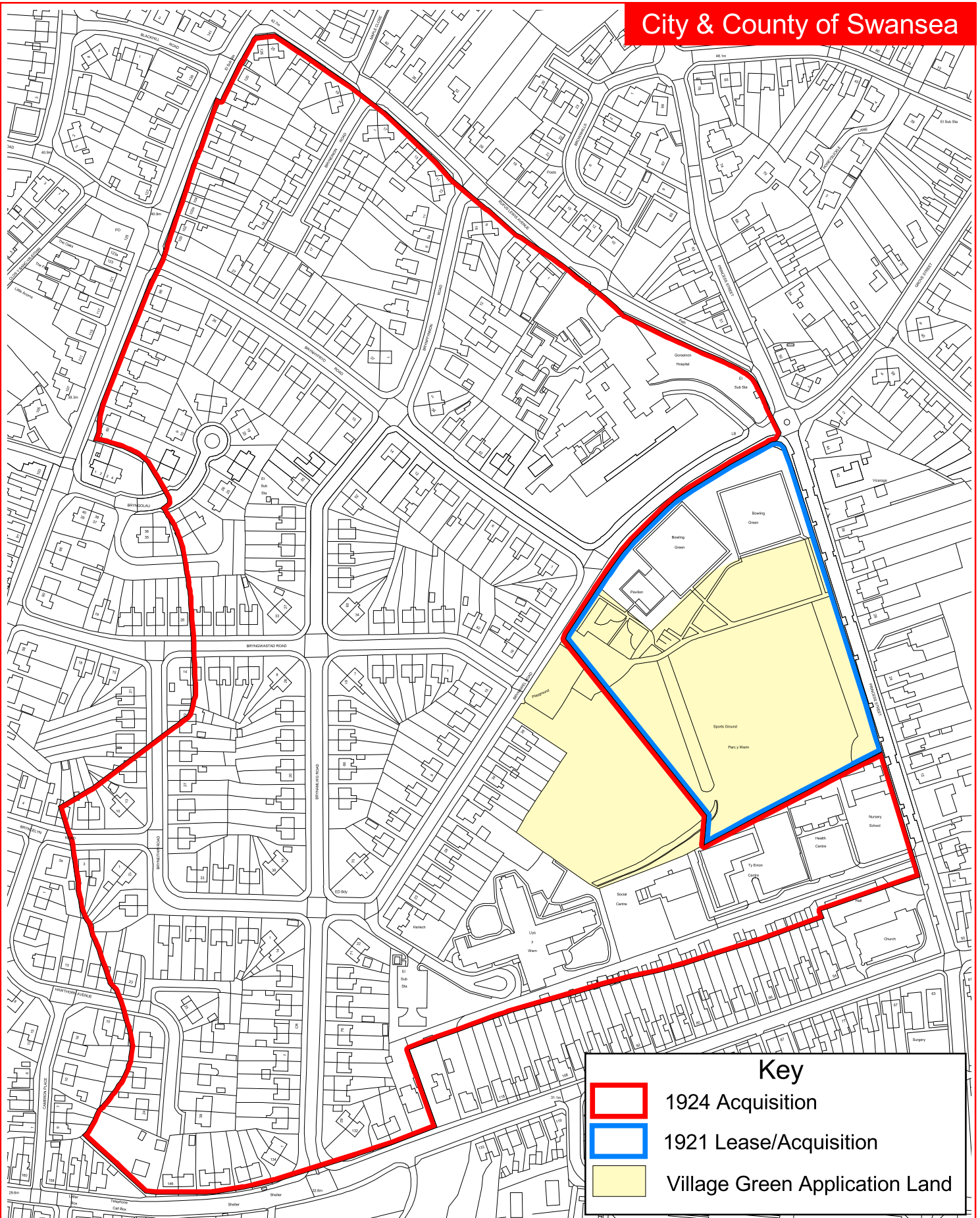
13.0 Legal Implications

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




Background Papers: Application file

Appendices:

Appendix 1	Plan showing the application site
Appendix 2	Plan showing the 1921 land and the 1924 land
Appendix 3	Report of Mr. Alun Alesbury, Barrister-at-Law dated 8 th May 2017



Key

-  1924 Acquisition
-  1921 Lease/Acquisition
-  Village Green Application Land



Parc Y Werin

Scale 1:3000 @ A4

Prepared by Gilian Buckley
Corporate Property
The Civic Centre
City & County of Swansea : Dinas a Sir Abertawe

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COMMONS ACT 2006, Section 15

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

**RE: LAND KNOWN AS PARC Y WERIN,
GORSEINON,
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

CONTENTS:

1. Introduction
2. The Applicants and Application
3. The Objectors
4. Directions
5. Site Visits
6. The Inquiry
7. THE CASE FOR THE APPLICANTS – Evidence
8. The Submissions for the Applicants
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 23rd November 2015, for the registration of an area of land known as Parc y Werin, Gorseinon (fronting on to Princess Street and Brynawel Road), as a Town or Village Green under *Section 15* of the *Commons Act 2006*. The application 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 itself, in its capacity as owner of the site concerned, made an objection to the application in this case, as did a number of other persons or bodies (see further below). It is important to record at this point that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the Commons Act. I have had no involvement with the Council in relation to this matter in its capacity as landowner, as local education authority, or indeed in any of its other capacities, other than by way of receiving evidence and submissions on the Council’s behalf as Objector to the application.
- 1.3. The Council as Registration Authority initially asked me to consider whether, in the circumstances of this particular case, and in the light of what had been said in the application and supporting documents, the objections to it, and the Applicant’s initial response to those objections, the factual position was sufficiently clear and undisputed that it might be possible for a decision on the application to be properly and fairly reached, without the need for hearing any further oral evidence and argument from the parties.
- 1.4. I myself initially took the view that this might well be the case, but it became apparent following the exchange of a number of further written comments or representations from the two main ‘Parties’ in this case (the Applicants, and the Council as Objector) that the factual background to this matter was in a number of respects less clear and straightforward than had initially appeared. Accordingly the Registration Authority concluded, in line with advice from me, that it had become appropriate and necessary that a public local inquiry should be held, to hear further evidence and argument in relation to the aspects of the case where the position was less clear, and less straightforward. In this context the Registration Authority took the view, which I endorse and agree with, that it did not need to hear further evidence seeking to demonstrate that significant numbers of the inhabitants of Gorseinon had used Parc y Werin during the relevant period of 20 years for ‘lawful sports and pastimes’; that proposition had been clearly established (and was not the subject of dispute) through the exchanges of written material which had already taken place. Likewise the Registration Authority was satisfied, on the written exchanges, that the administrative area of Gorseinon Town Council is capable of being a valid and relevant ‘locality’ for the purpose of Section 15 of the Commons Act 2006.

1.5. In this context I was appointed by the Registration Authority to hold a non-statutory Public Local Inquiry into the application generally, except in relation to the matters noted above, where the position was already clear, and to hear and consider the remaining evidence and submissions in support of the application, and on behalf of the Objector(s). I had in the circumstances outlined above already been 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 the further correspondence and exchanges which 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 later material, or the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANTS AND APPLICATION

2.1. The Application was itself dated 13th November 2015, but was noted as received by the Registration Authority on 23rd November 2015; the latter is therefore the effective date of the application. It was made jointly by (Gorseinon Town) Councillors James Dunckley and Claire Lewis. They are therefore “the Applicants” for the purposes of this Report.

2.2. The application form indicated that the application was based on *subsection (2) of Section 15* of the *Commons Act 2006*. The application was supported by a number of completed ‘evidence questionnaires’, and some other written and documentary material. I have already noted that there were a number of further submissions of written material from the Applicants, prior to the issue of Directions for the Inquiry.

2.3. I should also note that, following the initial making of the application in this case, a number of written representations in support of it were received by the Registration Authority from local people. I have read all of them, and taken them into account in forming my overall conclusions and recommendations.

2.4. On the question of the relevant ‘neighbourhood’ or ‘locality’, the application form as submitted referred to the Gorseinon Town Council Administrative Area as the relevant area, and attached a map. The Registration Authority has already accepted that this area is a valid ‘locality’ for the purpose of these proceedings (and I agree).

2.5. As far as the application site itself was concerned, its intended boundaries were clearly shown on a map which accompanied the application.

2.6. The site is currently a reasonably well maintained area laid predominantly to grass, with some trees, but also with some areas of hard-standing, including an area in the north-west laid out as a children’s playground, and another adjacent area which seemed to be used mainly for parking cars. The general appearance of the site is that of a fairly typical local park or recreation ground. The site is generally surrounded by fencing, but with several ungated gaps through that fencing, so that it appeared to be permanently accessible to people on foot.

2.7. The site generally slopes down from north to south, but not so as to prevent there being significant areas of generally flat land, including areas laid out as pitches to be used for playing football (although none was taking place at the times of my visits).

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. It is also the case (and of potential relevance to the present proceedings) that the Council is Local Education Authority for its area, including Gorseinon and the application site.

3.2. Written objections to the application was also submitted on behalf of the Governors of Gorseinon Primary School, and by the Deputy Head Teacher on behalf of that School, and by a number of individuals. I have read and considered all of these written objections, and (insofar as they raise matters relevant to Section 15 of the Commons Act 2006) have had regard to them in reaching my overall conclusions and recommendations. They do not however raise any points relevant to the Commons Act which add anything to the case made on behalf of the Council, and I do not record them separately in this report. In the event none of these other objectors (than the Council as landowner and LEA) participated in the Inquiry which I was appointed to hold (although they were given the opportunity to do so), or submitted any further representations. The Council, in its capacity as landowner and LEA, 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 and go on to the application site, unaccompanied. I also observed the surrounding area generally.
- 5.2. After all the evidence to the Inquiry had been heard, 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 some of the surrounding area more generally.

6. **THE INQUIRY**

- 6.1. The Inquiry was held at the Canolfan Gorseinon Centre, Millers Drive, Gorseinon, over three days, on 14th, 15th and 16th February 2017.
- 6.2. At the Inquiry extensive 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 APPLICANTS – 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, including completed evidence questionnaires.
- 7.2. Additional written or documentary material was then submitted to the Registration Authority on behalf of the Applicant [and also the Principal Objector], and then further such material was submitted 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 material, including documents and photographs, 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. In this particular case, significant areas of fact were not in dispute, such as the use by local people of the application site land for recreational purposes over a prolonged period (of at least 20 years). Nevertheless, to the extent that there were still factual matters in dispute, and as was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded 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 all of 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, etc. by individuals who gave no oral evidence.
- 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 Applicants

- 7.7. *Councillor David Cole* lives at 209 Frampton Road, Penreheol, Gorseinon. He explained that he is a member of the Council of the City and County of Swansea, for the Penyrheol, Gorseinon Ward.
- 7.8. He was born and raised in Gorseinon, and is now 64 years old. He went to the local nursery, infants and junior schools, and then to Gowerton Grammar School, before beginning his working life. From 1971 until retirement in 2005 he worked at 3M in Gorseinon. He was a health and safety officer at the plant at the time he retired. In 2010 he took up a position on Gorseinon Town Council, and in 2012 he was elected County Ward Member for his present Ward. He had been Captain of Neath Rugby football team in the 1970s.
- 7.9. When he was young his family lived on Bryn Close Road and they played football and cricket on Parc y Werin. Down at the bottom of the park, behind Brynawel Road, there were also a series of shallow ponds in which they caught newts and tadpoles as children. There were a lot of brambles on the land. He would say it was rough land. Parc y Wein at that time, in the 1950s and '60s, had a number of gates which the park keepers opened and shut. He did not recall any gate to the park behind Alexandra Road. He had no recollection of signage anywhere at that time on Parc y Werin.

- 7.10. The Carnival was the big local event of the year, held every second Saturday of July. The proceeds went to the Gorseinon Hospital. It was very well run. At that time money was collected on the gate. Years ago they would take fence panels away to let in the people who ran the fair. He believed the Carnival stopped in the 1990s. It was re-started in 2012, and he was treasurer on the Carnival committee until its final year in 2016. They were told by Swansea Council that they could not collect money on the gates.
- 7.11. As a member of Swansea Council's planning committee, he had raised concerns about the appropriation of this land in 2015. He went to the then Monitoring Officer seeking to "call-in" the appropriation. He thought they would consult the community more widely, but no notices were placed on Parc y Werin.
- 7.12. He later said that he thought the Carnival had in fact re-started in 2011. Before that it had stopped in the early 1990s, but he could not remember exactly when.
- 7.13. His father, who knew the site well, is Mr Ivor Cole who is currently aged 89. Mr Cole senior had been a park keeper.
- 7.14. Mr David Cole said that he had not discussed with his father the question of when the gates of the park were locked in those earlier days. He believed his father had been park keeper until 1995. Everything changed in about 1995, when the whole area was transferred from Lliw Valley to the City and County of Swansea. Mr Cole junior believed that his father had, as part of his job, opened and closed the gates of the park during the time that he had worked as park keeper.
- 7.15. *In cross-examination* Mr Cole said that there had been a number of changes in local government which had affected the park. Prior to 1974 the area had been in the Llchwyr Urban District. Then in 1974 Lliw Valley took over. Then on the 1st April 1996 Swansea took over. His recollection was that his father had been park keeper at Parc y Werin up until that last change.
- 7.16. There had been only two gates to the park. There was a double gate onto Princess Street, and another gate right opposite the hospital, on the corner near the bowling green. There had been no access from Alexandra Road to Parc y Werin.
- 7.17. Having considered some aerial photographs produced by the Principal Objector, Mr Cole agreed that a health centre had been built on the land to the south of the park between 1967 and 1971.
- 7.18. As for the entrances into the park, Mr Cole acknowledged that there was also an entrance from Brynawel Road, by the car park, but that entrance was not gated or closed. The only gates ever closed were the one onto Princess Street and the one on the corner by the bowling green. There had been three 'pitches' at the northern end of the park, which were two bowling greens and one tennis court.

- 7.19. He accepted that a 1981 aerial photograph showed that two football pitches had also appeared on the park by that time. He thought they were both junior pitches, and commented that the land had been very boggy until it was drained. On the 1981 aerial photograph there was shown yet another building to the west of the health centre, which Mr Cole said was a social centre. By the time of a 1992 aerial photograph there was shown yet a further building, which constituted a sheltered/social housing complex.
- 7.20. By the time of the 2005 photograph a playground had appeared near Brynawel Road, i.e. the children's play area. Mr Cole did not know why in a 2009 photograph the second football pitch appeared to have some smaller markings on it which did not clearly relate to the game of football.
- 7.21. He said that for local people, 'Parc y Werin' as a name meant everything north of the buildings running west from the health centre, right up to Brynawel Road. Therefore the bowling greens and tennis court were in what he would call the park, even though they are not within the present application site.
- 7.22. He accepted that the football pitches on the land took up a large part of the open area of it. They were used for the playing of games by local leagues and the like. He believed that the pitches were booked out from the local council. There would have been goalposts put in place, and occasionally nets he thought. He personally had played football there when he was aged 15/16 or so, but thereafter he played rugby. The pitches had been marked out with white lines. When the pitches were in use the public would stay off them, but they would go on that part of the land at other times. Outside league use the local people would use the goalposts on the pitches to practise shots etc.
- 7.23. He personally did not know how the bowling greens and tennis courts had been administered. As for the Carnival, there had never been an issue about the use of Parc y Werin in connection with it, but he believed that around the 1990s some problems had arisen about road issues and security, etc. However he did not know exactly when the Carnival had stopped at that time. Money for entry to it had been collected on the gates to the park, being the two gates he had referred to. When the Carnival re-started, the organisers had been told categorically that they could not collect money for entry. His recollection of the old system was that one paid one's money to go in, and would then be stamped on the hand to register the fact that one had paid. The committee organising the Carnival would have had permission to hold it there, and to do that. He himself had not been involved in any of that however, he had merely observed it.
- 7.24. As for the bowling greens and tennis court, he believed that these were now completely fenced off from the rest of the park; however that had not been the case originally. Those areas have been enclosed more recently. There was no such fence separating off those areas in the earlier days, according to his recollection.

- 7.25. *Mr Crispian Huggill*, lives at 19 Pencaecrwn Road, Gorseinon. He had moved to Gorseinon in 1985.
- 7.26. He confirmed that as far as the present bowling green area is concerned, one cannot get in there without a key. There had originally been one bowling green and three tennis courts, he thought. The bowling green in the extreme north-east corner of the park had been fenced off, but to its west, back in 1985, there were two areas of tennis courts which had not been fenced off.
- 7.27. In the early 1990s Lliw Valley Borough Council did quite a lot of work on the park. They replaced two tennis courts with another bowling green, and replaced the old pavilion with a new one. The new pavilion is shown in the 2005 aerial photograph. He believed it had been opened by the Mayor of Lliw Valley in 1994/5. There is a name plate visible on the building which says this.
- 7.28. In the autumn of 2015, there was considerable unease in much of the local community about an appropriation order which had been made by the Council of the City and County on land at Parc y Werin. No-one local to the park seemed to know anything about it, when and how it was carried out or who had been consulted, if indeed anyone was. Having read up some case-law on the subject, he decided to start a formal enquiry to the local authority, that is the City and County of Swansea. He had not realised at the time that one such enquiry would lead on to another. So on 14th December 2015 he submitted a Freedom of Information request to the authority, to seek to find out the how, why and when of the appropriation order carried out in the summer of that year.
- 7.29. Another issue had been troubling many people at that time. Hearing that the community were about to lose part of Parc y Werin to development, there were some who were convinced that this could not be the case, that it could never happen. They believed the park had been given to the people of Gorseinon by Mr W R Lewis, who had built the hospital, a large house for nurses' accommodation, the working men's club in Brighton Road, and a pavilion in the car park. The question arose whether there was any evidence of this benefactor in the deeds to Parc y Werin (which means the 'People's Park'). So he had started another Freedom of Information request to investigate the root of title to this land.
- 7.30. He had not expected that one year later he would still have many unanswered questions concerning the statutory basis of the ownership of the land at Parc y Werin. Neighbours and friends also had continuing concerns which were unanswered, because the local authority has withheld a substantial amount of information in the course of his enquiries. Freedom of Information enquiries were still ongoing.
- 7.31. He provided information about five Freedom of Information requests which had been made to the Council of the City and County between November 2015 and May 2016. He explained the nature of what had been asked, and produced a

bundle of documentation containing the material he had been provided with in response to those various requests. He also commented with varying degrees of satisfaction or dissatisfaction about the quality of the information with which he had been provided. [I note however at this point that my Report is not concerned with the question of the quality or lack of it of any Freedom of Information responses provided].

- 7.32. The disparate nature of the collection of material provided by Mr Huggill in his Appendices does not make it appropriate for me to seek to summarise it as part of my record of his evidence in chief. Items contained in his Appendices will be referred to as appropriate later in my Report, in my recording of his further evidence, or of any of the submissions made, by either party, which have referred to the material produced by Mr Huggill.
- 7.33. *In cross-examination* Mr Huggill said that he believed he now knew the statutory powers under which Parc y Werin was held. From the information provided it is clear. In relation to what he called the “1924 land”, being land acquired by the Council’s predecessor under a 1924 Indenture, that was public housing land acquired under the relevant housing legislation. A more significant issue arises in relation to what is known as the “1921 land”, sometimes also called the “1944 land”. These dates refer to a 1921 Lease, and an Indenture of 1944, the effect of the latter being to convey to the Council’s predecessor the freehold reversion to what had been the 1921 Lease. Relevant to the acquisition of the reversion to that land, said Mr Huggill, was the **1933 Local Government Act**. A meeting of the Llchwyr Urban District Council had resolved to buy the freehold interest in the land under the 1933 Act ‘and any other Acts thus enabling’. The 1933 Act was a broad brush enabling provision. Nothing in any surviving record said which provision of the 1933 Act was referred to, and there is no indication in any documentation as to what other powers were being referred to.
- 7.34. *In re-examination* Mr Huggill made clear that in his latter answers he had been referring to the relevant resolution of the Urban District Council of December 1943, as referred to in a document dated 10th January 1944, which was among the papers with which he had been provided.
- 7.35. **Mr Andrew Thomas** lives at 13 Brynawel Road, Gorseinon. He is aged 45 and has resided at this address all his life, currently with his brother. Their house is opposite Parc y Werin and he has been acquainted with it all his life.
- 7.36. His parents lived in Frampton Road, Gorseinon, and moved to 13 Brynawel Road in 1956 as first residents of the newly built property. In 1969 his father became one of the park keepers for Parc y Werin, alongside Dai Evans and another man until when Mr Evans retired in 1986, and his father became the senior park keeper. He (the father) retired from that job in 1996 when Lliw Valley Borough Council was taken over by Swansea City Council.

- 7.37. From 1969 one of his father's duties in the park was to open the gates at 7.00am and close them and lock them at 8.00pm, or 9.00pm in summer, every day Monday to Saturday throughout the year. The park was closed or locked every Sunday, he thought. The park had three gates, a double gate in Princess Street, a single gate in Brynawel Road and a single gate on the corner of the two streets opposite the entrance to Gorseinon Hospital. His father had been very particular about the opening and closing. Anyone found trespassing outside of those hours, for there were gaps around the side of the park where the fencing was not complete, was told to leave in no uncertain manner. However, Mr Thomas never remembered him ever calling the police or asking that offenders be fined for any such incidents. In those days the threat of being reported to one's parents was enough.
- 7.38. He remembered however that there was a period when the single gate on Brynawel Road, opposite Brynhyfryd Road, was left unlocked for many years. People were living in two large static caravans parked inside the park, near one of the tennis courts, and near to where the pavilion is today. They each had small fences and a path leading to their door. He believes they were used when the Council was refurbishing the houses in the area during the mid-1970s to 1980s. Electricity and water were plumbed in. He used to see washing pegged to the sides of the vans to dry. Rugs, mats, towels and other things would be taken for a shake and a clean outside.
- 7.39. Up until 1996 there were three park keepers in Parc y Werin for most of the time. All that changed when Swansea took over in early 1996. In October 1995 his father was told to stop locking and unlocking the park. Since that time the two gates had remained unlocked. The corner gate by the hospital was however locked to secure the bowling greens, when a section of new perimeter fencing was erected in the early 1990s, and has remained so. When his father retired he was not replaced. So there has not been anyone regularly on site every day to look after the park in the manner that the previous park keepers had been employed to do.
- 7.40. Up until the late 1990s there had never been any signs at the entrances to the park or within it. Since early 1996 there has been no-one to apprehend anyone who might be considered to be acting in any improper way, such as had been the case previously.
- 7.41. *In cross-examination* Mr Thomas said that he had been born in 1970. He himself had prepared his statement, including the parts about his late father.
- 7.42. There had been two static caravans in the park. Their own house had been very close to the park, on the other side of the road. Those caravans were there during the mid '70s and into the mid-1980s. He did not recall when they went, but he thought they would have gone by the early 1990s. They were based where the car park is now, and also where some flower beds were which are now grassed over. His recollection was that there had been a steamroller kept there, a static caravan, and another static caravan positioned longwise.

- 7.43. The gate to the bowling greens had always been locked overnight. His father's routine as a park keeper had been to close at different times in summer and in winter. The park had been closed on a Sunday. His recollection now was that there were no locks on it, it was just closed by bolts which could be opened. So people were not really locked out. However his father had thought that once the park was closed there should not be anyone in there. Only the caravan people had used the park out of hours, Mr Thomas thought.
- 7.44. In 1996 the park was taken over by Swansea Council. From then they wanted to leave the gates open all the time. His father had then retired at the age of about 63.
- 7.45. *In re-examination* Mr Thomas reaffirmed that it had been in October 1995 that his father had been told to stop locking the park. He was sure that it had been October 1995 that that had happened, that was when the changes were made in relation to not locking the gates.
- 7.46. **Mr Ivor Cole** lives at 3 Bryn Close, Gorseinon. Because of Mr Cole's great age and relative immobility, with the agreement of all parties to the Inquiry, I heard Mr Cole's evidence, and his cross-examination, at his own house at 3 Bryn Close on the morning of the second day of the Inquiry.
- 7.47. Mr Cole was born in 1927. In 1950 he moved to Gorseinon when he was working at a local tinplate works. Six years later he moved to Bryn Close, and started working first in Brynlliw, and then at Betwys Collieries. When he retired from the colliery in 1987 he became a park keeper in Gorseinon. He was one of three keepers who were responsible for three local parks and the comprehensive school in Pontarddulais. Early in 1996 Swansea Council took over from Lliw Valley, and he was made redundant along with his fellow park keeper John Thomas. Neither of them were replaced.
- 7.48. His job in Parc y Werin included looking after the bowling green, the football pitches, the three tennis courts, the flower beds and the surrounding areas of grass, the pathways and the pavilion including changing rooms, which were always a mess after football matches. There was also a machine for dealing with the leaves.
- 7.49. When he started there was a black spiked fence round part of Princess Street, followed by an old post and wire fence in the privet hedge, which had since grown over. Further down there were some old galvanised hoop stakes which are still there today. The main entrance to the park was a set of double gates off Princess Street. From the corner opposite the hospital the black fence continued up Brynawel Road, with two single gates, at the corner and opposite Brynhyfryd Road.

- 7.50. One of his jobs was to unlock the park gates at 8.00am and lock them at 8.00pm, or 9.00pm in summer. He also had to do the same in Argyle Gardens in the town centre. In summer they left the park gates open an hour longer, especially if bowls players were practising. After about 1990 they were told to leave the No.3 gate, the one on the corner of Brynawel Road locked all the time. Soon after that the Council replaced all the old spiked fencing with the galvanised fencing which is there today.
- 7.51. In his day the Carnival was part of the hospital fete. It was a wonderful spectacle and he was always on duty. Lots of people drove cars and vans in through the Princess Street entrance, and set up their stalls around the football field. The fair, and the lorries and vans and cars and caravans that came with it, came in off Brynawel Road, parked on the practice pitch field, and on the rough hard surface that is now the car park. Some of the caravans arrived before the fair and stayed for a while after it had gone. The fair organisers had to remove some of the fence panels to allow all these vehicles to get onto the park and then off again when it was all over and they moved on. After several years the fair people stopped putting the fence back together. The Council had told them to leave it open, and it was then left open all the time. Nevertheless the keepers kept locking and unlocking the park gates as usual.
- 7.52. Gradually more and more people started parking on the park, and some days the hard surface area was full of cars. On normal days the park keepers would check who was coming in to park there. Some owners would bring their dogs in their car, for a walk around the park. The bowls players started parking there too. Previously they had parked in Princess Street and walked up to the pavilion to change before their games. The old pavilion burned down, and when the new pavilion was finished in the early 1990s, and the fence near it was by then always left open, they started parking on the hard surface area which was right next to the new building. The bowls players had to book the green, which became two greens in the 1990s. They did that through the park keepers. Thus the keepers knew who was coming in and where they had parked.
- 7.53. There were three tennis courts in the park when he started. Sadly hardly any people used them in his time and they deteriorated. In the early 1990s the double court was turned into another bowling green, and the new pavilion which is still there today was built roughly where the third court had been. At the same time that the new galvanised fence was erected, a set of double gates was put in to replace the gap in the fence on Brynawel Road, but they were always left open and unlocked.
- 7.54. Football on the park was always popular in his day and has been since. Bookings for senior games on Saturdays and juniors on Sundays, and some weekday evenings in summer, was done through the Council offices. When the fence was left open lots of players and supporters parked on the hard surface area. Visiting teams would often come in a minibus so the place was full. In the days before the fence panels came down they would all park on the streets outside the park.

- 7.55. Some time after the fence was left open, they started keeping a skip on the hard surface area. That was for park waste, and a lorry would come to take it away when it was full and replace it with a fresh one. However local residents started using the skip for their own rubbish. Mr Cole was not happy and told them off and not to do that. However his own council boss did not seem to mind locals using it, so after a while Mr Cole stopped telling them off.
- 7.56. Most of his work time was spent on duty at Parc y Werin. But for two hours each day he had to work in Argyle Gardens, to unlock the gates there, collect up leaves, cut the grass, attend to the other maintenance jobs and lock up at the end of the day. That small park was not far away in the centre of Gorseinon.
- 7.57. For many years, back in the '50s and '60s, the local seller of "pop" (fizzy drinks etc.) regularly brought his horse to train on the park. Often on Saturday mornings he would bring his horse and cart and sell pop from the cart, and then take children for rides on it around the park. The children loved that. Mr Cole did not know whether the gentleman concerned had had a permit to sell in the park. This happened for many years, regularly.
- 7.58. The double gates on Brynawel Road were left open and unlocked after the new fencing was put in. He himself had been responsible for closing the gates at the end of the day until he was told to leave them open. He believed it was in 1994 that he was told to leave them open. It was definitely *before* he finished working for the Council. It was his seniors who told him to stop locking the gates. That was a good spell before he was sacke; he thought it was around 1994. He believed he had lost his job because of his age.
- 7.59. There was a time when the bowling enthusiasts wanted to have a match on Sundays. Hitherto the green was not supposed to be played on on a Sunday. He had asked his seniors and his foreman about this, and been told that no match was supposed to be played.
- 7.60. At the time Mr Cole lost his job he was 69. He was sure he was sacked because of his age.
- 7.61. As for the gates, all he could remember at that time is that they told him to leave the gates open. He believed that there had been a court case or something like that which led to this instruction to leave the gates open. There had been a fear that a vagrant might get in and perhaps die in there as a result of having been locked in, and that the Council might be liable, or something like that. Also the Council saved money by getting rid of him as a keeper. They saved money by not paying him to close the gates. He himself had been paid for two hours less work as a result of this change. However that suited him well at the time, as it was inconvenient to have to go to the park to close the gates.

- 7.62. *In cross-examination* Mr Cole reaffirmed that he had had to look after three parks and a comprehensive school's grounds. One of those parks was Argyle Gardens. He had to keep the parks clean and tidy. The park would always be empty when he locked up. He would walk round and check that everything was alright before locking up. The park was in his recollection also open on Sundays, but was locked at night.
- 7.63. He confirmed that at the time he was told to stop locking up, he thought there had been some kind of court case which meant that one had to leave the gates open, or else it would be the Council's fault if the gates were locked. He also thought that the Council had been trying to save money by getting rid of him. He could not actually remember which of the Councils (Lliw Valley or Swansea) it had been that had told him (to stop locking the gates). They definitely took two hours off his pay every day after the change, in order to save money. He was sure that that had happened before 1996.
- 7.64. The Fair when it had happened on Parc y Werin was a good and enjoyable day. It was held on a summer Saturday. Showmen came and set up stalls etc. People had to pay to get into the fair. The money was collected at the gate. In Gorseinon there were both a Carnival and the Fair. They were two big days and both were good. The Carnival was mainly moving around elsewhere, but would end up in Parc y Werin. People did not have to pay to get into the park to go to the Carnival. It was the Fair they had had to pay to get into.
- 7.65. *To me* Mr Cole confirmed that it had been at the park gates that the money paid to enter the Fair had been collected. People would come from all around to visit the Fair while it was held there.
- 7.66. **Councillor Claire Lewis** (Gorseinon Town Council) lives at 16 Brynhyfryd Road, Gorseinon. She is one of the two (joint) Applicants. She said that as far as what has become called the "1924 land" was concerned, her recollection was that at around the age of 7 or 8 (in the mid-1980s) she often went blackberry picking on land that is now occupied by the Llys y Werin nursing home, and the junior playing pitches. That land had been very overgrown. At that time there was a lane that led behind a building called Harlech House that led to an old metal gate onto this land. She did not recall if there was any fencing around the gate as it was all very overgrown with blackberry bushes. She had no recollection of signage around the gate, or indeed the rest of the park.
- 7.67. When she was young she remembered that the land on what is now the junior playing pitches was on one level. There was no drop down into the ditch like there is now. The ditch that is there now was put in in the 1980s. There were waterways around the edges, and they used to hunt for newts. The edges around that land also had shrubs around them, and they used to make dens in there. She would have been around 11 years old at that time.

- 7.68. She remembered the park gates being locked when she was a child, but thought that they had stopped locking them when she was about 12½ years old. There was still a park keeper at that time, and she remembered being told off for being there after hours. As far as she could recall, as long as there was a park keeper the gates were locked.
- 7.69. She has often ridden a bicycle on Parc y Werin; children often ride their bicycles there, but she has seen adults doing so as well.
- 7.70. In the area to the south-west of the present park, they used to pick blackberries. She used to go there to do that with her own father. She could not remember if other children played there. There had been a lane by Harlech House, which was the last house at the end of Brynawel Road, backing onto Llys y Werin.
- 7.71. *In cross-examination* Councillor Lewis said that the scrubby land to the south west of the main part of the park, where as children she and her friends used to play, was land which she had simply thought was open land. She did not remember if that land was ever maintained at that time. She could recall nothing being done there in particular to make it available for public use. The aerial photograph from the year 1967 which the Council had produced did reflect how the land appeared to her at the time; the distinction in appearance between the more maintained parts of the park and the scrubby land reflected what she could recall. She recalled that trees were later planted down the middle of the park. She could not remember a pitch being in place where the junior football pitches now are. Her recollection was that drainage was put in where the junior pitches are now. There was not a pitch there until later, then a full size adult pitch appeared.
- 7.72. She could see from the photographs produced that there were two pitches in 1981. She did remember them putting the drainage in, she thought in the late 1980s or early 1990s. Before the drainage went in the whole field was quite boggy.
- 7.73. She has been a Gorseinon Town Councillor for just over one year. She had lived on Brynawel Road from the age of 5 and then in Brynhyfyd Road from 10 years ago.
- 7.74. There are now some signs around the park, including near some of the entrances. They have been there for a few years, but are fairly new signs which she thought must have been there less than 5 years. She could not say if they had been there before November 2015. There is a dog waste bin near the Princess Street entrance. She thought that that had been there for a few years. There might have been some earlier bins, but the bins there now are newer bins.

- 7.75. There is a so-called “*fitness trail*” in the park now, consisting of five pieces of equipment. They were put in about 2½ years ago, having been donated by Gorseinon Town Council. That was in 2014 or later she thought. Some scallop shaped areas visible on some of the aerial photographs, near the present pavilion, were former flower beds, she believed.
- 7.76. In relation to where the enclosed play area is now, she thought that there had always been a play area there. She could recall a blue climbing frame when she was aged about 5. The present roundabout and some other pieces of equipment were put in there about 2 years ago, or possibly 2½ years.
- 7.77. The “*community pavilion*” referred to on one of the notices currently in the park is the same thing as the bowls pavilion. That notice does say that a permit is required for organised activities in the park. Her recollection was that people have always had to pay to play bowls there. Her understanding is that the bowls club runs itself, and has a long lease on the bowling greens.
- 7.78. As far as the soccer pitches are concerned, using them for games needs permission from the Council she believes, not that she has ever hired them. She believes that a football club maintains the pitches. She assumes that this is by agreement with the Council. Her belief is that the pitches have to be booked with the Council (Swansea Council) for organised matches.
- 7.79. She accepted that the public would not use the pitches while matches were taking place; that would be rude. She had never been aware of any football match being delayed by people going onto the pitch, other than by a dog running onto the pitch for example. She believes that anyone who went onto the pitch during a match would be told to get off. When a dog went onto the pitch and someone went to retrieve it, she had seen the incident but not heard it. The players had waved their arms around and shouted, she recalled.
- 7.80. There are other public parks or gardens in Gorseinon. One is Argyle Gardens, which is small, ornamental and in the town centre; there is another area called Melyn Mynach, which is about 300 yards from the town centre and very overgrown. That has fencing partly around it but no sports pitches. She thought that a skate park was at present being put in there. It has also had some paths on it. Parc y Werin is the only park in the town with tennis or bowls facilities on it. To her it is a public park.
- 7.81. *In re-examination* Councillor Lewis said that the south-western area of the park, albeit rougher land, had seemed to be part of Parc y Werin, because it all seemed to be open one part to the other. If she had been asked to say where that more scrubby land had been, she would have said it was down the back of the park.

- 7.82. **Ms Anne-Marie Rees** gave evidence in support of the application. She lives at 30 Llanerch Crescent, Gorseinon. She had been born on the Pontardulais Road, Gorseinon. She had played as a child in Parc y Werin.
- 7.83. She moved back to Gorseinon in 1992, and since then had taken her children to play in the park, and her grandchildren have also played there. She herself remembered playing in the same part of the park that Claire Lewis had referred to in her evidence. That referred to the ‘waste ground’ or rather more wild area in the south-west corner. She (Ms Rees) had played there all through her childhood. It was more interesting than the normal park.
- 7.84. They used to climb over a gate where Llys y Werin now is. That is where she spent a lot of time as a child. She stopped doing that when she was about 11. The land had been very overgrown and quite swampy. Lots of children used to play there. She did regard it as part of the park; there was nothing to separate it from the rest of the park. There were no gates between. The only gate was onto the road near to what is now the entrance to Llys y Werin.
- 7.85. **Mrs Beatrice Jones** lives at 48 Brighton Road, Gorseinon. She had used the park since she was very young. She has also used it with her own children. It is a very well used park. Parc y Werin was a very bad place to try to put a school. The traffic is bad, for example in the Brynawel Road, and people cannot park near the hospital. She would like the school to be relocated somewhere else with good access.
- 7.86. *In cross-examination* Mrs Jones said that she had lived for 48 years at Brighton Road. There are football pitches marked out within the park. A fair bit of the park can be taken up by organised football matches; those parts are quite often used for matches. Nets and flags are put up to mark the pitches.
- 7.87. She usually gets into the park via Princess Street but tends to go out at the other end.
- 7.88. She recalled seeing signs saying that it is a Swansea City Council park. She did not know how long they had been there but thought it was for quite a long time.
- 7.89. In addition to the oral evidence which I have just noted and summarised, and the material produced in the various bundles which the Applicants had produced for the purposes of the Inquiry, the Applicants also lodged shortly before the Inquiry a short statement with attachments which was described as being *further evidence in response to the Objector*.
- 7.90. This material sought to respond to a point which had been made in the evidence lodged from one of Swansea Council’s witnesses (Mr Alex O’Brien). Mr O’Brien

had referred to the presence of dog bins on Parc y Werin, and suggested that their presence was indicative of an implied licence to use the land for informal recreation. The Applicants' response was to enclose evidence to demonstrate that in fact the dog bins and signage in question are situated quite widely over the surrounding locality.

- 7.91. The signs in question refer to a "*designated area*" for the purpose of the relevant dog fouling legislation. The Applicants contend that the designated area referred to is in fact the wider locality. They produced a map and photographs showing the location of bins and signs outside the park, but in the same general area.
- 7.92. Reference was also made to some byelaws which had been promulgated in 1932 by Swansea Council's predecessor, and which had been produced in evidence on behalf of Swansea Council. The Applicants' view was that the byelaws referred to no longer apply, as Parc y Werin is no longer in the Parish which it was then in (Llandeilo Talybont). If those byelaws had continued in effect, then the frequent parking of cars in the park would have been in breach of byelaw no.10. Yet Swansea Council has in fact consented to the parking of cars in Parc y Werin for many years, and certainly throughout the relevant period. This must be further evidence of acquiescence in the face of contentious user, it was suggested.
- 7.93. The Applicants also produced photographic evidence of rear access gates from people's properties in Brynawel Road onto the park. It was said that these gates have been in place for many years, and have not been objected to by the landowner. It was suggested that this again was evidence of acquiescence by the landowner.

8. **THE SUBMISSIONS FOR THE APPLICANTS**

- 8.1. The Applicants submitted to the Registration Authority a number of documents containing submissions or legal argument, even before the decision had been taken to arrange for a public local inquiry into the Application. Some of these 'submissions' documents dealt with matters which subsequently became uncontroversial, and also to some extent the Applicants' case matured and was refined as the case progressed. Nevertheless it is appropriate that I should record in this Report a note of some of the points made at earlier stages of the proceedings on behalf of the Applicants, in order to give a reasonably full picture of the totality of the arguments which were advanced.
- 8.2. In the Applicants' response to the original objection on behalf of the City and County of Swansea as landowner, the Applicants noted the distinction between the land obtained by the Council's predecessor under the 1921 lease and 1944 conveyance (the '1921 land'), and the land obtained by means of the 1924 Indenture (the '1924 land').

- 8.3. The Applicants also noted the 1932 byelaws which had been enacted by the former Llchwyr Urban District Council. They noted that those byelaws referred to Parc y Werin, which was described in the byelaws as a pleasure ground. However no map was appended to the byelaws. The Applicants' contention at that time was that the byelaws referred only to the 1921 land, which was referred to explicitly in the 1921 lease documentation as being held for the purpose of public walks and pleasure grounds or a recreation ground. The byelaws did not refer to the 1924 land, which 8 years previously had been acquired for housing purposes. Thus the 1924 land did not at that time form part of Parc y Werin. It was not clear at what point if ever it formally became part of the park.
- 8.4. In respect of the 1921 land it was noted that although the 1921 lease documentation referred to the grant of the lease for the purpose of laying out public walks and pleasure grounds, there was no direct reference to section 164 of the Public Health Act 1875 in the lease document. Likewise the 1944 conveyance referred to the land concerned as a pleasure or recreation ground known as Parc y Werin, but made no reference to the Public Health Act 1875. It was thus argued that it was not established that it was the intention of the former Urban District Council to acquire the land for the purposes of section 164 of the Public Health Act 1875. The Applicants felt that if such had been the intention then explicit reference would have been made to it in both the 1921 lease and in particular the 1944 conveyance.
- 8.5. As far as the 1924 land was concerned, the Applicants suggested that it was clear that it was not acquired by the Council's predecessor for recreational use. Plans and documents from the 1920s showed that the land was acquired for a housing scheme. It was suggested that the plans specifically showed that the area of the park included in the 1924 transaction was intended specifically for housing.
- 8.6. Consequently there is no basis for inferring that the 1924 land was allocated for recreational use. This is not a case like the *Barkas* case which was considered by the Supreme Court. There is no evidence that the 1924 land was laid out for any purpose other than housing. Therefore the public had no statutory right to use the land in question for recreation. Local people's use would therefore have been 'as of right' rather than by right.
- 8.7. The Applicants dismissed any argument against the application based on the concept of statutory incompatibility. They pointed out that in the case of *Newhaven Port and Properties v East Sussex County Council*, the Supreme Court had clearly indicated that the mere ownership of land held by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility. In the Applicants' submission there was no case for considering that statutory incompatibility arose in circumstances where land was held for the purposes of any of the following: housing land, Public Health Act 1875 (section 164) purposes, or education purposes. There is no necessary incompatibility between land being held for any of those general purposes and its use *as of right* by local people for lawful sports and pastimes.

- 8.8. Submissions were also made about the locality issue, but this is not a point any longer in contention.
- 8.9. In later written submissions made by the Applicants in relation to the “1921 land”, it was pointed out that the 1921 lease had included a whole series of restrictive covenants which formed the basis of the original agreement to lease the 1921 land. Those covenants had been very specific, and included maintenance of fencing, the fencing to be to a particular standard and so forth. There was no reference to any of those covenants in the 1944 conveyance of the freehold to the same land. The Applicants’ contention was that the status of the land following the 1944 acquisition was unencumbered and not pursuant to any relevant statutory trust. As such the use of the land by local people would have been as of right and not by right.
- 8.10. In the Skeleton Argument produced by the Applicants for the purpose of the Inquiry itself, and as included in the bundle of papers lodged by the Applicants for that purpose, the Applicants indicated that they regarded the qualifying period for the purpose of this application as being from 23rd November 1995 to 23rd November 2015.
- 8.11. The statutory framework of section 15 of the Commons Act 2006 was considered. The grounds on which Swansea City Council as landowner had objected to the application were also noted and summarised.
- 8.12. The critical issue in this case is whether use of the land at Parc y Werin by local people has been “*as of right*” or not. The (documentary) evidence as to the history of public ownership of the land at Parc y Werin is fairly extensive, and in summary includes an unexecuted 1921 lease between Cameron Estates Limited and the present Swansea Council’s then predecessor, Llandeilo Talybont Parish Council. The Recital to that lease clearly envisaged that it was being granted for the purpose of public walks and a pleasure ground or a recreation ground being laid out thereon.
- 8.13. In contrast, the Indenture dated 30th December 1924 between Cameron Estates Limited and Swansea Rural District Council referred to the then council having submitted a housing scheme to the Ministry of Health, which would involve the acquisition by the then council of the land covered by the conveyance. The land was stated as having been acquired pursuant to the Housing Acts 1890 to 1919.
- 8.14. The 1944 Indenture between Cameron Estates Limited and Llŵchwr UDC described the land concerned as forming part of the then council’s pleasure or recreation ground. However one of the recitals to that Indenture made it clear that the agreement involved selling the property to the purchaser free from encumbrances except as thereafter mentioned. It was also indicated that the

previous lease would forthwith be merged and extinguished in the freehold reversion of the property.

- 8.15. A minute of Llŵchwr Urban District Council from December 1943 referred to the provisions of the *Local Government Act 1933* and other enabling powers being used to enable the Council to acquire the freehold of that part of the land. It is also clear from correspondence that Ministerial consent was not deemed necessary for that acquisition.
- 8.16. On the basis of the evidence, the Applicants submitted that it is for the Inspector and Registration Authority to establish the correct statutory power under which the two parcels of land at Parc y Werin are held. The legal approach of the Supreme Court in the *Barkas* case focused on the power pursuant to which land is held, and whether such power comprehends recreational use by the public, and therefore user by right.
- 8.17. Central to a determination as to whether user is by right or as of right is the issue of appropriation or lawful allocation of land. The more recent case of *R (Goodman) v Secretary of State* [2015] showed that appropriation or lawful allocation of land pursuant to statutes such as the Housing Acts could not simply be inferred from management actions on land held by public authorities. The need for evidence of a conscious deliberative process was emphasised.
- 8.18. The judge in the *Goodman* case had particularly emphasised that the *Barkas* judgment is not authority for the proposition that land can be appropriated without any evidence of a Council having considered whether the land was no longer required for the use for which it was previously held. Therefore appropriation cannot simply be deduced from a council's management of the relevant land.
- 8.19. Thus the Applicants' core submission was that the 1924 land was acquired and consented by the Minister for housing purposes, pursuant to the Housing Acts. At that time the role of recreational land in the area was fulfilled by the 1921 land, which was then held under lease.
- 8.20. The wider 1924 land was subsequently developed for housing over a period of 64 years, during successive stages of local government reorganisation. Additional housing was constructed on the 1924 land around 1950, and sheltered housing developed in 1989.
- 8.21. As such, while the Housing Acts provide a power lawfully to allocate land for recreation or open space, the 1924 land was in reality appropriated to housing use. The Objector has adduced no evidence to demonstrate that the land was deemed to be no longer required for the purpose under which it was previously held (i.e. housing).

- 8.22. In respect of the 1921 land the evidence indicated that the 1921 lease did indeed contain covenants and encumbrances pertinent to the *Public Health Act 1875*. Those covenants and encumbrances were however extinguished on merger into the freehold acquisition of title by the local authority in 1944. The land therefore is unencumbered land, and the resolution of the former Llwehwr UDC in relation to its acquisition refers only to the *Local Government Act 1933*.
- 8.23. That local authority had had a parks committee, but significantly the resolution was undertaken by the full Council. That accords with the contention that the land was acquired by the Council under a general enactment, pursuant to the *Local Government Act 1933*. The fact that no ministerial consent was required for this acquisition accords with the contention that the land was acquired under a general power pursuant to the 1933 Act.
- 8.24. Additionally the Applicants adduced evidence to show that planning permission was given for the erection of six temporary housing caravans on the 1921 land in 1974 and 1977. No appropriation of ‘open space’ to such a purpose was ever undertaken. That accords fully with the contention that the land was held under a general enactment, and therefore no appropriation from open space was required.
- 8.25. In summary therefore the Applicants contended that on the basis of the evidence and arguments presented on the use of both the 1924 and the 1921 land, both areas had been use *as of right* during the relevant 20 year qualifying period.
- 8.26. On the question of *statutory incompatibility*, it was noted that in addition to what the Supreme Court had said in the *Newhaven* case, two subsequent cases before the High Court had helpfully lent clarity in terms of the applicability of the doctrine. These were *Lancashire County Council v Secretary of State* [2016] EWHC 1238 – a case of land held for educational purposes; and *R (NHS Property Services Limited) v Surrey County Council* [2016] EWHC 1715 – a case of land held by a local health board.
- 8.27. In the *Surrey* case the judge had said that one must consider the actual statutory powers under which the land is held, that the fact that in some cases parcels of land belonging to some statutory bodies have been registered does not give rise to a rule that any land held by any statutory body can be registered, and that it is not necessary that the land in question is used for a purpose incompatible with use as a village green. What matters is whether as a matter of statutory construction the relevant statutory purpose is incompatible with registration.
- 8.28. In the *Lancashire* case Mr Justice Ouseley had concluded that no incompatibility arose between general educational functions and use as a town or village green.
- 8.29. In respect of land purportedly appropriated for educational purposes (in 2015) in the present case, there were very clear flaws in the purported appropriation. Both

the relevant advice to the Council's cabinet and the public notice wrongly referred to the section of the *Local Government Act 1972* which relates to disposal, rather than appropriation. There was also no evidence of a resolution that the land was no longer required for the purpose for which it is currently appropriated, as is required by *Section 122* of the *1971 Act*. The Applicants therefore conclude that the appropriation has not been carried out correctly or effectively, and is therefore invalid. To that extent the Applicants contend that the 1924 land remains land held for housing purposes. If however it were held that the appropriation had been valid, then the Applicants would rely on the conclusions of the judge in the *Lancashire* case that registration as a village green or land held for general educational purposes is not incompatible with the land being held by an authority for those purposes.

- 8.30. In respect of the so called 1921 land, the Applicants argued that the freehold title to that land was acquired in 1944 pursuant to a general enactment under the *Local Government Act 1933*. Given the broad construction of that Act, no question of statutory incompatibility arises here.
- 8.31. In respect of land held for housing purposes, the Applicants note that *Section 15* of the *Housing, Town Planning Act 1919* enabled the laying out of land for open space or recreational purposes. Therefore as a matter of statutory construction the question of incompatibility could not arise. It therefore follows that statutory incompatibility does not arise on either the 1921 or the 1924 land.
- 8.32. The Applicants included in their Inquiry bundle further submissions headed 'Response to the Supplementary Objection Statement'. To some extent this document repeated earlier submissions, but I note here some points mentioned in it. There was a degree of concurrence as between the parties over the question of the siting of temporary housing caravans on the 1921 land in the 1970s and the 1980s. However the Applicants questioned a suggestion which had been made by the principal Objector, on the basis of a 1971 aerial photograph, to the effect that the caravans had actually been in place at that early date. The Applicants disputed that, and suggested that the structures indicated in that photograph related to construction work on the park.
- 8.33. In respect of the 1921 land, and the subsequent acquisition in 1944 of the freehold of that land, it was accepted that, at the time of the proposed acquisition of the freehold, the land might well have been in use as a public park, inasmuch as the land was held as such pursuant to the terms of the covenants referred to in the 1921 lease, which had clearly been designed to restrict the use of the 1921 land to recreational use. However, the only statutory provision referred to in the 1943 resolution to acquire the freehold was the *Local Government Act 1933*. The land was (it was reiterated) therefore acquired pursuant to a general enactment, and this is entirely consistent with the text of the 1944 conveyance itself. The Applicants ascribe considerable import to the fact that the resolution in question at the time was undertaken by the full Council and not the old Urban District Council's parks committee. That also was consistent with the contention that the land was acquired

pursuant to a general enactment under the *Local Government Act 1933*, not under the *Public Health Act 1875*.

- 8.34. It appeared that both Applicants and the Objector agreed as to the presence and location of static caravans on the 1921 land. As for the static caravans, the Applicants' position is that the static caravans were consented and placed in 1974/5, and then re-consented in 1977. Written testimony from a former resident of Gorseinon, a Mr G Belmont, suggested that the caravans may have been in place as late as 1986/7. The Applicants do not dispute the use to which the caravans were put. The caravans were consented to under the Town and Country Planning legislation.
- 8.35. As far as appropriation is concerned, the Objector appeared to have misdirected itself in terms of its interpretation of the Applicants' stance. The Applicants are not suggesting that there was an implied appropriation of land here. The Applicants' position is that the 1921 land was acquired in 1944 pursuant to a general enactment, namely the *Local Government Act 1933*. If, as the Objector contends, the land is held pursuant to a statutory trust under the *Public Health Act 1875*, then there should be evidence of appropriation under *Section 122* of the *Local Government Act 1972*, in connection with the placing of the caravans. The evidence that the caravans were consented in 1974 pursuant to the *Town and Country Planning Act 1971* is clear.
- 8.36. Since the Objector's contention is that the 1921 land is held under a statutory trust for recreation pursuant to *section 164* of the *Public Health Act 1875*, the Applicants argued that there should be evidence of appropriation to an alternative use consistent with the terms of *section 122* of the *Local Government Act 1972*, as it was originally enacted. The evidence shows that no such appropriation ever took place. The Housing Committee of Lliw Valley Borough Council resolved to place static caravans on the 1921 land on September 19th 1974. Five days later consent was granted by the development committee of that Council for a residential caravan site in that location.
- 8.37. From that key evidence it is clear that no two week advertisement pursuant to *section 122* of the *Local Government Act 1972* was undertaken by the Borough Council. It is notable that while the acquiescence of the Council's Leisure and Recreation Committee had been sought, consent had been granted before a formal resolution of that committee in October 1974. The Applicants' position therefore is that the non-appropriation of land for temporary housing is evidence that the land in question was not held pursuant to statutory trust for recreation at that time, and this remains the position throughout the registration period. That position is consistent with the original 1944 conveyance.
- 8.38. There are inherent inconsistencies in the Objector Council's case. If as the Objector asserts the 1921 land is held under a statutory trust for recreation pursuant to the *Public Health Act 1875*, then formal statutory appropriation mechanisms

should have been complied with before the land could be used for anything else, such as the use of part of it as a caravan site, yet no such appropriation took place.

- 8.39. It was further argued in relation to the 1932 byelaws, that by virtue of **Article 41** of the **Local Government Area Changes Regulations 1976**, the byelaws would have ceased in 1974 to be in effect, because the Parish of Llandeilo Talybont would have ceased to exist upon the reorganisation of 1974. The byelaws would no longer be applicable to the new administrative unit to which Parc y Werin was transferred, and there was no evidence that Swansea Council have drafted new byelaws.
- 8.40. In further refined submissions prepared for the purpose of the Inquiry by Counsel representing the Applicants, it was argued that the sole issue for the Inquiry was whether the relevant user had been as of right or by right. In the case of **Mann v Somerset County Council** it was held that the evidential burden is on the objector to raise a vitiating circumstance which rendered otherwise qualifying user “*by right*”. The same must apply here.
- 8.41. The basic conveyancing history of the application land has been set out in the material provided by the Objector Council. As far as the 1924 land is concerned, that is the housing land or the western part of Parc y Werin, the 1924 Indenture records that the land was being purchased pursuant to the Housing Acts 1890 to 1919. It is conceded that this was the statutory basis of the acquisition.
- 8.42. The Objector argues that as a matter of fact the authority formed and extended a pleasure ground over this part of the land acquired for housing, and that it was a plain inference that this part of the land was held for the purposes of **section 15** of the **Housing Act 1919**.
- 8.43. The question whether the fact of the authority forming and extending the pleasure ground onto this land renders use of the land ‘by right’ is not the correct test. In the **Barkas** case it was held that user would be by right where: (a) the Minister had granted the required consent for the fields to be laid out as a recreation ground; and that there has (b) been a lawful allocation or designation by the authority of that land as public recreational space. Putting the matter another way, it is argued that there is a general test: did the local authority hold land pursuant to a statute the provisions of which were broad enough to encompass and enable the local authority to make the land available for recreational use? (i.e. a statute that provided a power to provide land for recreational purposes). Then a further limb of the test is whether the local authority made a lawful decision to use the land for recreational purposes. If the answer to those two questions is “Yes” then that will amount to a non-statutory appropriation sufficient to render use of the land “*by right*”.
- 8.44. In the present case the position is very simple. There is no evidence at all that the Objector or its predecessor obtained the consent of the Minister for setting out the

1924 land as recreational space, or that any allocation or designation was made to that effect. Accordingly there was no *Barkas* style appropriation of the land to recreational purposes. The Objector has conceded that there was no appropriation pursuant to *section 122* of the *Local Government Act 1972* or its predecessors.

- 8.45. All of the above is supported by the fact that part of the land which was formerly available to the public, and contiguous with the application land, was leased off in 1989 for development. There is no evidence of any procedure under *section 122* of the *Local Government Act 1972* having been undertaken. Moreover the question can be posed: why does the Objector not say that this land was allocated or designated for recreation?
- 8.46. This is reinforced by what was said in the *Goodman* case. In that case the court was concerned with an alleged appropriation under *section 122* of the *1972 Act*. There the judge was quite clear that there had to be some conscious deliberative process by the local authority concerned in relation to the transfer of land from one purpose to another, and that it cannot simply be inferred from how a council manages or treats the land. It was held that the *Barkas* case is not authority for the proposition that land can be appropriated without any evidence of the council concerned having considered whether that land was no longer required for the use for which it was held.
- 8.47. The present case is not concerned with *section 122* of the *1972 Act*, so the nature of the decision making process would be necessarily different. However a *Barkas* style appropriation still requires a decision making process as well. It cannot simply be inferred from the factual management or expenditure in respect of land held under Housing Act powers. Neither can it be inferred from the factual use of land by the local population, or the name which has been attributed to the land or part of the land from time to time.
- 8.48. As far as the land which had been subject to the 1921 lease, and the 1944 freehold acquisition, was concerned (the eastern part of the land), there is no argument to contradict the point that the Objector's predecessor in title acquired a lease in 1921 for the purpose of providing public walks and pleasure ground or a recreation ground on that part of the land. However as to the acquisition of the freehold reversion in 1944 over the same land, it is not clear that this was for the purposes of the *Public Health Acts 1875 to 1925*. The resolution authorising the purchase had only referred to the provisions of the *Local Government Act 1933* and all or any other powers then enabling.
- 8.49. The comments of the then council's clerk in a letter of 1944 is not itself part of the resolution. The recitation in the 1944 conveyance itself that the land was held as a pleasure ground is simply a matter of fact. The Objector's predecessor could have been acquiring the freehold interest for any purpose, notwithstanding the purpose of the previous lease.

- 8.50. The circumstances here are close to what arose in the *Malpass* case. In that case there had been no clear contemporaneous evidence as to the power under which the land concerned was originally acquired, and the court in that case appeared to have thought that this lacuna was not resolved even by the execution of a subsequent very clear deed by the authority concerned.
- 8.51. The Objector in this case relies on the legal presumption of regularity. The authorities show that the true meaning of this rule is that the presumption can reasonably be drawn where there was an intention to do some formal act, where the evidence is consistent with that intention having been carried into effect in a proper way, but the observance of the formality has not been proved or disproved, and its actual observance can only be inferred as a matter of probability.
- 8.52. In the present case there are several matters which are destructive of the inference which the Objectors seek to rely on. The initial resolution relating to the 1944 acquisition is set against the inference that this land was acquired for 1875 Act purposes. The later resolution in 1974 to use the land to station caravans is inconsistent with that view. Further, in connection with the caravans, no due regard was paid to the provisions of *section 122* of the *Local Government Act 1972*. There was no evidence of ministerial consent or publication of an alternative proposed use for public recreational land, or any consideration by the authority that the land was no longer required for public open space.
- 8.53. It is inappropriate for the Objector to rely on *section 120(1)* of the *Local Government Act 1972*. This was not land which was acquired for one purpose but then not immediately required for it. There is no evidence of a decision taken that would engage those powers. Also the land had been in the ownership of the Objector for decades at the time of the caravan use, and there could be no question of its not being immediately required for some other purpose. Further, if temporary use powers applied to all land without the need for a decision making process, that might emasculate the provisions relating to the power of appropriation, as land would be deemed to be held for whatever purpose it currently happened to be used for.
- 8.54. If for any reason the Registration Authority were to determine in respect of any of the application land that use became *by right*, but only after a period of 20 years of ‘as of right’ use, then the applicants reserved the right to contend that *section 15(7)(b)* of the *Commons Act 2006* applies. If the use by right commenced only after the commencement of the 2006 Act, it is indisputably clear that this provision would apply.
- 8.55. As for the question of implied licence, in the *Mann* case the judge spelt out what amount to six principles. The first is that the owner must make it clear that the public’s use of the land is with his permission, and this may be shown by excluding the public on occasional days. Second the owner must do something on his land to show that he is exercising his rights as owner over it, and that the public’s use of it

is by his leave. Third, there must be a positive act by the owner in respect of the public, although a notice is not necessary, provided the circumstances relied on allow the inference to be drawn. Fourth, implied consent by taking a charge for entry or a similar overt act communicated to the public is sufficient, without the need for an express explanation or notice. Fifth, such conduct need only occur from time to time during the period under scrutiny. Sixth, such conduct will be expected to have an impact on the public and show that when the public have access they do so with the leave or permission of the owner.

- 8.56. However the present Applicants argue that it is very doubtful that these principles apply to land which is in public ownership in the present circumstances. In other words, where a local authority owns land used for recreation, and acquiesces in recreational use, despite not having appropriated it to such use, actions consistent with such acquiescence will not be understood to give rise to use by right.
- 8.57. Merely pointing to events on the land, even if very frequent, will not inevitably lead to the inference of an implied permission, as was clear from the judgment in the *Goodman* case.
- 8.58. The principle set out by the judge in the *Mann* case derives from *Beresford*. Acts of upkeep which are not pursuant to any lawful allocation, designation or appropriation should merely be understood as acts of encouragement, not as the granting of a permission or right.
- 8.59. It is noted that reliance is placed by the Objector on prohibition or regulation of activity, such as formal sports on a marked up pitch, facilities and byelaws. Activities on the land which were authorised by the landowner, whether using facilities or not, are confusing implied permission with deference.
- 8.60. As to the byelaws, it was further submitted that this is not a case where they bite on the question of use as of right, for the following reasons: There is no reason to show that they were sufficiently advertised on the application land during the qualifying period, or during any period, by any relevant public authority. Further it seems that in the absence of a plan the byelaws might have been void for uncertainty. In any event they cannot apply to the 1944 land, as that was not acquired until after the byelaws purportedly came into force. Further, it was suggested that the operation of the *Local Government Area Changes Regulations 1976* meant that by automatic operation of law the byelaws ceased to apply when the Parish of Llandeilo Talybont was abolished and its area transferred to a new administrative area. In any event long before 1976 the byelaws appear to have lapsed.
- 8.61. As far as statutory incompatibility is concerned the purported appropriation of 16th July 2015 was a defective one. In any event the principle of statutory incompatibility as laid down in the *Newhaven* case applies only where specific land is to be held for a specific defined statutory function which would come into

irreconcilable conflict with the statutes governing status as a town or village green. Only in those circumstances will the land be outside the ambit of the *Commons Act 2006* as a matter of statutory interpretation.

- 8.62. It is surprising that the Objector submits that land identified for educational purposes is covered by this principle. It is known that the *Lancashire* case is going to the Court of Appeal on, inter alia, the statutory incompatibility point, and is conjoined with the *NHS v Surrey* case. The Applicants submit however that Mr Justice Ouseley's judgment on this point was correct, and that the Inspector in the present case should prefer the approach of Mr Justice Ouseley as opposed to the submissions made by the Objector. Were the Registration Authority to conclude that Mr Justice Ouseley was wrong, then it ought to await the result of the conjoined case in the Court of Appeal before making a decision on this present application.
- 8.63. Reverting to the question of the purposes for which the local authority has held the land at Parc y Werin, in order to defeat an as of right claim the Objector has to show both a decision by the owning authority to devote the land to recreational purposes, and a proper approval of that. There has clearly been no non-statutory appropriation in this case. One only has to look at the evidence in relation to land now built on which used to be part of this same site. One cannot simply deduce from factual circumstances that the owning authority has in a non-statutory way appropriated the land to recreational purposes.
- 8.64. The Applicants' view on the evidence is that the locking of any gates stopped some time in 1995, but that the use of Parc y Werin had been as of right in any event. Undoubtedly this land had been clearly understood by people to be owned by a public authority. But awareness of that does not amount to the grant of a permission to the public to use the land in circumstances where the land has not been provided expressly, as it had been in the *Barkas* case for example. The matter takes on a different light where the ownership of a piece of land is not in a public authority. The Objector suggests that marking pitches and hiring pitches and so forth makes people realise that use at other times was with permission. However that is not the case where land has not been appropriated either in a statutory or non-statutory way to recreational use by the public.
- 8.65. In closing submissions for the Applicant, Counsel noted that the Objector claimed that this application has no reality. However the core issue in this case is whether in circumstances where a local authority holds land in a way not giving rise to a right in the public to use it, inferences can be drawn from every quarter to render that use 'by right'. This is a case where such inferences would have to be drawn for the Objector to succeed.
- 8.66. The *Goodman* case in Exeter was local authority land. There the underlying statutory basis on which the land was held was inadequate to render use by right, notwithstanding the spending of money on and the holding of events on the land.

- 8.67. As for the issue raised about statutory incompatibility, the Applicants argue that there is a problem in this case with the purported appropriation. There is no indication of a statutorily proper appropriation to anything at all. The so-called **Boddington** principle does not apply to a resolution so defective that it cannot be understood without extraneous evidence.
- 8.68. The claimed appropriation in this case was also purportedly carried out under the wrong section. The advertisement which might have given rise to local objection said that the proposal was for ‘property development’. The notice was wholly defective; it was for the wrong purpose, and under the incorrect section. It is not correct that one should have to have reference to outside material in order to support it. Anyway the outside material does not support there having been a proper appropriation.
- 8.69. The preliminary question is: what was the decision? There may have been a decision which in itself was valid, but that decision cannot be changed in order to suit the purposes which are helpful in this case, or a purpose which someone in the Council may have intended, had they thought about it properly. The purported appropriation may therefore not be a matter beyond all challenge. If the Council moved diggers onto the land for example, a local person may well be able to seek an injunction to prevent it. [It was pointed out in passing that the Welsh Government have apparently introduced regulations which might be relevant to the appropriation of open spaces like this one. However these regulations were understood to be new, and not applicable at a relevant time for this present case].
- 8.70. Even if the Applicants were wrong about this, they would still rely on what the Supreme Court said in the *Newhaven* case. The principle enunciated in *Newhaven* must have fairly limited application. There cannot be many other cases having such particular facts. If statutory incompatibility has to be considered, this present case is on all fours with the case of *Lancashire County Council v Secretary of State* [2006] EWHC 1238 (Admin). The Inspector and Registration Authority should prefer the approach of Ouseley J to that of the Objector in this case. There is in fact compatibility between land being appropriated for educational purposes and the village green type use being allowed to take place there. The Council’s own witness had said that at present local children from the primary school go to Parc y Werin as part of such recreational activities. The evidence in this case fits what Ouseley J said in paragraph 79 of his judgment.
- 8.71. **Mrs Herbert-Evans** for the Council had not said that the local authority was now currently in breach of its statutory obligations to educate the children of the locality because of such use being made. One only has to consider her statement of evidence, where she acknowledged that any revised case in terms of school provision in Gorseinon would need to be considered in the appropriate way with the Welsh Government. There was no suggestion that it would be impossible to provide other schools elsewhere in or around Gorseinon.

- 8.72. Here on this land the local authority would be able to carry out educational functions, but in a different way, much as Ouseley J envisaged in the *Lancashire* case. Mrs Herbert-Evans had not pointed to any moment when the local authority would be in breach of its statutory obligations to the children.
- 8.73. On the question of whether Ouseley J's judgment in the *Lancashire* case was *obiter* or not, it was pointed out that all grounds raised by the applicant in that case had been expressly rejected by the judge. Therefore it would be appropriate for the Registration Authority in this case to get on with taking its decision if it is in agreement with the approach of Ouseley J on the statutory incompatibility issue.
- 8.74. On the important issue of "*as of right*" versus "*by right*", the Objector has the burden of raising any vitiating circumstances, once it is established that the statutory tests within *section 15* of the *Commons Act* have been met. As far as the Housing Act land is concerned (also called the 1924 land), *section 1* of the *Housing, Town Planning Act 1919* did not itself set out a power to provide open space on housing land. It was *section 15(1)* of that Act that provided a power on housing land to lay out open spaces. Therefore the scheme under *section 1* of that Act did not provide for open space to be laid out on the land. The "*scheme*" referred to in the Indenture of 1924 was a scheme for the provision of houses. The existence of the Indenture therefore is no proof that any part of the land was laid out as recreational land or open space under the housing legislation.
- 8.75. It is quite clear, even when one considers what the Supreme Court said in the *Barkas* case, that one can look at historic material relating to the acquisition of land etc., but one has to be extremely careful as to the inferences to be drawn from such material. One should not simply look at the use of the land which has taken place. There has to be some basis for concluding that the land was provided for recreational purposes in some proper way.
- 8.76. The *Goodman* case was a case about formal statutory appropriation. In that case Dove J said that in the case of appropriation one could not simply look at (for example) expenditure on planting trees on the land, or things of that sort.
- 8.77. It seems clear from the 1969 Ordnance Survey Plan, for example, along with other evidence, that it was not until the 1970s that the western part of Parc y Werin was set out in a formal way. The 1969 Ordnance Survey Plan is destructive of any inference that the land had all been set out as a park or open space by that time. It should of course have been noted that the *Housing Act* which was in force by the time the western part of the land was laid out in the 1970s was an entirely different one from the one in force in the 1920s.

- 8.78. The Applicants would say it is much more likely that no actual decision was made to provide a park in that western part of the land in the 1970s. The byelaws which had been referred to did not identify the particular area which they purported to cover. This is all very unhelpful when one is considering land acquired and held for different powers at different times. It is not at all blindingly obvious what area should be construed as having been Parc y Werin in a document such as the byelaws.
- 8.79. There are other factors destructive of any inference that the western part of the application land was laid out in some statutory way as a park or open space. The area of land where the nursing home now stands was leased off in 1989. That was not an appropriation, but it does not mean that the circumstances would not have triggered *section 123* of the *Local Government Act 1972*. There does not seem to have been any such process undertaken here. There was a lack of any consideration of loss of parkland in those circumstances. In those circumstances, how can it be inferred that either that land, or the other land which remained undeveloped in the western part of Parc y Werin, was land statutorily held for park purposes?
- 8.80. It had been suggested by the Objector that various passages in the *Barkas* case justified drawing an inference that the land was being held for some kind of park or open space purpose. However it is not the case that where provision is made, or where a public space is provided by a local authority, then one should have to search around to find a statutory basis to explain that provision. Even in the consideration given in *Barkas* to the earlier *Beresford* decision, the justices thought it had been the statutory approval of the new town plan, in other words a decision taken by the local authority, which would have meant that the land had been specifically provided for recreational use by the authority. The Applicants' argument in the present case is for the retention of a decision-based analysis in cases such as this. In other words, was there a decision actually taken by the local authority to provide this land for recreational or park purposes, or was there not? Clearly that is a difficult position for a local authority to find itself in. If there is anything inconsistent with such a decision having been taken, or rather with an inference that such a decision had been taken, then one should not draw an inference that the land is being held for some recreational purpose.
- 8.81. In the case of the so-called 1944 land, or 1921 land, this is not a position where any inference at all needs to be drawn. The comment of the Clerk in the letter of 1944 as to the reasons why he thought that the freehold had been acquired is nothing more than the comment of the Clerk. It is the contents of the local authority's resolution to acquire the land that matter. The prior position that the previous lease had been pursuant to open space purposes is irrelevant to this. Nothing coming from what was a private law situation is relevant here. This is a public law matter. There may have been good reasons for the local authority in 1943/4 *not* to acquire the freehold of the land under the *Open Spaces Act 1906*. Prior to the *Local Government Act 1972* it was very difficult for a local authority to use open space land for anything else.

- 8.82. The provision actually referred to in the resolution to acquire the freehold was **section 157** of the **Local Government Act 1933**, which enabled acquisition for the purpose of any of the functions of an authority. The circumstances are analogous to those in the **Malpass** case, where the record of a conveyance of 1936 had been similarly vague about the specific purpose for which land had been acquired by the local authority concerned. In **Malpass** the judge had said that this had been a lacuna. The minutes created during the 1960s were not considered by the judge to be relevant in that case. The case clearly demonstrates the lacuna the current Objector finds itself in. The lacuna in **Malpass** was not cured by the deed hanging in the council chamber.
- 8.83. In this present case we have a clear resolution. The Objector tries to rely on the presumption of regularity, but in this present case the presumption is destroyed from the beginning, because the actual resolution is set against the inference which the Objector seeks to draw. One cannot seek to use extrinsic material in order to make a resolution say something which it does not say. The presumption only comes in where there is a missing piece of evidence.
- 8.84. Also relevant is the 1974 resolution to use part of this land to site six caravans. This was done after the **1972 Local Government Act** came in. Yet there is no consideration of this being open space land recorded in the local authority minutes, nor of any need to get ministerial consent for what was proposed, nor was there any record of consideration of whether the land was any longer required for open space use. The Objector seems to rely on the temporary use provision in **section 121** of the **Local Government Act 1972**. However the Objector's argument is flawed. One only has to consider what was held in the **Goodman** case. There are simply no council minutes in this case to justify the Objector's argument, yet the position is that the council minutes in general are quite full and complete for this period. And there is no record justifying making an inference that a decision was taken to provide for *temporary* use of this land for the stationing of caravans. The land here had been owned by the local authority for decades. Also there can have been no question of the land not being required for its previous purposes, that is (on the Objector's view of things), **Public Health Act 1875** purposes in this case. The provision only allows for temporary use to take place where the land is not immediately required for its statutory purpose. Thus it is important to construe this provision quite tightly, as a matter of public importance.
- 8.85. Some reliance had been placed by the Objector on the very name of the site here. Yet it is the case that the Welsh word "*Parc*" can also mean "*Field*", and not just "*Park*".
- 8.86. As for the argument about implied licence, Mr Cole senior had made it clear that there was no exclusion of people on Sundays. There had been some locking and unlocking of gates, certainly. Mr Cole senior had been an excellent witness, with clear recollection of most things. From his evidence it is clear that by the early 1990s at least one of the gates was always left open and unlocked. This is relevant because closing and locking could be taken to be an act of exclusion. However this is not the case here. Mr Cole senior was also very clear as to the situation which

had led to him ceasing to close and then open the other gates. He placed that cessation in 1994, with reference to a court case that he had heard of. It took two hours off his work, as he recounted. Therefore he had multiple reasons to remember this circumstance, even if he could not remember which council it was that made the change. It had clearly been a good while before he finished working, and we know that he retired in 1996. Therefore one can be confident that there was no locking of the gates at the time of the start of the qualifying period for the present application. Mr Cole senior had been quite clear that the locking stopped a good while before he retired, and therefore the land has been constantly open since the early 1990s.

- 8.87. The Applicants do not accept that any earlier implied permission would continue in effect for any length of time. Any ‘hangover’ permission from an earlier period of opening and locking gates and so forth would be very short lived. A daily action, such as the daily opening and closing gates, if that disappears, not to be resumed, would hang over in terms of its legal effect only for a very short period. Therefore this point should be dismissed on the facts of this present case.
- 8.88. If it were to be concluded that some unlocking and locking of gates had taken place within the relevant period to this present case, then one should look at the factors as they were considered in the *Mann* case, and compare them with what Dove J had said in the *Goodman* case. As Dove J had said in the *Goodman* case at paragraph 37, these matters are fact-sensitive. Indeed it is suggested that the *Goodman* judgment is binding on the Registration Authority in this case. In this case some of the things relied on by the Objector are more subtle. The funfair here apparently charged for admission. However that is very similar to what had happened in the *Goodman* case, as far as the organised events there were concerned. As for the sports field activity on Parc y Werin, it is difficult to see how people playing football from time to time on the land lead to there being an implied licence, if even the presence of a funfair charging for entrance would not do so.
- 8.89. As far as the people playing organised games of football were concerned, there are some analogies to be drawn between this and the situation of the golfers and local people in the well-known *Redcar* case. Here it would have been rude of local people to interfere with the footballers playing their games. It was a reasonable matter of give and take that local people on Parc y Werin would not rudely interfere with games of football which were taking place.
- 8.90. The situation of the people playing tennis or bowls was entirely distinct, because they were separated off. There was no prospect of members of the public using those areas without making arrangements to do so. It is noted in the context of the decision in *Mann* in the High Court that the circumstances here in relation to the tennis and bowling areas were entirely different. An entirely fenced area, with ostensibly permanent fencing, would not lead to the inference that the use of the whole park outside that fencing was by permission. Likewise the building on Parc y Werin would have been locked and not generally available.

- 8.91. It is accepted that the land here was regulated by a park keeper until 1996. That is not entirely inconsistent with a public entitlement to use the land. Regulation by charge is clearly not enough. The existence of a park keeper is also not enough to imply permission to members of the public to be there. And also the gates had ceased to be closed off in the by then distant past.
- 8.92. As for signs, there was very little good evidence about when they were erected. The words on them seemed to have referred to organised activities, not to informal use by the local people. Also witnesses had said that the signs had appeared relatively recently.
- 8.93. Reverting to the question of the byelaws, consideration of the *Newhaven* case makes one ask whether they were effectively communicated. There was no evidence about this. The lack of a plan associated with the byelaws causes real difficulty. Were the byelaws too uncertain to be effective? What did the reference to Parc y Werin in the byelaws actually mean? On top of this there is the potential significance of **Regulation 14** of the *Area Changes Regulations*. [At this point it should be noted that Mr Blohm QC on behalf of the Objector accepted that the byelaws in this case are not relevant to the question of implied permission during the 20 year period of significance under **section 16** of the *Commons Act*].
- 8.94. As for the matter that other land had been sold off from the 1924 land, if that land had been open space, it would have been subject to the requirement to advertise etc., subject to the relevant predecessor provisions to those in the *Local Government Act 1972*.

9. THE CASE FOR THE PRINCIPAL OBJECTOR – EVIDENCE

- 9.1. As was the case with the Applicants, a considerable amount of reference to historical documentation was made in the representations of the Principal Objector, even before the decision was taken that this matter should proceed to a Public Local Inquiry. In the case of the Principal Objector, nearly all of this historical material was provided again in the context of the bundles prepared for the purpose of the Inquiry, and produced by the Principal Objector's witnesses. It is in my summaries of the evidence of those witnesses that I will refer to the documentary evidential material thus produced, as far as is necessary, and as far as it is not covered elsewhere in what I report.
- 9.2. **Mr Alex O'Brien** is a Chartered Surveyor, and is employed as Property Manager in the Corporate Building and Property Services Department of the City and County of Swansea. He has worked for the Council since 2012.
- 9.3. He is jointly responsible for the management of the Council's property holdings. He has reviewed notes, correspondence and Council minutes, and had also been able to locate a number of historic aerial photographs and Ordnance Survey plans,

to which he referred during his evidence. He produced aerial photographs of various dates between 1967 and 2014, and a substantial series of Ordnance Survey plans dated from between 1916 and 1999.

- 9.4. He dealt first with the so-called 1921 land, which had been acquired by the Council's predecessor under a lease of 1921, with acquisition of the freehold then having taken place in 1944. The Council's records show that the relevant part of the application site was originally acquired by the Council's predecessor by way of a lease of 31st December 1921. The lease was for 99 years from September 1915. It is clear that the lease was granted to the lessee for the purpose of public walks and pleasure grounds or for a recreation ground being laid out thereon. There were powers granted in the lease to lay out plant, improve and maintain the land for those purposes according to the provisions of the *Public Health Act 1875* and the *Local Government Act 1894*. No plan had been attached to the 1921 lease agreement, although the identity of the demise was explained further in the Indenture of 1944. The unexecuted 1921 lease agreement and a copy of the Council's registered title for the land were produced.
- 9.5. Following the acquisition of that 1921 lease, the Council's predecessors, Llchwyr Urban District Council, subsequently acquired the freehold interest in the land by a conveyance dated 24th June 1944. A copy of the conveyance was produced. Mr O'Brien also produced a letter from the then Council to the Welsh Board of Health of January 1944, with a resolution endorsed on it, but which also confirmed that the statutory authority for the acquisition of the freehold land had been the *Public Health Act 1875 to 1925* and the *Local Government Act 1933*.
- 9.6. The historic aerial photographs showed that between 1981 and 1992 a small part of the 1921 land was used for the siting of two caravans for the purposes of temporary housing accommodation. The caravans were sited on the north-west corner of Parc y Werin, fronting onto Brynawel Road. Some housing committee minutes of Lliw Valley Borough Council of 19th December 1974 were produced, referring to the siting of two of them on Parc y Werin. A planning application record from 1974 was produced, which provided for the siting of six caravans there for temporary housing accommodation. That application was further renewed in 1977. However, Mr O'Brien said, there was no evidence that any more than two caravans were in fact sited on Parc y Werin.
- 9.7. A 1992 aerial photograph showed that the caravans had been removed and replaced with a landscaped area which is consistent with the setting of the park.
- 9.8. Parc y Werin as it existed in 1932, which comprised the land acquired under the 1921 lease, and part of the lands covered by the 1924 conveyance, was also the subject of byelaws produced by the Llchwyr Urban District Council in respect of pleasure grounds in March 1932. The byelaws specifically state that the land is to be used as a park and recreation ground.

- 9.9. The pavilion and two bowling greens to the north of the application site are not within that site, although they are part of the original acquisition and have formed part of Parc y Werin.
- 9.10. The remaining part of the application site, which has been referred to as the 1924 land, was originally acquired by the Council's predecessor by a conveyance dated 30th December 1924. The land was acquired for the specific purpose of providing housing for the working classes under the *Housing Acts 1890 to 1919*. A copy of the 1924 Indenture was provided, which included a plan of the land conveyed. Much of the land acquired in 1924 was indeed developed for housing, but the part within Parc y Werin was used for recreational or park purposes.
- 9.11. Following the acquisition in 1924 the then Council instigated the construction of housing development on the majority of the land conveyed, which was to the north-west of the acquisition site. However in accordance with *section 15(1)* of the *Housing, Town Planning Act 1919* the local authority included an area for the purposes of public recreation. This part is the western part of the application site.
- 9.12. Having studied the historic aerial photographs and the earlier Ordnance Survey plans, it is apparent that the housing development commenced soon after the acquisition, with the majority of the development finished by 1935 at the latest. It appeared that between 1935 and 1948 a small further area was developed and a new through road serving the area was established.
- 9.13. In terms of the area set aside for public recreation, there is no evidence to suggest that the land was used for anything other than as a public park. A 1971 aerial photograph did appear to show the land being worked, with various portacabins and spoil heaps located on the site. However by looking at the earlier and later aerial photographs it appears that the 1971 works were purely for the purposes of improving the facilities at Parc y Werin. That evidence is consistent with the laying out of a surfaced football pitch.
- 9.14. In terms of the wider acquisition area in 1924, a number of freehold interests have subsequently been disposed of by the local authority via the right to buy scheme. Land directly to the north of the application site was also disposed of for the purpose of developing a hospital and care facility. A section of undeveloped land to the south-west of the application site was sold off on a long leasehold basis to a housing association. Also a small strip of land was sold off to residents to facilitate garden extensions and the building of garages.
- 9.15. Land lying immediately south of the present application site had been previously acquired by the Council's predecessors under two separate acquisitions. A small part had been acquired in 1949 for use as a daytime nursery, and the land and buildings there are still held by the Council for use as a nursery school, appropriated to education. A larger section of this southern land to the west of that was acquired in 1968 for use as a health centre. The land was then developed by

the Council's predecessor for those purposes and subsequently sold off to the local health board due to a reorganisation within the NHS. A further parcel to the west of that is still held by the Council for use as a social service facility. [N.B. it subsequently transpired that the information given by Mr O'Brien, as recorded in this paragraph, did not present the full, correct picture in relation to this land, to the south of the application site – see below].

- 9.16. A notice under *section 122* of the *Local Government Act 1972* was issued by the Council on 23rd May 2015 to appropriate the open space land at Parc y Werin for educational use. Mr O'Brien exhibited a copy of the 'notice of appropriation' and the relevant cabinet report from July 2015. He also produced cabinet minutes and a plan.
- 9.17. The entire area of Parc y Werin has been continuously maintained by the Council since its acquisition as open space, for the recreation of the public. The park is listed on the Council's website under an A-Z of Parks and Nature Reserves.
- 9.18. The Council has installed various items of park furniture over the years, including Trim Trails, general waste bins, dog fouling bins, a children's play area, football pitches, bowls greens, benches and signage. Organised events at the recreation ground are controlled and managed by the Council's Parks Section, and have been since the acquisition of the land, albeit that pre-1996 records are limited. Mr O'Brien produced photographs showing the current configuration of the park, and a plan showing the position of various items of park furniture.
- 9.19. The football pitches are maintained and controlled by the Council's Leisure and Tourism department and require permits in order to use the facilities. He produced information detailing usage of the pitches, and a standard booking form which is used internally. In the year 2014/15 there were 34 senior matches, 17 junior matches and 38 mini-matches. Thus in that time almost 3,000 users would have used the pitches with the consent of the Council.
- 9.20. The Council has erected signs at the site stating that any organised event will require permission from the Council. The boundaries of the park are enclosed with railings and hedgerows with gated entrances on the western and eastern sides of the site. From historic mapping, and in consideration of the byelaws it would be reasonable to assume that the site has been enclosed since its original acquisition. However Mr O'Brien understood that the gates had not been locked for a number of years owing to financial constraints.
- 9.21. In later evidence in chief Mr O'Brien corrected some of what he had said earlier about the strip of land to the south of the present application site. From documentation which appeared to show what was conveyed in 1924, it now seemed clear that the area to the south of the present application site, on which various buildings have been constructed, was in fact included within the acquisition by the Council's predecessor in 1924. In other words the lands

occupied now by the nursery school, the health centre, the social centre etc., were in fact included within the 1924 acquisition.

- 9.22. *In cross-examination*, in relation to the 1944 acquisition of the freehold (of what had been the “1921 land”) Mr O’Brien accepted that while the Council clerk’s letter of 10th January 1944 about the acquisition referred to both the **Public Health Act 1875** and the **Local Government Act 1933**, the record of the resolution of the authority (noted also in that letter) referred only to the **Local Government Act 1933**.
- 9.23. In relation to the 1924 land, Mr O’Brien agreed that until 1989 the area to the south-west of the present application site, now occupied by the Llys y Werin residential scheme, was also part of an area of green open space. There is no definitive evidence to show that the area of the 1924 land within the present Parc y Werin was ever officially designated for use for recreation. No paperwork has been unearthed supporting that definitively. The 1924 documentation did not make specific reference to the **Housing, Town Planning Act 1919**, but merely mentioned that the acquisition was in connection with a scheme for the provision of housing for the working classes.
- 9.24. The byelaws of 1932 had no plan associated with them. He was not aware whether there was any evidence that the byelaws had ever been advertised on Parc y Werin. He did not know when the Trim Trail exercise equipment was put in at Parc y Werin, nor when the litter bins or the play area were installed there.
- 9.25. He did not have the construction dates for the buildings which had been erected in the strip to the south of the present application site. A series of aerial photographs were useful in identifying the approximate dates when those buildings were erected.
- 9.26. He accepted that a photograph which hung in the lobby of the premises where the Inquiry was taking place appeared to show a picket fence between Parc y Werin and the rough area to the south, and that by reference to the other aerial photographs it was possible to date that particular aerial photograph to somewhere between 1971 and 1981.
- 9.27. *In re-examination* Mr O’Brien said that the 1935 Ordnance Survey plan showed a solid line between the area marked as Parc y Werin and an area apparently marked as rough ground to the south of it. Such a solid line suggested a physical boundary between those areas at that time.
- 9.28. Although a clause in the 1924 draft Indenture appeared to make reference to the approval by the Ministry of Health of the scheme of housing which was intended at that time, Mr O’Brien himself had not seen any surviving record of that scheme.

- 9.29. As for the park furniture within the park, the waste bins and dog bins would be replaced regularly, as for any park belonging to this Council. Mr O'Brien did not know if the Council still owned the park which had been referred to as Argyle Gardens.
- 9.30. *Mrs Louise Herbert-Evans* is a Programme Manager and Head of Capital Planning and the Delivery Unit in the Education Department of Swansea Council. She has worked for the Council since 2008.
- 9.31. She had been involved in leading the project to construct a new primary school building on a single site for Gorseinon Primary School. She explained the way in which proposals for reorganising and investing in schools in Swansea had been taken up with the Welsh Government. A budget involving capital spending on work for a new building for Gorseinon Primary School had been duly approved. Planning permission for the new building for the primary school, which was to be on part of Parc y Werin, had been given in December 2015.
- 9.32. Evidence was given about the business case which has had justified these proposed works, and a number of shortlisted options which were considered. Any new site had already to be in the Council's ownership, as well as being within the Gorseinon catchment area.
- 9.33. Other sites than Parc y Werin were considered, but they all had various problems.
- 9.34. The option involving establishment of a new build primary school on a single new site at Parc y Werin came out as the most satisfactory scheme, after the Council's considerations. Approximately 3.2 acres of the total 8.77 acres at Parc y Werin would be used for the school scheme. These 3.2 acres currently incorporate two mini pitches and a modestly equipped playground.
- 9.35. *In cross-examination* Mrs Herbert-Evans said that the Argyle Garden site was too small for a school, and also had restrictive covenants which affected how it could be used. She did not know who has the benefit of the restrictive covenants affecting Argyle Gardens, but did not consider this to be a relevant point.
- 9.36. The Council has appropriated part of the land at Parc y Werin for educational purposes. If the land here were registered as a town or village green, then the Council as Education Authority would have to completely revisit the business case for the new school. She did not know if there was any way to provide a new school if Parc y Werin is not available. Other sites may not meet the necessary objectives.
- 9.37. Nevertheless the Education Authority is not currently failing to meet its statutory obligations to the relevant children. The existing accommodation for the relevant

children is on three sites. It would be necessary to make significant investment in the existing building if the school was to remain on that site. The Council has responsibilities in respect of how it spends public money. Nevertheless no analysis had been done on refurbishment on the existing site.

- 9.38. Mrs Herbert-Evans acknowledged that the notice of the intended appropriation of the land at Parc y Werin had (in its wording) suggested that the Council intended to appropriate the land for the purposes of property development.
- 9.39. *In re-examination* Mrs Herbert-Evans said that outside the area proposed specifically to be used for the school, whether the school made use of the other land within the park would be at the option of the school. If the school wished to book pitches on the park then they could book grass pitches free of charge.
- 9.40. *To me* Mrs Herbert-Evans said that the Council's Open Spaces audit had identified an overall surplus of open land of this kind in the Gorseinon area. The proposed provision of a multi-use games area on the park (as part of the proposal to take land from the park for the new school) would potentially represent an enhancement to the park.

10. **THE SUBMISSIONS FOR THE PRINCIPAL OBJECTOR**

- 10.1. As in the case of the Applicant, the Principal Objector in this case put forward a considerable number of submissions or representations, spread over a period of many months, even before the Public Local Inquiry into the application was arranged (and these were all exchanged and made available as between the principal parties concerned).
- 10.2. In its initial fully reasoned objection statement, the Principal Objector indicated that it took three specific points of objection. The first was that recreational use of Parc y Werin, at least until July 2015, was by right and not as of right. The second was that registration of Parc y Werin as a town or village green would be incompatible with the statutory purpose for which Parc y Werin is held. Reliance was placed on the Supreme Court Decision in the *Newhaven* case. The third point then taken by the Principal Objector (but subsequently abandoned) was that the Applicants had failed to prove that the locality on which they had relied had existed for 20 years.
- 10.3. As for the facts, it was pointed out that one part of the land at Parc y Werin had originally been acquired by the Council's predecessor under a lease of 1921. However only an unexecuted draft of that 1921 lease was available. That draft appeared to have been attached to an agreement for a lease. By that lease certain lands were demised to the then Parish Council for a term of 99 years from 1915.

There is no copy of the plan attached to the 1921 lease, but the identity of the demised land is explained by a 1944 Indenture relating to the same land.

- 10.4. The 1921 lease documents made it clear that the lease was being granted of the land “*for the purpose of public walks and pleasure ground or a recreation ground being laid out thereon ...*”. The lease documents also granted power to lay out, plant and improve the land for those purposes “*according to the provisions contained in the Public Health Act 1875 and the Local Government Act 1894 ...*”. It was clearly intended that the leased land would be used as public walks or pleasure grounds or a recreation ground and for no other purpose.
- 10.5. In respect of the other main part of the present Parc y Werin, an Indenture dated 30th December 1924 was made between the previous landowners and the Council’s then relevant predecessor. This Indenture conveyed to Swansea Rural District Council certain land in Gorseinon (which was shown on a plan). The first recital to the 1924 Indenture provided that Swansea RDC acquired the land for the purpose of houses for the working classes under the ***Housing Acts 1890 to 1919***.
- 10.6. It appears from the recitals to an Indenture of 1944 that in 1930, Swansea RDC was converted into the Llchwyr UDC, and that Llandeilo Talybont Parish Council was dissolved and its assets vested in Llchwyr UDC. Thus the leasehold land subject to the 1921 lease, and the freehold land subject to the 1924 Indenture vested in Llchwyr UDC.
- 10.7. In 1932 Llchwyr UDC made byelaws with respect of a number of pleasure grounds and recreation grounds including Parc y Werin, which is described as a pleasure ground. The byelaws were approved by the Minister of Health.
- 10.8. In 1944 an Indenture was made between the freehold owners of the land leased in 1921 (and certain other parties) and Llchwyr UDC. This Indenture conveyed to Llchwyr UDC the freehold reversion to the 1921 lease. The land conveyed by the 1944 Indenture is shown on a plan, and faces what we know as Princess Street and Brynawel Road. In fact the plan referred to both as proposed roads; it is inferred that the plan was taken from the 1921 lease, which was entered into at a time when the area had not yet been developed.
- 10.9. Clause 1 of the 1944 Indenture describes the land conveyed as forming part of the purchaser’s pleasure or recreation ground. That clause also provided that the 1921 lease should merge in the freehold reversion.
- 10.10. Llchwyr UDC became part of Lliw Valley DC in 1974. The District of Lliw Valley became part of the area of Swansea Council in 1996.

- 10.11. Much of the land acquired under the 1924 Indenture was developed for social housing. However, since its acquisition by the local authority in 1921 and 1924, Parc y Werin has always been used as an area for public recreation, and has been maintained by the local authority which owned the park from time to time as a recreational space. It is a typical urban park or recreation ground, mostly laid to grass. The facilities on it were described.
- 10.12. Swansea Council as Local Education Authority had in 2015 decided to build a new infant/primary school on part of Parc y Werin. In 2015 it published a notice under the **Local Government Act 1972** of its intention to appropriate part of the park for educational purposes. An appropriation for part of the park to be used as a school site was made by the Council's Cabinet in July 2015. That attracted local opposition and led to the present TVG application.
- 10.13. The present application excludes a pavilion and two bowling greens which are within Parc y Werin, but includes an enclosed children's playground and a car parking area which are within the park.
- 10.14. It was stated in the Principal Objector's initial objection statement that it was expressly accepted that:
- (i) Parc y Werin has been extensively used since the 1920s as a park for recreation by local people and the general public;
 - (ii) there have been no permissive signs on the park
 - (iii) the gates to the park were not closed or locked.
- 10.15. On the first main ground of objection, in relation to whether use of the park had been "*as of right*" or not, it was argued that the public were using the park by statutory permission at all material times, at least until the July 2015 appropriation. It was established in the **Barkas** that if a local authority holds land for statutory purposes which authorise it to use the land for public recreation, and the local authority intentionally does so use it, the public are using the land *by right* pursuant to statutory permission, and not *as of right*.
- 10.16. The Objector's argument was that the two parts of Parc y Werin were (until the 2015 appropriation) held for different statutory purposes. As for the land acquired leasehold in 1921 and freehold in 1944, that land was acquired and held under **section 164** of the **Public Health Act 1875**. That Act empowered local authorities to purchase or lease land for use as public walks or pleasure grounds. This fully accords with the terms which appear to have been in the 1921 lease. That also squares with the description of Parc y Werin as a pleasure ground in the 1932 byelaws.

- 10.17. As for the 1944 Indenture, all the indications are that the freehold was also acquired and held under *section 164* of the *Public Health Act 1875*. The land was already held leasehold under that provision. Clause 1 of the 1944 Indenture describes the land as “*part of the purchaser’s pleasure or recreation ground*”. No amendments were made to the 1932 byelaws or to the use of the land. The land was plainly acquired with the intention that its existing use should continue.
- 10.18. The land subject to the 1921 lease and 1944 Indenture was thus held under *section 164* of the *Public Health Act 1875*. Clear case-law shows that the public have a statutory right to use such land. That proposition had been upheld in the Supreme Court in the *Barkas* case. Thus public use of Parc y Werin was clearly by right and not as of right, at least until some or all of it was appropriated for educational purposes in 2015.
- 10.19. Turning to the land acquired under the 1924 conveyance, it is plain from the first recital that the land was acquired pursuant to the *Housing Acts 1890 to 1919* for provision of housing for the working classes. Part 1 of the 1919 Act dealt in some detail with the provision of local authority housing for the working classes. *Section 15(1)(a)* empowered a local authority to lay out and construct “*open spaces*” on land acquired to provide housing for the working classes. *Section 15(1)(b)* empowered the local authority with the consent of the Local Government Board to provide incidental facilities such as places of recreation.
- 10.20. The substance of these powers has been preserved in all subsequent consolidations of the housing legislation. The current legislation is the *Housing Act 1985*. A power to lay out and construct recreation grounds in connection with housing accommodation provided by local authorities is in *section 12* of the *1985 Act*, and the power to lay out open spaces on such land is in *section 13* of that Act.
- 10.21. This case is on all fours with the decision in *Barkas*. There as here the land was acquired for housing purposes. A recreation ground or open space was laid out and maintained on part of that land for the benefit of the occupants of the local authority housing. It does not matter that the recreational land also benefits the public generally. Recitals to the 1924 Indenture here recite that the Minister had approved the housing scheme and the acquisition of the land. It is a reasonable inference that the scheme envisaged recreational use of the land incorporated into Parc y Werin, so that the Minister can be taken to have consented to use as a recreation ground. In any event there is a presumption of regularity, and so any necessary Ministerial consent can reasonably be inferred. Further, Ministerial consent was not in fact required for laying out and maintaining open spaces. The land here was an “*open space*” as defined by the *Open Spaces Act 1906*. In this situation the Supreme Court in *Barkas* held that the public has a right to use the recreation ground, so that the public has a statutory right to use the land for recreation. This is use “*by right*”.
- 10.22. Recreational use of Parc y Werin, at least until the 2015 appropriation, was therefore not “*as of right*”. The Applicants therefore cannot prove 20 years

qualifying use. Even if the statutory appropriation was not validly worded, recreational use of Parc y Werin continued to be by right and not as of right until the date of the TVG application.

- 10.23. The decision of the Supreme Court in the *Newhaven* case has introduced a new legal principle into the law relating to the registration of TVGs. It was held that land cannot be registered as a new TVG if registration would be incompatible with the statutory purposes for which the land is held. In that case a beach within Newhaven Harbour could not be registered as a TVG because the statutory restrictions on development of a TVG would be inconsistent with the exercise of statutory harbour powers. The statutory restrictions are those in *section 12* of the *Inclosure Act 1857* and *section 29* of the *Commons Act 1876*. The principle of statutory incompatibility applies to land held by local authorities.
- 10.24. Thus, since the 2015 appropriation, the land comprised in Parc y Werin has potentially fallen into three classes:
- (i) land appropriated for educational purposes;
 - (ii) land still held for the purposes of *section 164* of the *Public Health Act 1875*;
 - (iii) land still held for housing purposes.
- 10.25. As for the first class, registration of the land as a TVG would be incompatible with the statutory purpose for which the land is held, since it would prevent the building of the proposed new school. As for the second class, it was accepted that registration as a new TVG would not be incompatible with the purposes of *section 164* of the *Public Health Act 1875*. As for the third class, although the land is used for recreation at the moment, it could be used as social housing under the statutory housing powers on which it is held. It was suggested that registration as a new TVG would be incompatible with the use of the land for social housing. Thus it was argued that the statutory incompatibility principle prevented registration as a TVG of at least two out of the three categories of the land at Parc y Werin.
- 10.26. In a supplementary objection statement submitted by the Principal Objector in August 2016, the Objector responded to some further information put forward by the Applicants, which had pointed out that two static caravans had been situated on part of Parc y Werin for a period of some 9 years up to about 1997.
- 10.27. It was indicated that the Principal Objector believed that those two caravans had been sited on the small part of the park for some years in the 1970s and 1980s as temporary accommodation for council tenants, initially while neighbouring council houses were renovated. The caravans were visible on an aerial photograph dated 1981, but were not on another one dated 1992. There was some uncertainty about the date of another photograph thought to be showing two caravans on the site, which was believed to have dated back to the early 1970s.

- 10.28. There was a record of a temporary planning permission being given in 1974 for a residential caravan site to accommodate up to six caravans for temporary housing in the north-west corner of Parc y Werin, fronting Brynawel Road. There is a record of a renewal of that permission in 1977. There was no evidence that any more than two caravans were ever sited there.
- 10.29. A 1974 minute had been found which referred to a decision to place two caravans at Parc y Werin as temporary accommodation. Another set of minutes from 1980 record a council house exchange relating to a caravan in Parc y Werin. It seems clear that the caravans were sited on the part of Parc y Werin which was acquired under the 1921 lease and the 1944 conveyance. The caravans were sited on part of the land which has now been appropriated to educational purposes.
- 10.30. It was noted that the Applicants were arguing that the land that had been acquired in 1921/1944 could not have been held for the purpose of public walks or pleasure grounds if part of it was used in the 1970s/80s for siting caravans. The Applicants had further argued that some or all of that land must have been appropriated for statutory purposes consistent with the use for siting caravans. The Applicants had also pointed out that siting caravans would be in breach of the 1932 byelaws, and that any failure to close and lock the gates of the park was in breach of the 1932 byelaws. The Applicants had further argued that when the 1921 lease was merged into the 1944 conveyance, the latter acquisition was not for the same purpose as the original acquisition of the lease.
- 10.31. The Objector's response to these points was that it is completely clear that the 1921 lease was for the purposes of *section 164* of the *Public Health Act 1875*. Clause 1 of the 1944 conveyance described the land as part of the purchaser's pleasure or recreational ground at Parc y Werin. The evidence shows that after the 1944 conveyance the land conveyed still continued to be used and maintained as a public park. The fact that the 1944 conveyance provided for the 1921 lease to merge into the freehold does not mean that the freehold land was held under different statutory powers from the leasehold land. The 1943 resolution and the letter about it in 1944 are consistent with the proposition that the freehold was being purchased for continued use of Parc y Werin as a public park under the *1875 Act*. There is no evidence that Llchwyr UDC were purchasing the freehold reversion of Parc y Werin for any other purpose than use of it as a public park.
- 10.32. It is necessary to consider the totality of the evidence to decide under what statutory power the freehold reversion to Parc y Werin was purchased in 1944. The Applicants do not put forward any other statutory purpose for which the freehold reversion to the 1921 lease was purchased in 1944. The evidence all points one way, i.e. that it was purchased for the purposes of *section 164* of the *Public Health Act 1875*.
- 10.33. The Applicants have argued that if Parc y Werin was still held for the statutory purpose of a public park after 1944, then it was appropriated for other purposes

when part of the park began to be used as a caravan site; but they do not suggest that there is any evidence of an express appropriation, so they must be suggesting some sort of implied appropriation.

- 10.34. However only a very small part of Parc y Werin was used as a site for two caravans. The rest of the land continued to be used as a public park. In those circumstances it is not possible to infer an appropriation of the whole of the park, as opposed merely to the site of the two caravans. As for any argument based on implied appropriation of the land used for siting the caravans, there was no such implied appropriation.
- 10.35. Whether any such appropriation was under the *Local Government Act 1972* (which was in effect from 1974), or whether it was under earlier legislation, the case-law relevant to this topic establishes two requirements of a valid appropriation. First there must be a determination by the appropriating authority that the land is no longer required for the purposes for which it was acquired. In the present case there is no evidence of any such determination. Indeed the evidence suggests that the proposed use for siting caravans was always perceived as temporary, and that the caravan site would revert back to public park use in due course.
- 10.36. Second, there must be an actual decision by the relevant local authority to appropriate the land for a new purpose. It is not enough that the local authority just uses it for a new purpose. In the present case there is no evidence of any decision by the Council to appropriate the caravan site for a new statutory purpose. So far as the evidence goes, the Council just used the land for the new purpose. Accordingly there was no implied appropriation when part of Parc y Werin was used as a temporary site for caravans.
- 10.37. The Applicants had argued that the local authority could not use part of Parc y Werin as a caravan site without an appropriation. This raises two issues, first whether the then authority could lawfully use land purchased for use as a public park temporarily for other purposes, and second, whether use for a purpose other than the statutory purpose necessarily requires the inference of an appropriation.
- 10.38. The first issue is, as far as the Objector is aware, undecided and was left open in the recent *Goodman* case in the High Court. It had been decided back in the 19th century that land acquired for sewerage purposes could be used temporarily for recreational purposes until required for the sewerage purposes. The *Local Government Acts of 1933 and 1972* both contained a power to buy land in advance of its requirement for a particular purpose, and to use it temporarily for another purpose. So a local authority can lawfully use land temporarily for a different statutory purpose from that for which it was acquired, without appropriating it for another statutory purpose.

- 10.39. The second issue referred to had been determined by the recent *Goodman* case, where the judge held that Exeter Council had been using for public open space purposes land which was in fact held for development purposes. The previous council in this present case may have been acting unlawfully in using part of Parc y Werin as a caravan site, but such use did not necessarily imply an appropriation to caravan site purposes.
- 10.40. A further difficulty which faces the Applicants on the implied appropriation argument is that, if use of part of Parc y Werin as a caravan site in the 1970s gave rise to an implied appropriation away from public park purposes, it is hard to see why the cessation of use as a caravan site and renewed use as a public park did not give rise to an implied appropriation back to public park purposes. If so, Parc y Werin has been held for the purposes of *section 164* of the *Public Health Act 1875* since the early 1990s, and this is fatal to the present application.
- 10.41. Further, the Applicants do not in fact put forward the identity of the new statutory purpose for which they contend that Parc y Werin was impliedly appropriated in the early 1970s. However, if there were an implied appropriation, the obvious statutory purpose in the light of the evidence that the caravans were to be used for temporary housing purposes, would be housing purposes. If so, the same by right argument would apply as to the land purchased in 1924 for housing purposes.
- 10.42. It was noted that the Applicants argue that the various councils successively owning Parc y Werin have not complied with the 1932 byelaws in a number of respects. These included the stationing of the caravans, and failure to close the park one hour after sunset. There is nothing in this point. If the byelaws have been breached that cannot conceivably affect the statutory purpose for which Parc y Werin has been held. There is no evidence that the byelaws have ever been revoked.
- 10.43. It was further argued that the enclosure of part of Parc y Werin for the purpose of siting the temporary caravans would have given rise to an implied permission by the Council to use the rest of the park for recreation, on the principle of the decision in the case of *R (Mann) v Somerset County Council* [2012] EWHC 814.
- 10.44. In summary submissions put forward on behalf of the Principal Objector shortly before the opening of the Inquiry, it was pointed out that the land here had in fact been used by the authority and its predecessors as a pleasure or recreation ground and sports ground for local schools and local sports clubs since the 1920s, but subject to that it had been used by local inhabitants for informal recreation.
- 10.45. The Objector does not dispute that a significant number of the local inhabitants of the Gorseinon Town Council area have used the application land for lawful sports and pastimes during the relevant application period. It was expressly accepted that the Gorseinon Town Council area is a locality for the purposes of *section 15* of the *Commons Act*.

- 10.46. However the Objector contends that the application land has throughout the application period, and for many decades before that, been held by the local authority and used by the public by virtue of statutory permission. The very name of Parc y Werin means "*the people's park*".
- 10.47. Alternatively, if the land was not held by the local authority for the purposes of recreation, local inhabitants have used the land pursuant to an implied licence. Use in those circumstances would not have been as of right either. Furthermore, the registration of the land as a TVG would be inconsistent with the intended use of a substantial part of it for educational purposes.
- 10.48. The factual disputes in this case appear to be limited. The title to and factual acquisition of the land by the predecessors to the present Objector do not appear to be challenged. The eastern part of the land was originally acquired by the Council's predecessor under the 1921 lease. The western part of the application site was a relatively small part of some freehold land conveyed to the Council's predecessor by an Indenture of December 1924. The freehold reversion of the 1921 land was conveyed to the Council's predecessor in 1944. The Objector's predecessors in title therefore had possession of the entirety of the land from 1924, and freehold title to it all from 1944.
- 10.49. There does not appear to be any substantial dispute as to the use of the application land during the application period, which is from November 1995 to November 2015, or indeed since 1924. It has been used as a typical local authority pleasure ground and recreation area. It contains typical recreation facilities, including sports fields which are let out for use by the local authority.
- 10.50. A small part of the land acquired in 1924 (bordering on Brynawel Road) was used for temporary housing with the placing of two mobile homes and associated works, following a grant of planning permission for six mobile homes. The mobile homes were removed by 1987 and the land was reinstated as recreational land.
- 10.51. It was noted that the Applicants had also referred to a pile of spoil being visible in an aerial photograph taken in about 1970. That appeared to be consistent with works of improvement to the application land as recreational land, which works were carried on at about that time.
- 10.52. It was accepted that parts of the land acquired under the 1924 conveyance adjacent to or near to Parc y Werin had been disposed of and used for other purposes, such as a hospital or housing. However that was consistent with the purposes for which the land has always been held.
- 10.53. The factual issues remaining therefore appear to be:

- (1) Was the application land held by the local authority for recreational purposes when acquired?
 - (2) Was the application land ever appropriated to any other purpose subsequently, and if so what?
 - (3) To what extent and under what powers was land historically used as a recreational land at Parc y Werin used for housing purposes?
 - (4) If so, was use of the land by local inhabitants subject to a licence by implication?
 - (5) What is the statutory purpose for which the application land is currently held?
- 10.54. In order for use of open land to be “*as of right*” the use must amount at the time of use to a trespass. Where land is held by a public body for the purpose of permitting local inhabitants to enjoy lawful sports and pastimes on it, then their use is by right or permissive use, the antithesis of use as of right. This was clearly decided by the *Barkas* case.
- 10.55. As for whether the local inhabitants had a right to use this land during the application period, a local authority is a creature of statute, and can only lawfully do what it is authorised to do. The first step therefore is to consider what statutory power the application land was acquired under. Once that is established, so is the purpose for which the land was held. The next question is whether the purpose has been altered by an appropriation under the relevant provisions of the 1933 or 1972 *Local Government Acts*. The Objector’s case is that the land acquired in 1924 was acquired under the *Housing Acts*, which among other things authorised the laying out of land as recreation land. The land whose freehold title was acquired in 1944 was acquired under *section 164* of the *Public Health Act 1875*, which required that land to be held for the purposes of recreation. In neither case has there been any subsequent appropriation.
- 10.56. The basis on which the Council or its predecessors acquired the land is a matter of evidence. In the present case there are no available minutes setting out the purposes of the demises or conveyances. In the absence of formal evidence of the authority’s intention (such as minutes resolving to exercise a specific power) the best evidence lies in the recitals in or terms of the formal instruments by which the land was acquired. In the absence of any such evidence the Objector would rely on the principle known in Latin as “*omnia praesumuntur rite esse acta*” (the presumption of regularity), and would seek to infer a lawful origin from the contemporaneous use of the application land as recreation land. However, by reason of the actual terms of the conveyances here, and the surrounding circumstances, it is unnecessary to do that in this case.
- 10.57. The Objector here holds the land through two titles, the 1944 conveyance of the eastern part, following on from the 1921 lease of the same land, and then the 1924 Indenture of the western part. There is no other conveyance of the application land. The 1921 lease was expressly for the purpose of the land being used as a pleasure ground. That purpose was restated in the demise itself, and the terms of

grant. The only appropriate or credible statutory purpose is that contained in *section 164* of the *Public Health Act 1875*. The fact that Parc y Werin was included in byelaws as one of the local authority's parks and pleasure grounds is entirely consistent with this. The 1944 conveyance of the freehold reversion of this land did not set out the purpose for which the land is acquired, but recited that the land was held as a pleasure ground. Given that the lease was held for the purposes of public recreation and had 76 years still to run, the absence of any statement of alternative statutory purpose is a very strong indication that the purpose for which the land was held remained the same as it was before, namely recreation. That is consistent with the use of the land in fact remaining the same after the conveyance as before. There is no evidence that the land was acquired for any other purpose.

- 10.58. That matter is confirmed by the copy letter dated 10th January 1944 from Llŵchwr UDC to the Welsh Board of Health, indicating that the acquisition was to take place under the *Public Health Acts 1875 to 1925*, as well as the *Local Government Act 1933* (which gave the Council power to acquire land for their statutory purposes).
- 10.59. As for the land acquired in 1924, the 1924 Indenture recited that the land was acquired for the purpose of carrying out a scheme for housing the working classes under the *Housing Acts 1890 to 1919*. Among the powers contained in that legislation were provisions empowering an authority to construct open spaces on land acquired to provide such housing, and to provide facilities incidental to the housing such as places of recreation. Unsurprisingly, if a local authority was empowered to construct housing estates, it was also empowered to provide ancillary facilities, including those for recreation.
- 10.60. As a matter of fact the authority formed or extended a pleasure ground over that part of the land conveyed which is presently known as Parc y Werin. The plain inference is that this part of the land was held for the purposes of *section 15* of the *1919 Housing, Town Planning Act*.
- 10.61. There is no evidence of any subsequent appropriation of the application land to different purposes. Until 1972 an appropriation of local authority land had to comply with the provisions of *section 163* of the *Local Government Act 1933*. After 1972 appropriation was governed by *section 122* of the *Local Government Act 1972*. That would have required the authority to consider that the land was no longer required for the purpose for which it was acquired, and that it was now required for some other statutory purpose. Ministerial consent to the appropriation would have been required under the 1933 legislation, and thereafter public advertisement of the change of statutory use.
- 10.62. Insofar as the Applicants contend that the construction of permanent housing on land formerly part of Parc y Werin is material to consideration of the basis on which the land is held, the Objector argues that in fact no such construction took place on Parc y Werin, but that if it did the land which was held under the *Housing Acts* was held precisely for the purpose of providing housing, and would not have

been appropriated to a different use. Insofar as appropriation to such use was required, the necessary appropriation to be inferred would have extended only to the land so used for construction.

- 10.63. The evidence of use of a small part of the application land for temporary housing for a period in the 1970s and 1980s (the caravans) does not indicate or evidence an appropriation of either the application land as a whole or a small part of it. Neither is there any evidence of ministerial consent, publication of the alternative proposed use, or consideration by the authority that the land was no longer required for public open space use, such as would have been required under the legislative provisions relating to appropriation of local government land.
- 10.64. There was in any event no need for the land to be appropriated to another use where the use to which the land was to be put was temporary. The case of *Attorney General v Teddington UDC* [1898] 1 Ch 66 was referred to.
- 10.65. As for the question of implied licence, use is permitted by implication if it would be evident to members of the public carrying out that use that they have the permission of the landowner to do so. Where public use of land is restricted by the landowner for part of the time, then use by the public at other times may be permissive. The well-known *Beresford* case was referred to. Where the public use of part of the land is restricted by the landowner to part of the time, then the public use of the whole of the land at other times may be permissive. The *Mann v Somerset* case was referred to.
- 10.66. The underlying concept is one of regulation. If a landowner makes it plain to the public that he has the power to regulate their usage of the land, which he may do by prohibiting or restricting certain types or periods of usage, the usage which they do in fact carry out, and which is not regulated, is in effect subject to the landowner's will. It is obvious that anyone seeing a formal sport taking place on a marked up pitch would conclude that the teams playing had been given the exclusive use of at least the pitch for the duration of the game. Further, the land here is obviously a local authority park with facilities. It is fenced and gated, albeit that the gates have not been shut for many years. As with parks, byelaws are applicable to it. No member of the public would have considered that he was trespassing, because he would have assumed from the surrounding circumstances that the local authority permitted or authorised him to be there.
- 10.67. The Council's original objection had asserted statutory incompatibility arising from the holding of part of the land for educational purposes for the latter part of the relevant period. The question thus arose whether the land concerned was in fact appropriated for educational purposes. The issue is whether the Objector purported to appropriate the land, not whether it was validly appropriated. The report leading to the claimed appropriation in July 2015 set out the legal effects and requirements of appropriation. Although the actual decision was to appropriate the land "*from the director of place to the director of people*", the meaning of the decision when

read with the report is clear. The Council was appropriating the land from recreational use to educational use, to enable it to construct a school.

- 10.68. The decision is to be presumed effective until it is challenged and set aside. Although it could be rendered void *ab initio* by a court of competent jurisdiction, until then it is presumptively effective.
- 10.69. Is there a statutory incompatibility here? In the *Newhaven* case Lord Neuberger had held that where Parliament has conferred on a statutory undertaker powers to acquire land and to hold and use that land for defined statutory purposes, the **2006 Commons Act** does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes.
- 10.70. The underlying principle is one of statutory construction. The **Commons Act 2006** is to be interpreted so as not to permit the registration of TVG rights where land is during the relevant 20 year period held by the landowner pursuant to particular statutory powers, and the continuing performance of those statutory powers would be interfered with were the land to be subject to TVG rights. The issue is not of failure to perform duties; it is of the hindrance of the continuing statutory purpose. That will require the Inquiry to identify the continuing statutory purpose for which the land is being used.
- 10.71. The ‘continuing use’ of the land includes not only the factual use but also the likely or contemplated use. In the *Newhaven* case that use had gone on for many years without conflict with the public recreational use. Notwithstanding this, the Supreme Court considered that it was plain that there would be conflict from the very terms of the statutory purpose. It appears that had the conflict not been obvious, then the court would have accepted evidence to ascertain whether the statutory purpose was likely to be hindered by the creation of a town or village green.
- 10.72. The Supreme Court in *Newhaven* had distinguished a number of cases where TVG applications had been used on land owned by local authorities. The point that distinguished those cases from the *Newhaven* case was not the mere fact that the landowner was a local authority, but that the particular purpose for which the land was held, and its use, was not inconsistent with registration. The contrast is with the mere holding of land for a statutory purpose which is not of itself sufficient to create a statutory incompatibility. The distinction with the situation in *Newhaven* was that the land there was being used for a statutory harbour purpose and was being used as a working harbour. In none of the local authority-owned examples discussed was the statutory inconsistency point argued, and the court considered that in no case was the purpose for which the land was held a relevant statutory purpose.
- 10.73. The statutory incompatibility point has recently been considered by the High Court in the case of *Lancashire County Council v Secretary of State* [2016] EWHC

1238 (Admin). The comments of the judge in that case were *obiter* as he upheld the findings of the Inspector that the land was not held for educational purposes. That was a necessary step prior to consideration of statutory incompatibility.

- 10.74. Here, the land has been or will be appropriated to educational use by decision of the Council. The use to which the land is to be put, and for which it is required, is the construction of a new school, and the detailed plans are set out the Objector's evidence. The education legislation imposes on education authorities statutory duties as to the provision of education facilities. There are also duties on local education authorities and governing bodies to ensure the safety of children, and which provide for the governing body to have control of the school premises for that purpose. The point is a simple one: Parliament provides that school premises are to be subject to the control of the school for the purposes of education, and that is entirely inconsistent with a public right of entry subject to "give and take". Where a local education authority has decided, as it is empowered to do, to use its land for the purpose of education, then it will be wholly inconsistent for the public to have or to be able to exercise a right of recreation over it.
- 10.75. In further submissions at the opening of the Inquiry it was suggested that the reason why the 1921 land had initially been leased to the local authority, rather than sold as freehold, would have been that it was at the time settled land, and it was therefore much easier for the settled land trustees to lease it to the local authority for use as a park. It was clear from the totality of the evidence that by 1924 the park at Parc y Werin was in existence. In 1944 the Cameron Estate (the owners of the freehold) had effectively offered the local authority the opportunity to buy the freehold reversion, and the local authority agreed. It is plain from the surrounding documents and circumstances that the purpose of that freehold acquisition in 1944 was for the land to continue to be used as a park. Therefore it is obvious that this land has always been used for a park. Even if that were not the case, it would have been obvious to anyone using the park that they were permitted to do so by the local authority.
- 10.76. Further, it was argued in relation to the statutory incompatibility point, that if the land is held under a particular statute then Parliament cannot have intended that land held for that particular purpose could have rights generated under other legislation which are inconsistent with the statutory purpose for which the land is held.
- 10.77. In closing submissions at the end of the Inquiry, it was argued on behalf of the Principal Objector that there is a degree of unreality around the present application; it is a surprising application. In order to obstruct development certain local residents are asserting that their use of land which has been a well-known public park since the 1920s has been as trespassers, and that therefore they can assert that the land should be registered as a town or village green, with the consequences that: (a) the public have a general right to use all of the application land for recreation, subject only to "give and take"; (b) any construction work on then land

will be prohibited in perpetuity. The Applicants' case is based on a misreading of the relevant authorities, and reliance on an absence of complete Council records.

- 10.78. The Principal Objector contends that the application land has at all material times been held by the Council for the purpose of public recreation, and that the public's use of the land has been "*by right*". The circumstances indicate plainly and objectively that the public has used the application land for recreation by permission of the Council, and hence not as of right. Further, the Council has appropriated part of the application land for educational purposes, specifically to construct a new combined school, and it is inconsistent with the purpose for the land to be registered as a TVG.
- 10.79. As for the first main argument, where land is held by a local authority for a use which permits public recreation, subsequent public recreation will be by right and not as of right. That was the decision in the *Barkas* case. In *Barkas* the issue concerned a situation where land was held under *section 80(1)* of the *Housing Act 1936*. *Barkas* did not concern itself directly with how the local authority might go about proving that any particular statutory regime applied to any particular piece of land. Nor did it formulate any requirement that any such right had to be approved by a Minister.
- 10.80. There is a fundamental difference between establishing a statutory power under which a local authority holds land on acquisition, and on subsequent appropriation. An appropriation is a change of holding power. Prior to the *Local Government Act 1933*, when a local authority ceased to require land for the purpose it had been acquired for, it had to dispose of the property, even if it wished to use it for some other purpose. It would then have to re-acquire it.
- 10.81. Although in the *Beresford* case Lord Walker had referred to the formal appropriation of public authority land for public open space purposes, this is now regarded as referring to no more or less than a decision by the authority to hold land for a public open space purpose for which it is entitled to hold it – see the *Barkas* case.
- 10.82. There are no formality requirements in respect of the recording or making of a decision to acquire land on a particular statutory basis. It is a matter of fact as to whether a local authority has decided to acquire land on a particular basis, and if so what.
- 10.83. Matters of fact are susceptible of proof by relevant evidence. Evidence is relevant if it tends to show that the fact asserted is more or less likely. Even without direct evidence, factual matters may be inferred from surrounding or circumstantial evidence.

- 10.84. As for the powers on which land is held on acquisition, there is a practical hierarchy of evidence in such circumstances. This will be: (1) a formal minuted decision as to the basis of acquisition; (2) a record in the instrument as to the basis of the decision to acquire; (3) contemporaneous evidence of the decision; (4) surrounding circumstantial evidence of the decision; (5) evidence of usage.
- 10.85. The Applicants rely on the *Malpass* decision to establish that evidence of subsequent use is not evidence, or not sufficient evidence, of the purpose for which land was acquired. *Malpass* was in fact a judicial review decision where the inspector had found as a fact that it was not possible to say what the purpose was for which the land had been acquired. The case is not authority for the proposition that the statutory purpose cannot be ascertained from secondary evidence. Indeed the judge considered that further evidence, together with the evidence previously before the inspector, may have shown a probability that the land was acquired under the *Public Health Act 1875* as a matter of fact. This indicates that it was thought quite possible for the purpose to be inferred in this way.
- 10.86. The *Goodman* case, relied on by the Applicants, does not assist here. It deals with the quite different and specific requirements for statutory appropriation under *section 122* of the *Local Government Act 1972*, which requires a conscious decision that land is not required for the previous use. A mere change of use is unlikely to provide this, the inspector having found as a fact that the council officers had gradually forgotten that the land had previously been appropriated to industrial use in that case.
- 10.87. In *Barkas* the Supreme Court was willing to consider that in the absence of evidence, approval of a proposal by the Minister, where that was required for a lawful holding, would be presumed.
- 10.88. This is an aspect of the presumption of regularity. Where an official act is performed (for example, the acquisition of land which requires Ministerial consent) it will be presumed that Ministerial consent had been obtained because it is on balance unlikely that the authority would have acted unlawfully.
- 10.89. As for the 1924 Indenture, we do not have the original or executed Indenture, or any minute or document relating to the acquisition of the land. Given that the acquiring authority was Swansea RDC, and that body has been through three subsequent transformations (to Llŵchwr UDC in 1930; to Lliw Valley DC in 1974; and to Swansea City Council in 1996) that is not surprising. The only relevant contemporaneous document is the draft Indenture. The disposals off of various pieces of land recite the title arising from the draft Indenture, and it is common ground that an indenture in this form was executed.
- 10.90. The Indenture recites the submission of a scheme to the Minister of Health for the provision of houses for the working classes, and the (undated) approval of that scheme. The Indenture also recites that Swansea RDC was the local authority

within the meaning of the Housing Legislation. The Indenture was intended to transfer the land to Swansea RDC under the then Housing Legislation. Such a scheme required the consent of the Local Government Board (later amended to the Minister of Health).

- 10.91. Where land was so transferred the local authority had power to lay out and construct public streets and roads or open spaces on the land. There were other powers to let or dispose of the land to other parties, the exercise of which required the need to obtain consent. The local authority in this case did not dispose of the application land acquired under this Indenture. It follows that it had the power to construct open space areas, without the specific consent of the Local Government Board, on any part of the land subject to the scheme. The Applicants' suggestion that ministerial approval was required for such construction or use is wrong. The scheme did not need to specify the open space. If the scheme had contained a specification for open space then it would have been binding on the authority.
- 10.92. In fact the Council thereafter constructed Parc y Werin to its present size. The byelaws also indicate that Parc y Werin was in existence by 1932. The Applicants' argument that the later conveyances away of some of the 1924 land, and the demise of part of the 1924 land to a housing association, give rise to an inference that the application land was not held as open space is misconceived, for a number of reasons. The first is that the land concerned in those conveyances, etc., was never part of Parc y Werin. There is no evidence that it was ever maintained as such. The evidence that was heard made the point that it was particularly muddy and overgrown. It was shown on the 1935 Ordnance Survey Map as overgrown. By the 1970s, if not earlier, the land to the south of the park was fenced off, as had been seen from photographic evidence. The land to the south of the park was appropriated for other purposes after being transferred. It was not necessary for Llchwyr UDC to appropriate the land to another use before transferring it.
- 10.93. It was unnecessary for Swansea Council to appropriate the land it demised to the housing association before it did so, even if it had been set out as an open space. Land held under acts of this sort may be used for housing, even if they are historical open space. They need not be formally appropriated to a different purpose, as is clear from the *Barkas* judgments.
- 10.94. As for what is known as the 1944 land, the 1944 conveyance of it did not state the purpose for which the freehold reversion was conveyed. However, looking at the evidence as a whole, it is as plain as it can be that the land was transferred as a pleasure ground. The following matters lead to that conclusion: The 1921 lease provided for the land demised only to be used as a pleasure ground. By 1935 the land was in use as a pleasure ground. It had a football pitch, a bowling green and tennis courts on it, and was regulated as a park by byelaws. The approach to dispose of the reversion came from the Cameron Estate, not the Council. The offer of disposal related to the freeholds of both the Parc y Werin and Argyle Gardens, which were both recreation grounds. The reason why the original disposal was by

lease appears to have been because the estate was unwilling to sell the freehold at the time. The implication therefore is that the Council would have been willing to acquire the freehold as a pleasure ground if so offered in 1921, rather than the long lease entered into. The price paid (in 1944) appears to have been based on years' purchase of the covenants under the lease, rather than any premium value based on alternative use. The clerk in his letter of 10th January 1944 recorded the Council's resolution as having been to buy the land under the powers contained in the 1933 Act and all or any other powers then enabling. The 1933 Act gave the Council power to buy land for any of their powers under general acts. The resolution in effect does not specify the purpose for which the land was acquired. The letter to the Welsh Board of Health however states that the land was acquired not only under the *Public Health Acts 1875 to 1925* but also the *Local Government Act 1933*. The letter was written by the Clerk to the Council within a month of the resolution, and would be expected to be accurate. The reference to the *Public Health Act 1875* is consistent with the use under the lease to date. The use of the land thereafter continued to be exactly as it was before.

- 10.95. The use of a small part of the land for temporary housing (caravans) was either an error (in that there should have been an appropriation) or a temporary use in respect of a parcel of land that the Council did not consider was needed for recreational purposes. The power to use for other purposes where there is no requirement to use the land for the purpose for which it was held was sanctioned by the *Attorney General v Teddington* case, referred to earlier. There are also statutory provisions (again referred to earlier) enabling this in certain circumstances. It would be absurd to deny authorities reliance on these provisions where they no longer require land for the purpose for which it was acquired, but do not immediately require it for the purpose to which they wish to appropriate it. Equally it would be absurd to require the land to be disposed of if it was temporarily not needed for the purpose for which it was acquired. The *Goodman* case is not authority against this approach. It is a decision based on the inspector's factual findings in that case.
- 10.96. The argument about implied licence is an alternative argument. The point can be tested by asking, if the Council could not show on what basis they held the application land, would the public be using the land as trespassers? That is in effect another way of putting the test from the *Barkas* case.
- 10.97. The Applicants suggest that the Objectors cannot rely on mixed use of land as demonstrating a licence, because that is contrary to the *Lewis v Redcar* judgment. This is a misunderstanding of the effect of the *Lewis* case, which concerned the effect of 'deference'. That meant that if the public always deferred to the landowner he would not be put on notice that he should object to their presence. The Supreme Court in that case concluded that he should be put on such notice. In an implied licence case the issue is different. It is whether a reasonable member of the public should have thought that he was being permitted to go onto the land. The *Lewis* judgment is no authority on that question.

- 10.98. The *Lewis* point was considered by the judge in the *Mann* case. He concluded that *Lewis v Redcar* did not prevent the operation of the doctrine of implied licence.
- 10.99. Various matters give rise to the implication of a licence in this case. Until 1994, or possibly October 1995, or the date when Swansea took over (according to the various different pieces of evidence given to the Inquiry) the park gates were shut daily. The shutting of the gates would indicate to the public that they were being periodically excluded, and hence that their use when it did occur was permissive. It does not matter if the shutting of the gates ceased before the commencement of the application period. If an implied licence existed before that date, it would continue for a period after it, and extend on into the application period.
- 10.100. Until Swansea acquired the application land, Gorseinon had an annual fair which charged for entry onto the land. That is a classic event that indicates that the use of the land is permissive.
- 10.101. The landowner regulated the use of the land by reason of its use of the sports field, which was licensed exclusively but intermittently to third parties. There was no question here of “give and take”. The landowner and his express licensees used it when they wished, and the public kept off the pitch in consequence. People cannot and did not use the land when it was in use for formal games.
- 10.102. The landowner here (the local authority) licensed use of the tennis courts and bowls lawns. It is immaterial for these purposes that those areas are outside the application land. They are within Parc y Werin as a whole, and the concept of licence applies to Parc y Werin. Local residents would have understood that the facilities were being used by exclusive licensees.
- 10.103. Furthermore the land was regulated by a park keeper or keepers until mid-1996, and signage on the land indicated that the land was under control and regulation of the owning local authority.
- 10.104. This was public land. In the *Goodman* case the judge had distinguished the *Mann* judgment for that reason, relying on the judge’s reference to the commercial nature of the usage of part of that land. It is likely that Dove J in *Goodman* misunderstood the point of the *Mann* case. In *Beresford* Lord Walker had suggested that the notion of an implied licence had its attractions.
- 10.105. Lord Carnwath’s discussion in *Barkas* of the *Beresford* case suggested that the fact of public ownership of the land concerned was material tending towards the finding of an implied licence. Where a local authority has power to grant a licence, the inference will be that a licence had been granted.

- 10.106. In further submissions it was argued that it was a fundamental requirement upon the Applicants that it be shown that local people using Parc y Werin had effectively been doing so as trespassers. The idea of trespass in a municipal park seems bizarre. The Objector's arguments are on the side of common sense.
- 10.107. In the Principal Objector's view the Applicants' case is based on a misreading of the legal authorities. It also depends on the absence of certain Council records. Going through the basis of the Council's holding of this land, no-one has the absolutely full records of what happened between 60 and 100 years ago. The Applicants' case appears to say that various important points cannot be proved as they are not clearly there in documents. In response to this the Council has three broad arguments. The first is the argument in relation to "*as of right*". The application land has at all material times been held by the Council, right through to 2015, for the purpose of permitting the public to use the land for lawful sports and pastimes. Even if the land was not so held, everyone has tacitly agreed that they have implied permission or licence to be there. Further, because the Council has purported to appropriate part of the land for school use, that is inconsistent with registration now as a TVG; that part of the land cannot be registered as a TVG.
- 10.108. There has been much discussion in this case of the concept of appropriation. There is a fundamental difference between the rules when a local authority acquires land and the way in which it changes the purpose of land which it already holds. Local authorities are creatures of statute, or unnatural persons. They only have power to do what they are allowed to do. Therefore a local authority generally has to show a statutory power in order to acquire land. It used to be generally thought that once a local authority no longer needed land for its original purpose it had to sell it. Then in 1933 Parliament said that local authorities could use surplus land for another purpose. Originally in this context there was a requirement that such a change had to be approved by a Minister. That was for a formal appropriation. There is a certain amount of confusion when the term "*appropriation*" is used. In the ***Barkas*** case, both the Court of Appeal and the Supreme Court made it clear that the kind of appropriation being discussed did not necessarily mean formal appropriation. The judgment of Lord Justice Sullivan in the ***Barkas*** case was considered; this suggested that any means of allocation by a local authority of land to recreational use is sufficient to make the land held for open space purposes. In that case the judge was analysing the particular statutory power relevant to the land concerned in Whitby, Yorkshire. The position at Parc y Werin is not in exactly the same terms. The Housing Act legislation at Parc y Werin did not require ministerial consent for use as open space. It is clear from the Supreme Court judgments in ***Barkas*** that that court accepted that land does not have to have gone through a formal appropriation procedure such as that under ***section 122*** of the ***Local Government Act 1972*** in order to be regarded as properly appropriated or allocated for public recreation purposes.
- 10.109. The fact that the relevant statutory procedure has been gone through does not have to be recorded in any formal way. It is also a matter of fact whether any formal requirement has been complied with. Any such question is susceptible of proof by relevant evidence. It is thus legitimate to ask whether there is anything relevant as showing the likely position. One does not need direct evidence, one can take this from circumstantial evidence. For example, it could be an inference from the fact

that a local authority has spent much money making available a park for public use. This would suggest that it intended to do so. In practice there is a hierarchy for ordering evidence. If there had been a full minuted decision that would be conclusive of the matter. If there was a record in the instrument of acquisition then that would be good first hand evidence of the position. Circumstantial evidence can also be useful. In other words it is relevant to consider what people actually did after the putative decision had been taken.

- 10.110. In the *Malpass* case, the inspector had found that there had been a by right use of the land concerned on the basis of a 1964 confirmation deed. He had also found as a fact that he was unable to say what the purpose of the original acquisition was. In other words the only basis for his conclusion was the deed of 1964. It is clear from a proper analysis of the *Malpass* decision that the judge was willing to accept that the subsequent acts of a local authority can be relevant to deciding what was the original purpose of an acquisition. There is nothing in that case which supports the proposition that the original purpose of acquisition cannot be found from subsequent events.
- 10.111. As for the *Goodman* case, that related to land held by a local authority under various forms of landholding. The starting point in that case was that the land was not held for recreation. Thus the objector could only succeed if it could demonstrate that the land had been formally and strictly appropriated to recreational use under *section 122* of the *Local Government Act 1972*. In that case the objector had referred to informal appropriation. It appeared to be suggested that one could imply an appropriation from the circumstances. Much of the difficulty appears to stem from people confusing the notion of implication with that of inference. It is not good enough to say that a use would be unlawful unless land had been appropriated to that use; that would be to suggest that by implication an appropriation had taken place. This is impermissible. What is acceptable is to rely on matters of inference. If one looks at the facts and concludes as a matter of fact that a local authority did appropriate then that would be permissible.
- 10.112. The point of the *Goodman* case was that the judge was troubled by the point that for an authority to exercise the power of appropriation under the 1972 Act, it has to be satisfied that the land is no longer required for the purpose for which it was previously held. That requires some conscious deliberative process so as to ensure that the statutory powers under which the land is held is clear. Therefore the judge in that case held that appropriation from one use to another cannot simply be inferred from how the council manages or treats the land. Thus, insofar as the *Goodman* judgment suggests that some formality is required, it is dealing with a different point entirely from anything which arises in the present case. It is clear however from the *Barkas* judgments in the Supreme Court that that court accepted that for example one could assume ministerial consent in the absence of proof contrary. Such an approach is consistent with the presumption of regularity.
- 10.113. As far as the 1924 Indenture is concerned, we do not have an original or an executed Indenture. Nor is there a minute or document relating to the acquisition

of the land. The Council has searched for these things and they are simply not available, notwithstanding numerous freedom of information requests. We only have a draft Indenture. Nevertheless it is common ground that an Indenture broadly like this was executed. It is plain that an Indenture of the relevant date was in fact executed, because this is made clear by the later documentation which has been found. Therefore the 1924 draft Indenture is a good root of title. Furthermore the recitals in the draft Indenture of 1924 stipulate that ministerial consent needed to be obtained. Everything that is recorded is consistent with a formal Indenture having been entered into. Nevertheless we do not have the details of the consent that the Minister gave. It is unthinkable that this transfer would have been executed for such a large piece of land without the consent of the relevant Minister. The fact that the transfer was executed, as we know from the subsequent conveyancing history, leads to a strong factual inference that the consent was properly obtained. This is the presumption of due execution.

- 10.114. With regard to *section 1* of the *Housing, Town Planning Act 1919*, *section 1(2)* does not say or did not say that a scheme had to detail open space proposals, merely that it may do so. In *section 15* of that Act, no consent from the Local Government Board (later the Minister) is required for the provision of open space. However there is provision for consent being required relating to sale or letting of land. In this case the local authority concerned did not sell or dispose of any of the land once it had acquired it. Therefore the construction and provision of the open space here must have been under the provision which allowed for such construction without ministerial consent. It is therefore unnecessary for the local authority to demonstrate ministerial approval for that specific use on this land. This contrasts with the position in respect of *section 80* of the *Housing Act 1936* in the *Barkas* case. In the present case we know that Parc y Werin was provided to broadly its present extent for as long as anyone can remember. The earliest evidence of its extent is in fact from the 1935 Ordnance Survey Revision. We further know from the 1932 byelaws that Parc y Werin was in existence by that date.
- 10.115. The Applicants maintain an argument based on the fact that some of the rough land to the south has been disposed of without any formal statutory appropriation away from open space use. The argument was that it should be inferred that in the original scheme this land was not to be held or considered as open space land. The Applicants' argument is misconceived because it is not necessary for land to be designated as open space anyway. The 1890 – 1919 housing legislation did not require designation, just the allocation by provision and use as an open space. The land leased off in the 1980s for development by a housing association was not land which had been maintained as part of the park or open space. We know this from actual evidence. It is also plain from Ordnance Survey and aerial photographs that the nature of that area of land was quite different from that of Parc y Werin. Thus whatever the Council's predecessors had decided to do with Parc y Werin, they did not do with that other land to the south. As for the other land to the south of Parc y Werin, that was not appropriated by the Council because it was disposed of to some other authority. The relevant receiving authority appropriated it to their particular use once they had received the land.

- 10.116. If land falls within the Housing Acts but is used as open space, a local authority does not need to appropriate it before actually using that land for housing. That is clear from the *Barkas* decision. If that is right, the fact that the Council chooses to let land for the construction of housing would not lead to the conclusion that the land was not held as open space in the first place.
- 10.117. As far as the 1944 conveyance is concerned, it is agreed that that does not stipulate the power under which the freehold reversion was acquired. Nor are there any formal minutes showing the basis of the transfer. However looking at the evidence as a whole, it is as plain as can be that the land was transferred as a pleasure ground. The 1921 lease was clear that it was only for use for such a purpose and gave the Council full power to lay the land out for that purpose. It was on a 99 year lease for a fixed rent. The rent was to be increased by 20 times if used for any other purpose. We know from the evidence that by 1935 the land was in fact in use as a pleasure ground. It had a football pitch, bowling greens, tennis courts and byelaws in place. It was a permanent park.
- 10.118. In 1943 the estate which owned the freehold proposed the sale of this land with another freehold reversion. The other land concerned at Argyle Gardens, it is clear from the Ordnance Survey Plans, was laid out to flower beds and walks. All of this tends to confirm that the acquisition of these freehold reversions was not part of a plan to acquire the land and remove the restrictions on its use and develop it. The price paid in 1943/44 seems to be based on a years' purchase assessment of the rental covenant in the lease. It was clear that this was not being put forward as the acquisition of a valuable site for development purposes. The local authority was just buying out the freehold reversion.
- 10.119. As for the letter of the 10th January 1944, one should ask why one would not have regard to this. It was written by an office holder dealing with a body having statutory functions. It was written to the chairman of that body, and one should be able to rely on the statement of the clerk as to what the factual purpose of the acquisition was. This is extremely strong evidence that the intention was to continue to use the land as public open space under the *Public Health Act 1875*. As a matter of fact that use of the land continued thereafter. The Applicants' suggestion that the freehold of the land was acquired for wider or general purposes is simply wrong. Nothing in the record gives any indication of any intention other than that of using and continuing to use the land as a park. That should be the end of the matter.
- 10.120. The appearance of the caravans is a very small and minor point. There is a possibility that the use for temporary housing would be within the Housing Acts anyway. The likelihood is that the correct legal position was simply overlooked. Thus it would appear that there was either an error in the usage temporarily for a caravan site, or that that part of the land was not needed for public open space for the time being, and so was used temporarily for another statutory purpose namely that of housing. It is impossible to raise inferences as to the purpose of the 1944 acquisition from these actions, which took place in the 1970s or 1980s.

- 10.121. As for the question of implied licence, it would have been clear to local people that they were being permitted to go onto the land. The Council was clearly controlling access to the land as a whole, and from time to time as to part of it. How would the matter have appeared to the public? It is possible to imply a licence by the acts of the landowner, even if not from the inactivity or acquiescence of the landowner. Here it was evident that a licence was in existence. Up to almost the start of the relevant period the gates were being regularly shut. The local authority was demonstrating that the public were not allowed to have access to the land at all times. There was some confusion in the evidence as to exactly when this stopped, but it was clear that it was somewhere between 1994 and 1996. It is the shutting of the gates which gives rise to the implication of a licence, and it is likely that that perception would have continued beyond November 1995.
- 10.122. Furthermore the annual fair continued until Swansea Council took over. It affected the whole park. Entrance to the park was regulated and a fee paid for admission. This is a classic example of use not being as of right. It does not matter if the entrance fee was paid to the owner or to a licensee of the owner.
- 10.123. It is also clear that the Council regulated use of the sports fields on the site. It is clear from both the *Mann* and the *Goodman* cases that implied licence cases are extremely fact-sensitive. Lord Walker in *Beresford* was effectively saying that the fact of public ownership makes it more likely that allowing the public in will amount to a licence or permission.
- 10.124. It is clear from the Ordnance Survey Plans and photographs that the area used for formal sports has fluctuated. For example the second football pitch only appeared after drainage works were carried out. During the relevant period for the present application the football pitches substantially covered much of Parc y Werin. Thus the park is a combined public park and sports field regulated by the local authority, not a town or village green.
- 10.125. As far as the statutory incompatibility argument is concerned, there is a question mark over the validity of the appropriation which has rightly been raised by the Applicants. Although that is right it is not material, because the effect of an administrative decision by a local government body is to have effect until it is challenged in court. When it is challenged it is then set aside retrospectively. It may never be challenged. The decision was taken in connection with planning matters, and there have been various other acts which have taken place in reliance on it.
- 10.126. The incompatibility argument is therefore based on the appropriation of 2015. The logic of the *Newhaven* decision was that one does not derogate from specific acts in reliance on provisions in general legislation. In the present case there was not specific legislation but enabling legislation delegating to local authorities the power to use land in the ways that they determine. It is apparent from *Newhaven*

that if the use of land as directed by the relevant legislation had interfered with the registration, then that would have amounted to statutory incompatibility.

- 10.127. As far as the *Lancashire* case was concerned, what Ouseley J had said about statutory incompatibility was *obiter*. The relevance of the argument here is that if before the end of the relevant statutory period the local authority decide that the land will be used for the purpose of a school, and that the public will be excluded from the land, then that is inconsistent with a subsequent decision to declare the land a TVG. Parliament cannot have intended both uses to operate simultaneously. That particular educational use, specific to a piece of land, takes priority over *section 15* of the *Commons Act*.
- 10.128. On this point it is argued that the decision should be taken now that there is statutory incompatibility, and it is not argued that one needs to wait for Court of Appeal decisions in the *Lancashire* or *NHS v Surrey* cases.

11. **DISCUSSION AND RECOMMENDATION**

- 11.1. The application in this case was made under *Subsection (2)* of *Section 15* of the *Commons Act 2006*. That 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 continue to do so at the time of the application."*

The application was received by the Registration Authority, on 23rd November 2015. That is therefore the 'time of the application', and the date from which the relevant 20 year period needs to be measured (backwards).

Assessing the Facts

- 11.2. 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 the application site at Parc y Werin over the relevant years, and to some extent over the earlier history of the site before those years. 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(2)* have in reality been met on the land of an application site. However the point was also made (correctly it seems to me) on behalf of the Applicants, that if all the facts

required to meet the statutory criteria have in fact been proved, it is for an objector then to justify a claim that there is some vitiating factor which nevertheless comes into play, so as to prevent registration of the land concerned.

- 11.3. To the extent that any of the facts were in dispute in this case, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether the statutory criteria for registration have been met or not.
- 11.4. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point, canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements (particularly ‘pro forma’ statements), questionnaires and the like, which have not been subjected to any such opportunity of challenge.
- 11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of ‘findings of fact’. Rather, what I propose to do, before setting out my overall conclusion, is to consider in turn the various particular aspects of the statutory test under **Section 15(2) of the 2006 Act**, and the case-law based question of ‘*statutory incompatibility*’, 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.

“A significant number of the inhabitants”

- 11.6. In this case, right from the start, there has been no dispute that significant numbers of Gorseinon people have regularly used the application site at Parc y Werin recreationally, over very many years. This is not surprising, as it has, and has had, all the appearance of a typical municipal park or recreation ground, whatever its actual legal status might be (as discussed later). The evidence given of use of the park over many decades also supports this view.

“... of any locality ...”

- 11.7. Initially this aspect of the statutory criteria appeared to be in dispute, but before the Inquiry, and consistently since that time, it has been agreed that Gorseinon (i.e. the area covered by Gorseinon Town Council) is a valid ‘locality’ for the purposes of

Section 15 of the *Commons Act*, and has been for the whole of any relevant period of 20 years. This view is obviously correct, in my opinion. It is unnecessary therefore to consider the statutory concept of a ‘neighbourhood’.

“indulged ... in lawful sports and pastimes on the land”

- 11.8. Once again there was no real dispute that local Gorseinon people, during the whole relevant period, have made regular use of the open land at Parc y Werin for both informal and formal sports and pastimes, over the whole of any relevant 20 year period. I note that there is in fact an area covered in tarmac within the northern part of the site, which seems quite regularly to be used for car parking, albeit that much of this may be associated with recreational use of the park. The evidence suggested that parking in this area had taken place over a good many years. Nevertheless no party to the proceedings suggested that this ‘parking area’ and its use should be treated or considered as distinct from the remainder of the application site. That appears to me to be a reasonable approach to take to the factual circumstances here, and I recommend it to the Registration Authority.

“for a period of at least 20 years”

- 11.9. As I have already in fact noted, there was no dispute at all that recreational use by local people of Parc y Werin has taken place for well over 20 years, or that it was still taking place when the present application was received in November 2015.
- 11.10. The question whether that unhindered use by local people was in fact regularly interrupted on significant parts of the application site, namely the marked out football pitches, was logically raised by some of the evidence. This relates to the evidence, which was not really challenged, that the marked out football pitches on the park have been quire regularly licensed by the owning local authority (the Principal Objector) to local football clubs and groups for use for specific organised matches. Common sense, and normal standards of human behaviour, would suggest that other local inhabitants, not involved in the organised match, would not normally go onto the marked out pitches while such a game was going on, other than in unusual circumstances, such as to retrieve a dog which had strayed onto the pitch. That view was entirely supported by the relatively small amount of direct evidence which I heard on the topic.
- 11.11. However this issue was not raised by the Principal Objector on the basis that it suggested material ‘interruptions’ to the required 20 year period on at least some parts of the land, and there was no suggestion (for example) that the parts of Parc y Werin constituting the marked out pitches should be treated differently in the result from the remainder of the park. Rather, it was suggested by the Principal Objector that these aspects of the park’s use go to whether its use by local people really was “*as of right*”, as opposed to “*by right*”, or (perhaps more relevantly) with the permission or licence of the owning local authority. This is the subject of the next part of this concluding section of my Report.

- 11.12. Likewise there was an element of uncertainty on the evidence as to whether an earlier management ‘regime’ on the park, of regularly locking at least some gates into it overnight, had or had not continued just into the very early part of the relevant 20 year period, beginning in November 1995. The evidence was (in my judgment) completely clear that no locking of park gates had taken place after Swansea Council took over from Lliw Valley Borough Council in the Welsh local government reorganisation of April 1996.
- 11.13. My conclusion, on the balance of the evidence which I received, is that the regular locking of park gates ceased some time before that, in the circumstances which were canvassed in the evidence, notably that of Mr Ivor Cole, and that the practice had ceased before November 1995.
- 11.14. However, in any event, the issue of the earlier locking of park gates was not really raised by the Principal Objector as an argument against the establishment of an uninterrupted 20 years of ‘lawful sports and pastimes’ use, but more as another ‘marker’ of the status of the land at Parc y Werin, which (the objector argued) was a facility provided for public use by the licence or permission of the local authority, rather than an area of open land being used “*as of right*”.

“As of right”

- 11.15. The view of the Supreme Court, in the well-known and leading case of ***R (Barkas) v North Yorkshire County Council*** [2015] AC 195, [2014] UKSC 31, appears to be that the use by the public of land where there is a clear statutory *right* to make such use, is exactly the same in principle as a use with the (implicitly revocable) *permission* or licence of the landowner, and that, they both constitute use *by permission*. The reason for conjoining these two types of situation appears to be to fit them both neatly into the category “*precario*” [by, or with permission] in the well-known Latin tag applied regularly in ‘as of right’ prescription cases: “*nec claim, nec vi, nec precario*” – without secrecy, without force, without permission.
- 11.16. I would venture to suggest (with considerable and respectful diffidence) that there is some potential logical difficulty in this particular view of their Lordships. There is a conceptual distinction (it seems to me) between, on the one hand, someone being on a piece of land by virtue of an incontrovertible statutory right to be there, and on the other hand, being on land with the revocable permission or licence of its owner. What is however completely clear from the ***Barkas*** judgment is that, both where there is a revocable *permission* from the owner to be there, *and* where there is an actual statutory *right* to be there [“*by right*”], the situation is fundamentally different from one where “*as of right*” use can be demonstrated. “*As of right*” really does mean “*as if of right*”: that people have to be using the land *as if* they had the right to be there, when in fact they did not.
- 11.17. Thus there is in effect a trespassory element to ‘as of right’ use. The people whose use gives rise to a claim have to have been (at least technically) trespassers on the

land concerned, even if they might have been tolerated trespassers, whose use was acquiesced in by the landowner.

- 11.18. It is clear from considerably older case-law, and confirmed by *Barkas*, that where land has been provided as a public park or recreation ground under *Section 164* of the *Public Health Act 1875* (as amended over the years), or as a ‘public open space’ under the *Open Spaces Act 1906*, the public have an actual *right* to enjoy the use of such land, subject only to the need to obey any relevant byelaws which might be in force. The public’s use therefore is “*by right*”.
- 11.19. *Barkas* went further than that, and held that where a recreation ground had been duly provided under powers in the housing legislation to provide such grounds in connection with the provision of housing accommodation, then the public (and not just the occupiers of the specific local housing) are allowed to use such grounds, and also do so “*by right*”. Such land could not therefore be registered as a town or village green on the basis of long user by local people “*as of right*”.
- 11.20. None of this was really in dispute between the parties in this present case, but it is worth re-stating as the agreed basis from which one needs to consider the specifics of this case further. The Applicants’ case essentially is that there are aspects of the history of this particular land at Parc y Werin which mean that, whatever the outward appearance might have been, it was not at any relevant time a public park of the kind people are entitled to use “*by right*”, and nor was there any kind of express or implied permission from the local authority land owner for local people to use the park.
- 11.21. In spite of the fairly uniform general appearance of Parc y Werin today (apart from areas such as the tarmac ‘parking’ area, the children’s playground, and a few individual items of “*trim trail*” equipment), in reality it consists of two adjacent blocks of land, with a distinctly different original acquisition history. This is not controversial as between the parties, and indeed the discovery of a lot of the historical detail owes much to the assiduous efforts and researches of those involved on both sides of the present dispute.
- 11.22. Very approximately the eastern or north eastern two thirds of the present Parc y Werin (including the area of the bowling greens outside the current application site) was initially acquired by the present Swansea Council’s predecessor on a long lease dated 31st December 1921. The Council’s relevant predecessor at that time had been the Llandeilo Talybont Parish Council.
- 11.23. No copy remains available of the executed lease of 1921, nor of the plan associated with it. There is only a draft Indenture for the lease. That the lease was in fact executed on 31st December 1921 is known from a later conveyancing document of 24th June 1944, whereby the present Council’s predecessor (by then the Llŵchwr Urban District Council) acquired from the trustee freeholders the freehold interest in the land which had been the subject of the 1921 lease. The 1944 conveyance

does contain a plan of the land concerned, and I accept as probable the Principal Objector's point that this plan has the appearance of being the same as the one which clearly had been attached to the executed 1921 lease.

- 11.24. It is of interest to note that the 1944 Conveyance, states on its cover that it relates to "*hereditaments forming part of Parc-y-Werin Gorseinon ...*". I shall refer to the land the subject of the 1921 lease and the 1944 conveyance as "*the 1921 land*".
- 11.25. The south-western (very approximately) one third of the present application site was acquired freehold by the present Council's predecessor by an indenture dated 30th December 1924, as part of a very much larger area of land. The Council's then relevant predecessor was the Swansea Rural District Council. Later conveyancing documentation (the 1944 conveyance) records that in 1930 Swansea Rural District was formally converted to the Urban District of Llŵchwr, and that in the process the Parish Council of Llandeilo Talybont was dissolved and merged into the new Llŵchwr Urban District Council.
- 11.26. The available record of the 1924 indenture suggests that the acquisition by Swansea RDC of the land it related to had been approved by the Ministry of Health, and was pursuant to a scheme for the provision of "*houses for the Working Classes*" which had been submitted by that Council to the Ministry of Health, in the exercise of powers under the *Housing Acts 1890 to 1919*. No record remains available of the scheme which was submitted to the Ministry of Health. Again, on my understanding of the parties' positions, as they were made clear at the Inquiry, none of what I have recorded thus far in relation to the 1924 Indenture is controversial as between the parties.
- 11.27. The part of the present application site which was included within the indenture of December 1924 is what I shall refer to as "*the 1924 land*" – although in this instance it will be necessary also to make some reference to other parts of the land acquired by Swansea RDC in 1924.
- 11.28. I shall need to consider the "*1921 land*" and the "*1924 land*" separately, as in many respects quite different issues and considerations arise in each of the two cases, as far as the general issue of whether there has been "*as of right*" use of the land by local people is concerned.
- 11.29. Before embarking on that separate consideration of the two adjoining landholdings, it is appropriate that I should note that in 1932 the Llŵchwr Urban District Council made, and had approved by the Minister of Health, a set of Byelaws "*with respect to Pleasure Grounds*" in the UDC's area. Though they do not obviously say so expressly on their face, those byelaws have the appearance of being byelaws in respect of Public Walks and Pleasure Grounds made pursuant to *Section 164* of the *Public Health Act 1875*.

- 11.30. One of the ‘pleasure grounds’ which the 1932 Byelaws relate to is ‘Parc y Werin, Gorseinon’. Byelaw no.1 appears to say that both Parc y Werin and a recreation ground at Pontlliw are “*in the Parish of Llandeilo Talybont*”. I have already noted that the Parish **Council** of Llandeilo Talybont had apparently ceased to exist in 1930, as would automatically have happened at that time, when an Urban District Council was created. However it may well be (though nothing turns on it, in my view) that the Parish of Lland(e)ilo Talybont continued to exist for either (or both) geographical or ecclesiastical purposes.
- 11.31. I also note, from the helpful series of large scale Ordnance Survey Plans produced by the Principal Objector, that by 1935 the Ordnance Survey was showing ‘Parc y Werin’ as appearing to include effectively all of what I am calling as the “*1921 land*” and the “*1924 land*”, together possibly with a small amount of further land (within the 1924 acquisition), a little further to the south-west, which has been subsequently developed.

The 1921 land

- 11.32. It is clear that the leasehold interest in this land which was acquired by the Council’s predecessor in 1921 was acquired for the express purposes of setting up a ‘public walk or pleasure ground’, or a recreation ground, on the land concerned. The **Public Health Act 1875** was not mentioned in the lease. This may have been because the former Llandeilo Talybont Parish Council was not, strictly speaking, an ‘urban authority’ of the kind referred to in **Section 164** of that Act.
- 11.33. However by 1930 Parc y Werin had been inherited (through a local government reorganisation) by Llchwyr Urban District Council, which undoubtedly was an ‘urban authority’. It is known that by 1932 (if not well before that) Parc y Werin had been formed as a ‘pleasure ground’, because Llchwyr UDC secured byelaws governing Parc y Werin as a pleasure ground. These byelaws are entirely in a form which suggests they were made under **Section 64** of the **Public Health Act 1875**, even though the Act does not appear to be mentioned in them. It is reasonable to infer that they were so made, and I do so infer.
- 11.34. As was fairly typical for byelaws of that time, they do not include any map or plan showing the exact geographical extent of Parc y Werin, or indeed of any other park or recreation ground to which they applied. It was to be a matter of local knowledge and evidence what the extent of a park or recreation ground was, should the matter ever be questioned in a byelaw prosecution (for example). It is again reasonable to infer that they must have applied at the very least to the land which in 1930 the Llchwyr UDC had inherited from the former parish council, held under the 1921 lease. We also know from the Ordnance Survey record that by 1935 something called ‘Parc y Werin’ [the People’s Park] was evident on the ground to the cartographers covering (apparently) the whole of the 1921 land, and further land to the west.

- 11.35. It was conceded at the Inquiry on behalf of the represented Applicant that if the 1921 lease had remained in effect through its full term, which would have expired in 2014, then the 1921 land would have been held by the present Council and its predecessor(s) under **section 164** of the **Public Health Act 1875**, as a public park or recreation ground, for almost the entirety of the 20 year period relevant to the present case. Accordingly it would have been completely clear, following the principles enunciated by the Supreme Court in **Barkas**, that the 1921 land cannot be registered under the Commons Act as a town or village green, because its use over the years by local people would have been ‘by right’, not ‘as of right’.
- 11.36. In my view this concession was correct, and reflects the conclusion I would have drawn in any event. The argument for the Applicants however is that this situation no longer applied after the freehold to the 1921 land was acquired by Llchwyr UDC in 1944, because (in effect) that freehold was acquired for general purposes, not ‘public walks or pleasure grounds’ purposes; the 1921 lease was merged into the freehold, and so it and its terms ceased to exist; and other things which happened later suggested that the Council’s predecessors did not treat the land as being held as ‘public walks or pleasure grounds’ – the original **1875 Act** terminology, but which covers what in more modern parlance are referred to as public parks or recreation grounds. I shall consider these points.
- 11.37. As already noted, in 1944 Llchwyr UDC acquired the freehold to the property free from incumbrances, with the 1921 lease merged into the freehold, so the specific lease terms about use and laying out as public walks or a recreation ground ceased formally to exist. The 1944 conveyance itself says nothing about the statutory power under which the freehold was being acquired, although it does describe the land as forming “*part of the Purchaser’s pleasure or recreation ground ... known a Parc y Werin...*”.
- 11.38. The further historical research carried out by the parties (some of it by means of pursuing Freedom of Information requests) produced a considerable volume of correspondence from the 1943/44 period dealing with this acquisition. Much of it does not add a great deal, but from it we learn that on 9th December 1943 he Llchwyr UDC resolved “*pursuant to the provisions of the Local Government Act 1933, and all or any powers them enabling*”, to apply to the Ministry of Health for consent to make the purchase of two freeholds where leases were currently held, one being the ‘1921 land’ at Parc y Werin, and the other being Argyll [sometimes spelt Argyle in the evidence] Gardens, another (small) park or pleasure ground in Gorseinon.
- 11.39. It is this reported resolution which forms the essential basis of what I understand to be the Applicants’ argument. Because the resolution itself made no express mention of the **Public Health Act 1875**, but only the **Local Government Act 1933**, and the land was acquired free of incumbrances and not subject to the former lease terms, it is argued that thenceforth the land (now freehold) was held by Llchwyr UDC for general purposes, not as a park or recreation ground.

- 11.40. The relevant power in the *1933 Act* was taken by both parties to be *Section 157*, which allows local authorities to acquire land by agreement for the purpose of their functions under that or any other act. No ministerial consent was in fact required to exercise this power. My attention was also drawn to *Section 158* of the *Local Government Act 1933*, which allowed the purchase, *with* ministerial consent, of land which was *not* immediately required for the local authority's relevant purpose(s).
- 11.41. The Applicants argue that because the land was thereafter held for general purposes, it was no longer a public park or recreation ground which local people could use "*by right*". If they carried on using it, they were now doing so "*as of right*".
- 11.42. However it is important to note that on 10th January 1944, just over a month after the reported resolution, the Clerk to Llŵchwr UDC wrote to the Chairman of the Welsh Board of Health (in answer to a query), stating that "*the statutory [authority] of the Council for the proposed acquisition is derived not only from the Public Health Acts 1875 to 1925, but also the Local Government Act 1933*". Somewhat ironically, it turned out (as seen in the later correspondence) that no ministerial consent was in fact required, because the Council was not proposing to borrow any money in order to buy the two freeholds. I should perhaps also note that, strictly speaking, the reported resolution of the 9th December 1943 was not actually to *make* the relevant freehold purchases, but only to make an (apparently unnecessary) application to the Ministry for consent. Presumably the actual operative decision in fact to make the purchases was taken later, following the correspondence referred to, although the parties have not been able to unearth a formal record of that decision. It must have been taken *after* the Clerk's clarification of the relevant statutory authority on 10th January 1944.
- 11.43. The conveyance of the freehold(s) pursuant to that decision was dated 24th June 1944. My conclusion, having regard to the balance of probabilities as far as the evidence is concerned, and the presumption of regularity ('*omnia praesumuntur ...*'), is that a proper decision was taken to buy the freehold, relying on powers including the *Public Health Act 1875* – which in this context must mean *Section 164* of that Act.
- 11.44. Everything about the local authority's then conduct is consistent with this: the land was already held and laid out as park/recreation ground, and there was not the slightest indication of any intent to change this; the use as park/recreation ground did not in fact change after 1944, but (the evidence clearly suggests) carried on as before; the price paid in 1944 did clearly appear to represent a "years' purchase" approach to the previous rent being paid under the 1921 lease, rather than any kind of 'hope value' relating to other potential uses; the byelaws for Parc y Werin would (on the face of things) have continued unchanged, and there is no indication of any attempt to alter that position.

- 11.45. I found the submissions on behalf of the Principal Objector as to this particular aspect of the matter entirely convincing, and my conclusion is that after 1944 Llchwyr UDC continued to hold the 1921 land at Parc y Werin as a park or recreation ground under its *1875 Act* powers.
- 11.46. The Applicants advanced an argument that by virtue of the *Local Government Area Changes Regulations 1976* S.I. No. 246, the byelaws would have ceased to have any effect after March 1976. This argument, as advanced to the Inquiry, appeared to me to be based on an apparent misconception that the 1932 Byelaws were somehow related to a local government area then existing, consisting of the Parish of Llandeilo Talybont, whereas we know from the evidence that this civil parish and its Council had ceased to exist in 1930, two years before the Byelaws came into existence.
- 11.47. The Byelaws as enacted clearly related to the area of the old Llchwyr UDC, which continued to exist until in 1974 it was replaced by the new Lliw Valley District (or Borough) Council. In any event it seems to me to make no difference whether the Byelaws ceased to have effect in 1974, or 1976, or indeed earlier or later; and I note that the Principal Objector made clear that it did not seek to argue for the continued effectiveness of the old Byelaws during any part of the relevant 20 years under consideration in this case.
- 11.48. Subject to what I say below, it is clear in my judgment that the 1921 land carried on being held by the owning local authority as a park or recreation ground under *Section 164* of the *Public Health Act 1875*, after 1944, and indeed still after the local government reorganisations of 1974 and 1996. The (local) public using this land were not trespassers (or even ‘technical’ trespassers), but were doing so ‘by right’, in my judgment.
- 11.49. Against this clear view the Applicants sought to argue that the High Court decision in *R (Malpass) v Durham County Council* [2012] EWHC 1934 (Admin) should lead to a different result. Insofar as relevant here, that case appears to hold that where it was unclear (and the Inspector in that case had found it to be unclear) under what power a local authority had acquired and then held a piece of land, it did not avail that in a much later deed a local authority had put on record its view that the land was held as public open space or public works (but not gone through an appropriation process at that later time).
- 11.50. In this present case however, the evidence clearly points (in my view) to the freehold being acquired in 1944 in order to carry on the land’s already established use as a public park or recreation ground, and I so find as a fact.
- 11.51. An important further fact on which the Applicants place great significance is that in the 1970s the Lliw Valley Borough Council took a decision to permit the temporary stationing of up to six caravans for residential use, as a temporary measure while some houses were being repaired/renovated, on an area within the

northern part of Parc y Werin. In the event only two such caravans were apparently so placed for a period (the precise dates of which were not completely clear from the evidence), and as it happens these seem to have been in the western corner of the ‘1921 land’.

- 11.52. The Applicants argue that this therefore shows that the local authority knew or considered that it held the land at Parc y Werin as general purpose land, with which it could (subject to any other relevant legal restrictions) do what it liked, rather than as a park or recreation ground. Or, putting it another way, that it is further evidence suggesting that the local authority’s predecessor in 1944 really did intend to, and in fact did, acquire the freehold to the park for its general purposes.
- 11.53. It undoubtedly is the case that no records have been found showing that Lliw Valley Borough Council properly considered, still less carried out, an appropriation from park/recreation use to the temporary use for caravans. However it is equally the case that they carried out no formal (re)appropriation in the other direction when the temporary caravans were removed, and the land restored for many further years to its use as part of the park/recreation ground.
- 11.54. It is difficult for me to judge, on the basis of any material presented to the Inquiry, what exactly was in the ‘mind’ of Lliw Valley Borough Council when it agreed or decided upon the temporary caravans, other than a short term solution to a current practical problem. Although the matter was dealt with as a matter of town and country planning, I do not know what if any legal advice the then Council received or considered in relation to its powers (or lack of them) in relation to changing the use of land it owned for a particular purpose. I do not know (for example), and nor did any of the parties to the inquiry claim to know, whether Lliw Valley acted in the belief (or on advice) that it had powers to make such temporary use of open land it owned, or whether it just went ahead in (legal) error, and without any proper advice.
- 11.55. What is clear, it seems to me, is that it is logically impossible to conclude that it made some kind of implied [or ‘to be inferred’] appropriation from open land in park/recreational ground use to use as a residential caravan site, without also concluding that it must have made a similar ‘appropriation’ in reverse, when it removed the caravans and restored the original use.
- 11.56. It does not seem to me therefore, as a matter of judgment, that the ‘temporary caravans’ episode has any bearing on my conclusion that, from at least the 1930s, the 1921 land at Parc y Werin has, on a proper view, been held by the Council and its predecessors for park/recreation ground purposes under **Section 164** of the **Public Health Act 1875**. I shall deal later with the question whether the purported ‘appropriation’ of July 2015 – which included a small part of the 1921 land – raises an issue of ‘statutory incompatibility’. It has no effect on my conclusions on the “*as of right*” issue. The 1921 land has **not** been used “*as of right*” by local people, in my judgment on the evidence.

- 11.57. Argument was also advanced on behalf of the Applicants, based on the fairly recent judgment of Dove J in the High Court in the case of *R (Goodman) v Secretary of State for Food and Rural Affairs* [2015] EWHC 2576 (Admin). I have considered carefully both the arguments advanced and the judgment of Dove J. The gist of that judgment seems to me to be that it cannot properly be assumed from the mere conduct of a local authority, in terms of its management of land in its ownership, that it has validly “appropriated” the land from one undoubtedly lawful previous ownership purpose or function, to a new one reflected by the more recent land management practice. For an ‘appropriation’ from the previous valid purpose to have occurred, the authority has to be seen to have gone through a process which either was, or was closely akin to, that required under *Section 122* of the *Local Government act 1972*, of forming the view that the land was no longer required for the purpose for which it was previously (lawfully) held.
- 11.58. I am afraid I do not see this judgment of Dove J as in any way helping the Applicants, as far as the 1921 land is concerned. Indeed it tends to confirm my view that the temporary stationing of two caravans on a small part of that land in the late 1970s and 1980s was a mere footnote or (less than fully explained) ‘quirk’ in Lliw Valley Borough Council’s management of this land. It did not mean that Lliw Valley Council had ‘appropriated’ any of the 1921 land away from park/recreation ground use to a temporary housing use – nor indeed that it ‘appropriated’ the land back to park/recreation ground after the caravans went. The purpose for which Lliw Valley Council lawfully held that land during the whole of the period relevant to this point was as a park/recreation ground, on my assessment of the facts in this case. As mentioned above, this view is supported by the clear fact that, after the caravans went, the land did in fact revert, without any apparent record of formal decisions being taken, to its park/recreation ground use.

The 1924 Land

- 11.59. As noted above, the formal history of this land, in terms of statutory powers for its acquisition and subsequent ownership, is almost completely distinct from that for the 1921 land, even though at present the ‘plots’ merge seamlessly into one another, and appear to be in exactly the same use, a situation which the evidence suggests may well have been the case for very many decades.
- 11.60. This land was acquired freehold in 1924 by the Swansea Rural District Council, another predecessor of the Llchwyr UDC which was established in 1930, and hence eventually also of the present Principal Objector Swansea Council. I have already noted that this land was acquired by Swansea RDC as part of a very much larger purchase of land in this part of Gorseinon pursuant to a “*scheme*” under the Housing Acts 1890-1919 for the provision of “*houses for the working classes*” which had been submitted to the Ministry of Health. The conveyancing documentation from 1924 records that the purchase was approved by the Ministry of Health. No record has been found of the contents of that ‘scheme’.

- 11.61. It is clear from the evidence I received that much of the land acquired under the 1924 Indenture was indeed developed for housing, with some other associated development. However I have seen or heard no evidence that *“the 1924 land”* within the present application site was ever developed for housing purposes in the sense of ever having houses or domestic curtilages etc. set up on it.
- 11.62. Indeed, as noted above, by the time of the 1935 large scale mapping by the Ordnance Survey, the cartographers marked indistinguishably as ‘Parc y Werin’ an area which appears to include the whole of the present *“1921 land”* and *“1924 land”* within the application site, together with a small amount of further land to the west (but which was also included within the 1924 purchase). It is not entirely clear however, from any evidence which I received, whether at the time of the 1932 Byelaws Llchwyr UDC would have regarded ‘Parc y Werin’, as referred to in those Byelaws, as including the *“1924 land”* within the present application site.
- 11.63. The 1935 Ordnance Survey also showed as open, undeveloped land, but marked in the way usually associated with ‘rough grazing’ or similar, another long strip of land, running along the entire southern boundary of the present application site, and then rather further west. This strip of land was also included in the purchase under the 1924 Indenture, and in the event I heard a considerable amount of evidence in relation to it.
- 11.64. It seems to have remained largely undeveloped for several decades, and indeed this was still the case at the time of a clear aerial photograph of 1967 which was produced to the Inquiry, when the land had the appearance (from the photograph) of fairly rough scrubland – a description which accords with such oral evidence about it as was given to the Inquiry. However the more south-westerly parts of the present application site also had (in the 1967 photograph) the appearance of fairly rough scrubland, as opposed to the more manicured, or at least ‘managed’ appearance in the photographs of the remainder of the site to the north-east. Some of the oral evidence I heard also corroborated the view that around that time the south western part of the present application site was fairly rough ground. The 1967 aerial photograph did however give the impression of some demarcation existing between the present Parc y Werin and the other strip of land to the south of it, as did (rather more clearly) another large aerial photograph from a probably slightly later period which happened to be hanging in the lobby of the Inquiry venue.
- 11.65. It is right to note also that the series of large scale Ordnance Survey maps which were produced to the Inquiry, dating from more recently than 1935, did not show a consistent demarcation line between more managed land and rougher land to its south and south west, several times (notably in the 1969 survey, but also in others) showing rougher ground extending northwards into the present application site.
- 11.66. However it is a notable feature of what has happened immediately to the south of the application site that since the late 1960s the entirety of this strip of land (also included in the 1924 purchase) has been gradually developed with a series of

mostly quite large buildings, with their curtilages, which now have a character (and uses) quite different from that within the application site. Only the extreme eastern end of that southerly ‘strip’ of land had been developed, with one small educational building, by the time of the 1967 photograph.

- 11.67. A reader unfamiliar with the background and arguments in this case might wonder why I devote so much attention to a strip of land outside the application site under consideration. This is because the Applicants seek (in effect) to argue that this particular strip is a strong example justifying the view that the land acquired in 1924 has been held as a whole by the present Council’s predecessors more in the way of being general land kept available for the purposes of potential development, rather than being land some of which (that on the application site) has been made available for recreational use by local people ‘by right’, or by permission.
- 11.68. It is certainly true that no record remains available of what specifically was envisaged in the ‘scheme’ submitted to the Minister in 1924 as the intended use of the 1924 land, within the application site or elsewhere. However such evidence as there has been leads me to the conclusion, on the balance of probabilities, that the 1924 land within the application site has been consistently provided as a matter of fact, for use by local people for recreational purposes, even if (as noted above) some parts of it have for some of the time consisted of rather rougher ground than the rest of it. Indeed the evidence is convincing that over very many decades “*the 1924 land*” (in this sense) has been made available for public use in much the same way as has been the ‘1921 land’, as discussed above.
- 11.69. I accept the point however that this in itself does not necessarily mean that the 1924 land within the application site was being held by the Council’s predecessors for a purpose or purposes which gave the public a right or permission to use it. It is necessary to consider more deeply what this land was actually being held for over the years, and whether there are any inferences which can reasonably be drawn from such facts as are known.
- 11.70. Plainly, as noted previously, much of the wider area of land acquired in 1924 was in fact developed for housing estates, as one would expect. The Inquiry’s attention was however drawn to some of the specific provisions of the ***Housing, Town Planning Act 1919***, which was (it seems) the most recent and current piece of housing legislation in effect when the 1924 acquisition was made. ***Section 1*** of the ***1919 Act*** set out some specific requirements which a “*scheme*” for the housing of the working classes had to satisfy, when it was put forward for approval, initially by the Local Government Board, latterly by the Ministry of Health. These requirements did *not* include anything about open spaces, parks or recreation grounds within the areas to be developed [***Section 1(2)***], but did allow for schemes to contain ‘incidental, consequential and supplemental provisions’. Once a scheme was approved, it was binding on the local authority concerned [***Section 1(3)***].

- 11.71. However, as noted above, no record remains of the scheme which was approved in this case, or whether it said anything at all about the provision of open space, etc, within the housing area, or more particularly about where within the acquired land such provision was to be made.
- 11.72. However *Section 15(1)* of the **1919 Act** specifically allowed local authorities to “*lay out and construct ... open spaces on the land*” which they had acquired for the purpose of ‘housing the working classes’, and it is clear from the section that no further ministerial or Local Government Board consent was required in order to do that.
- 11.73. The relevance of this, it seems to me, is that it is reasonable to infer from the evidence that this land (the 1924 land within the application site) was, at an early date following its acquisition, set apart as an open space area within the much wider area acquired for housing, and that this was something the local authority at the time was fully empowered to do, pursuant to the statutory power I have just been discussing. This, it seems to me, is the ‘presumption of due process’ being applied in a proper way. The land concerned has never really been used for anything else other than as an open space recreational area, within the wider area being developed over the years. More than that, it has been consistently managed for many decades as part of a park or open space.
- 11.74. It does not seem to me to matter that other (large) parts of the overall land acquired in 1924 were in fact developed for housing; that is exactly what one would expect, and does not detract from the evidence that the ‘1924 land’ *within* the application site was in fact laid out and provided as open space for local public use, pursuant to the statutory power to do precisely that.
- 11.75. Nor does the fact that the ‘southern strip’ of land, to the south of the present application site, has been sold or leased off for other purposes seem to me to affect the position. Most of the plots were sold or transferred to other public organisations pursuant to specific decisions by the Council’s predecessors to make such transfers. The most recent development on the ‘southern strip’, pursuant to a lease to the Gwalia Housing Association, was specifically for a housing use, the original overall purpose of the 1924 acquisition.
- 11.76. There is no evidence, it seems to me, that any of the land within the ‘southern strip’ ever was treated as an indistinguishable part of the open space, or part of Parc y Werin, only to be later removed from such use without any recorded ‘appropriation’. That land always was treated as separate and distinct from either the 1921 land or the 1924 land within Parc y Werin, it seems to me from the evidence.
- 11.77. In my judgment therefore, the position in relation to the 1924 land within the application site is in fact strongly analogous to that of the recreation ground within a former municipal housing estate considered by the Supreme Court in **R (Barkas)**

v North Yorkshire County Council [2015] AC 195. In that case the recreation ground had been provided on what was originally ‘housing land’, pursuant to a statutory power to provide such a facility, which in that case required a ministerial consent, which was (it seems) obtained. In this present case part of an overall area acquired for a housing scheme was, on my judgment of the facts, provided by the local authority as an ‘open space’ area, pursuant to a statutory power to do so which did *not* require ministerial consent.

11.78. It does not in my view avail the Applicants to argue that we do not know whether **Section 15** of the ***Housing, Town Planning Act 1919*** was still in force whenever the ‘decision’ was made to lay out the ‘1924 land’ part of Parc y Werin as an open space area, as it is my general understanding (and in accordance with the submissions for the Principal Objector about this point) that the power to lay out and provide open spaces within housing areas persisted right through the subsequent legislation in ***1936 Housing Act***, and is still there in **Section 13** of the ***Housing Act 1985***.

11.79. I do not see how, in the light of the ***Barkas*** judgment, it can be plausibly argued that the local public using the deliberately provided ‘1924 land’ part of Parc y Werin were doing so as trespassers, ‘as of right’. They were clearly doing so, in my judgment, ‘by right’ or ‘by permission’ of the owning local authority.

‘Implied Permission’, etc.

11.80. The case-law does indeed indicate that the concept of *implied permission* can be of relevance in ‘village green’ cases (as a matter which can vitiate ‘as of right’ use), and a certain amount of time was spent at the Inquiry discussing it. It was argued by the principal Objector in relation to both the 1921 land and the 1924 land, i.e. in effect the whole of Parc y Werin. However I would express some reservations as to its relevance as a matter needing further consideration, in a case where the correct view on the law and the facts appears to be (as I conclude and advise it to be here) that there was an *actual* right or ‘permission’, arising from the status of the land, for members of the public to use the land at all relevant times.

11.81. The points pursued by the Objector which I have in mind are those about the occasional closing of the park (to all but paying customers) for funfairs, the previous history of closing gates at night, fencing off the bowling greens area, licensing specific groups to use the football pitches etc.

11.82. By way of an aside, it is not entirely clear to me how some of these reported aspects of the running of the park would have been consistent with the 1932 Byelaws (for as long as those remained in effect), although undoubtedly some of them would have been. However they all seem to be fairly typical of the sorts of thing which are commonly expected in a public park, at least from time to time, and the fact that they happened does not in any way suggest (in my judgment) that at other times local people were using the park as trespassers (i.e. “*as if of right*”).

They clearly had a lawful *right* to be there, in this public park/recreation ground, subject only to any properly enacted and enforced byelaw provisions.

- 11.83. Other arguments were also (briefly) raised by both sides during the course of the Inquiry, or in the exchanges of representations before it, about matters as diverse as the ‘Dog Fouling Bins’ within the park and surrounding area, or the existence of some ‘rear access gates’ into the park from people’s back gardens. Neither these points, nor any others which may have been mentioned in passing, has any effect on what in my judgment is the clear position that local people were, during the whole of the relevant period, using Parc y Werin ‘by right’, not as trespassers, or ‘as of right’, for the reasons discussed above.

‘Statutory Incompatibility’

- 11.84. In initial advice which I gave to the Registration Authority, which was seen by both principal Parties, I expressed some doubts as to the soundness of this point (in the context of this present case), as it had been raised in the Principal Objector’s original statement of objection. At that time it had been argued that the principle of ‘statutory incompatibility’ barred the registration under the *Commons Act* of *both* the ‘1924 land’ originally acquired for housing purposes *and* the (substantially but not entirely overlapping) land which had been purportedly appropriated in July 2015 to education purposes.
- 11.85. This objection as a whole was based on the line taken by the Supreme Court in its then relatively recent judgment in the case of *R (Newhaven Port and Properties Ltd) v East Sussex County Council* [2015] AC 1547; [2015] UKSC 7. That case related to the somewhat unusual factual circumstance of a ‘village green’ claim having bene made in respect of a tidal ‘beach’ which was itself within the territory of a working port of harbour. The working of that harbour was both governed and empowered by various pieces of local and more general harbour legislation. It was held by their Lordships in the Supreme Court that registration of the piece of land concerned as a ‘town or village green’ was incompatible with the statutory empowerment, under other more specific provisions, of the use which could be made of the same piece of land as part of a working harbour.
- 11.86. I advised the Registration Authority previously, and still say, that I do not find the reasoning and explanation of the principal judgment in *Newhaven*, given by Lord Neuberger and Lord Hodge jointly (with Lady Hale and Lord Sumption agreeing), entirely easy to follow, in terms of the intended scope and breadth of any principle that they were laying down. I also noted in passing that Lord Carnwath did not agree with the majority on this point. It is clear that a ‘statutory incompatibility’ principle applies when there is an active, statutorily empowered current use (in that case the harbour use) whose continuation is (or at least might be) manifestly at odds with registration under the *Commons Act*. But on the other hand, as the Applicants in this present case had pointed out in their Response, Lords Neuberger and Hodge did also specifically say (*Newhaven*, para 101): “*The ownership of land by a public body, such as a local authority, which has statutory powers that it can*

apply in future to develop land, is not of itself sufficient to create a statutory incompatibility.”

- 11.87. Since the initial exchanges of submissions by the parties in this present case, and my initial advice as referred to above, the principle of ‘statutory incompatibility’ in the context of town or village green claims has been addressed in High Court judgments in two different cases: ***Lancashire County Council v Secretary of State for the Environment etc, and Bellingham*** [2016] EWHC 1238 (Admin), and ***R (NHS Property Services Ltd) v Surrey County Council*** [2016] EWHC 1715 (Admin).
- 11.88. In the ***Lancashire*** case Ouseley J upheld the determination of an Inspector to the effect that the principle of ‘statutory incompatibility’ [based on the ***Newhaven*** judgment] did not apply so as to prevent registration of some land which (it was argued) was held by the County Council for education purposes. I should note briefly that there was some argument in these present proceedings as to whether the part of Ouseley J’s judgment dealing with this particular part was *obiter* or not.
- 11.89. In the ***NHS Property v Surrey*** case, Gilbert J concluded (to give a very brief summary) that some land held by a property ‘arm’ of the NHS could not be registered as a village green (in spite of the ***Commons Act*** tests being met), because that was incompatible with the potential development of that land for statutory purposes associated with the NHS.
- 11.90. Neither Counsel appearing before me expressed the view that it is easy to detect a common and consistent logical thread running through those two judgments, and I would respectfully agree on that point. The key point which they did both draw to my attention (and which I was in any event aware of through professional sources) is that both of these cases are apparently due to be considered further, by the Court of Appeal, it seems potentially in a conjoined hearing, in the autumn of this current year.
- 11.91. Thus, had this point turned out to be the key determining issue in this present case, it may well have been appropriate for the Registration Authority to have delayed issuing its final determination until after the appearance of the Court of Appeal’s anticipated judgment in the two cases referred to. The alternative to this would have been (in my view) to proceed to take a decision now which placed the greatest emphasis on what the Supreme Court Justices actually said in ***Newhaven***, including the sentence which I have quoted at paragraph 11.85 above.
- 11.92. Regardless of which of these would have been the better course to take, there are other additional conclusions which can in my view be fairly drawn now in relation to the Principal Objector’s statutory incompatibility argument. As it was being put by the time of the Inquiry, the Principal Objector’s argument on this point relied solely on the purported ‘appropriation’ of the western part of Parc y Werin which was carried out in July 2015 by the Council’s Cabinet, which (it seems) was carried

out with a view to to appropriating the relevant land to educational purposes (in order to build the proposed school) from the purposes for which it had been held by the Council beforehand. July 2015 was of course within (even if only by a few months) the 20 year period to which the Applicants' claim under **Section 15(2)** relates.

- 11.93. However, having considered the evidence and arguments put forward by the Principal Objector, I remain entirely unsatisfied that the purported appropriation was carried out properly or effectively; the apparent wording of the Cabinet resolution concerned did not even mention the purposes to which (or indeed from which) the land was being purportedly appropriated from one 'Director' (of Place) to another one (of People). I have very strong reservations about the effectiveness of that as an appropriation at all.
- 11.94. The appropriation of land by a local authority from one purpose to another authorised one is subject to a certain amount of formality, prescribed by **Section 122** of the **Local Government Act 1972**, including a clear requirement for a conclusion that the land "*is no longer required for the purpose for which it was held immediately before the appropriation*". There are further formalities required as to advertising in relation to land 'forming part of an open space' (which both sides agree were applicable to the circumstances at Parc y Werin).
- 11.95. I have carefully considered what actually happened here, from the documentation produced to the Inquiry both by the Principal Objector Swansea Council, and for the Applicants' side. It may very well be that the Council's officer responsible for the fuller Report attached to the 'Report of the Cabinet Member for Education' to the Council's Cabinet of 16th July 2015 had some understanding that, in order for it to be lawful to build school buildings on part of the parkland at Parc y Werin, the "*land use had to be altered from recreation to Education purposes and hence the requirement for appropriation*". Indeed she said as much in paragraph 8.1 of that Report, under the heading 'Legal Implications'.
- 11.96. However I can see no sign at all in that Report (and none was drawn to my attention) that its author had any appreciation that a decision needed to be consciously made that the land concerned was "*no longer required*" for its immediately previous (recreational) purpose. The relevant "*recommendation*" in the report merely said "*As no objections to the appropriation have been received, the Appropriation of the land at Parc y Werin from the Director of Place to the Director of People is approved which will enable the building of the proposed Gorseinon Primary School*". The subsequent Cabinet 'decision' of 16th July 2015, as recorded, is in effectively identical wording. There was therefore no wording in the relevant resolution which made any reference at all to the actual purpose or use from which the land was being purportedly appropriated, and only a rather oblique one to the use for which the land was being purportedly appropriated "*to the Director of People*".

- 11.97. Furthermore, both the Cabinet Report and the record of the decision made reference to the wrong statutory provision, **Section 123** instead of **Section 122** of the **1972 Act**. The actual statutory notices, required under **Section 122(2A)** to invite objections to a proposed appropriation, had also referred to the wrong section, as well as both making no reference to the use or purpose *from* which an appropriation was being proposed, and describing the new purpose as “*property development*”. These notices also, in two places, said that what was being proposed was a ‘disposal’ of the land, rather than an appropriation.
- 11.98. To be frank, it would be difficult to conceive a more inadequate or unsatisfactory handling of the procedural requirements associated with seeking to bring about such a potentially contentious appropriation as one from long-established parkland to use of the land for building on it (albeit for a publicly useful purpose such as a school).
- 11.99. I do however need to state at this point that as an Inspector appointed to assist the Council in its role as Registration Authority in making a determination under **Section 15** of the **Commons Act**, it is not at all my role or within my ‘jurisdiction’ to make any kind of formally binding finding or decision as to the legal validity of an act carried out by the Council in another capacity entirely. All I can do is weigh up the soundness of the point being argued on behalf of the Council as Principal Objector, that because of the purported July 2015 ‘appropriation’, the relevant part of Parc y Werin **cannot** be registered under the **Commons Act**, by reason of ‘statutory incompatibility’.
- 11.100. In this context therefore, I conclude that it seems to me that aggrieved local people, in any relevant legal context, would have a very high chance of establishing that the purported appropriation of July 2015 was completely ineffective – i.e. no valid appropriation took place at all, because of the manifest and multiple defects in the procedure which I have referred to above.
- 11.101. I should say that I accept in a general sense the argument advanced by Mr Blohm QC for the Principal Objector that in principle a formally recorded decision of a public authority will be presumed to be effective, even if (for example) there was some underlying defect rendering the decision liable to judicial review, unless and until it has been successfully challenged in a court of competent jurisdiction. However in this particular case, it seems to me on the facts, the purported decision made was so ill-considered and ill-expressed that it did not succeed even on its face, in carrying the appearance of being a proper and valid appropriation.
- 11.102. I also agree with the point made by Mr Wilmshurst for the Applicants that, on the face of things, even though no attempt has been made to bring Judicial Review proceedings against the purported appropriation, it would be open to an aggrieved local person to argue, with some reasonable prospect of success, that there had been no effective appropriation at all, in (say) injunctive proceedings, upon the appearance in the park of diggers or construction work.

- 11.103. However, as I have foreshadowed above, the true relevance of these remarks in the present *Commons Act* context is to lead me to the conclusion that in my judgment the ‘statutory incompatibility’ argument put forward by the Principal Objector is unpersuasive as an additional ground for rejecting the present application.
- 11.104. Thus the conclusion on this particular point which I reach, and commend to the Registration Authority, is that in the circumstances of this particular case, ‘statutory incompatibility’ should *not* be regarded as a sound additional basis or ground for rejecting the Applicants’ application.
- 11.105. I might also note (though this point was not followed through in argument by the parties before me) that where, as here, a ‘statutory incompatibility’ is only claimed to have come about in the last few months of the relevant 20 year period under *Section 15(2)* of the *Commons Act*, the question might need to be considered whether in those circumstances an Applicant’s application can be considered ‘in the alternative’ under *Section 15(3)*, if ‘as of right’ use could be shown to have extended back well over 20 years before the application date. The application would have been made well within the 2 year period applicable in Wales to *Section 15(3)* cases, and it would seem arguably to be highly unjust to applicants (and not called for by the actual wording of *Section 15*) to hold that they must lose their claim entirely if they have ‘backed the wrong horse’ as between *subsections (2)* and *(3)*, in circumstances where a decision as to which would have been the more appropriate subsection can itself only be reached by resolving uncertain or contentious issues as between the parties.
- 11.106. However it will be appreciated, in view of what I have said above in relation to the statutory incompatibility argument, that the point I have made in the preceding paragraph is in reality something of a ‘footnote’, which does not have any effect on my overall conclusions and recommendation, based on the arguments as between ‘by right’ and ‘as of right’ use of this land by local people.

Some ‘overview’ points

- 11.107. Before formally expressing my final conclusions and recommendation to the Registration Authority, it seems to me that there are two rather wider points on which it might be appropriate to make some observations. The first is that, as the Principal Parties in this case are fully aware, when I was first asked to assist the Registration Authority in this case, I took the view based on the initial exchanges of representations from both sides that there appeared to be very little if any material disagreement as to the relevant factual history of what had happened at Parc y Werin over the years, and that therefore it might well be possible to decide this case ‘on the law’, based on the exchange of written representations, i.e. without the need for a local inquiry, or the hearing of oral evidence..

- 11.108. It subsequently transpired that various aspects of the factual history had become confused, or mis-stated or unclear, and the decision was taken by the Registration Authority, rightly in the circumstances (in my judgment), that a public local inquiry should be held, in order to seek to resolve the areas of uncertainty, and their legal consequences. Clearly, that might not have proved necessary, had the accurate historical facts been more fully established at an earlier date.
- 11.109. The second general observation which I feel can usefully be made is to note the point that it is not part of the role of Registration Authorities, in administering *Section 15* of the *Commons Act 2006*, to seek to make up for arguable or perceived deficiencies in the general law as to the ‘protection’ from unpopular change of parks, recreation grounds and open spaces in the care and ownership of local authorities.
- 11.110. It is the case that, for several decades now, at least since Parliament enacted *Section 122* of the *Local Government Act 1972* in its present form (which is now significantly amended from the original), Parliament has left it to local authorities themselves to make decisions as to whether such open areas in their care can be ‘appropriated’ to other uses, including putting buildings and development on them. The only effective provisos are that the authority concerned must make a conscious decision that the land is “*no longer required*” for its previous purposes, and that it must advertise its intentions in accordance with *Section 122(2A)*, and properly consider any objections received in response.
- 11.111. This undoubtedly means that land consisting of parks, recreation grounds and public open spaces, even long-established ones, has considerably less legal ‘protection’ from an owner bent on development, compared with land registered as a town or village green under the *Commons Act*. It is therefore understandable that local people concerned about proposed developments on parks and recreation grounds should try to get them registered under the *Commons Act*, especially when the courts up to the House of Lords/Supreme Court, have been consistently clear that there is no exemption from registration under that Act, simply because land belongs to a local authority. It is even more understandable in circumstances where it might be perceived that no proper weight has been given to the importance of preserving established parks and open spaces in their present use.
- 11.112. However it has been equally and consistently clear from case-law for some time now that land which actually is held or allocated by local authorities for parks, recreation grounds, or open space use *cannot* be registered as a town or village green, because its use by the (local) public is ‘by right’, or ‘with permission’, not ‘as of right’. Concerned local people therefore do need to understand that the only ‘remedy’ for these concerns in such cases is a ‘political’ one, both in a local sense by actively pursuing opportunities to object to proposed appropriations and disposals, and in a ‘national’ sense by seeking to persuade the Westminster Parliament or the Welsh Assembly, as appropriate, to consider changing the relevant statutory provisions.

- 11.113. What cannot be a satisfactory mode of proceeding is to seek to persuade Commons Act Registration Authorities, (perhaps especially when they are also, at a corporate level, the landowner concerned) and those assisting them in making decisions, to determine matters in a way manifestly in defiance of the present state of the law.
- 11.114. I do not say any of these things by way of implicit criticism of the principal parties in the present case, both of whose contributions I have found helpful in pointing the way towards a resolution of this dispute. These latter remarks of mine are intended more as general observations which (although they arise out of the factual circumstances of this case) might I hope be of at least some wider assistance to those who might come to read them.

Final conclusion and recommendation

- 11.115. As will be apparent from what I have set out at some length in this section of my Report, my conclusion is that the Applicants have *not* succeeded in making out a case that the application site, or any part of it, should be registered pursuant to **Section 15** of the **Commons Act 2006**. In particular they have 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.
- 11.116. Accordingly my recommendation to the Council as Registration Authority is that *no part* of the land of the application site at Parc y Werin should be added to the Register of Town or Village Greens maintained under the **Commons Act 2006**, pursuant to the Applicant's application, for the reasons given in my Report.

ALUN ALESBURY
8th May 2017

Cornerstone Barristers
2-3 Gray's Inn Square, London WC1R 5JH
and
One Caspian Point, Pierhead Street, Cardiff Bay, CF10 4DQ

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANTS (although technically he was instructed only on behalf of the one Applicant Cllr. James Dunckley):

Mr Paul Wilmshurst, Counsel

- Instructed by Messrs Edward Harris, Solicitors

He called:

Cllr. David Cole of 209 Frampton Road, Penyrheol, Gorseinon

Mr Crispian Huggill, of 19 Pencaecrwn Road, Gorseinon

Mr Andrew Thomas, of 13 Brynawel Road, Gorseinon

Mr Ivor Cole, of 3 Bryn Close, Gorseinon

Cllr. Claire Lewis (joint Applicant), of 16 Brynhyfryd Road, Gorseinon

Ms Anne-Marie Rees, of 30 Llanerch Crescent, Gorseinon

Mrs Beatrice Jones, of 48 Brighton Road, Gorseinon

FOR THE PRINCIPAL OBJECTOR (The City and County of Swansea as landowner and Local Education Authority):

Mr Leslie Blohm, Queen's Counsel

He called:

Mr Alex O'Brien, Chartered Surveyor, Property Manager,
Corporate Building and Property Services Dept, City & County of Swansea

Mrs Louise Herbert-Evans, Head of Capital Planning and Delivery Unit,
Education Department, City & County of 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 of the considerable quantity of further representations or 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 Applicants and the Principal Objector, all of which were provided to the Registration Authority (and me) as complete bundles.

FOR THE APPLICANTS:

‘Summary of the Case of the Applicant’

Bundle of ‘Supplementary Information’ produced by Mr Crispian Huggill, to be filed as Appendix to his personal statement

Written submissions of Mr Edward Bailey in the ‘Newhaven’ case (Supreme Court)

Applicants’ ‘Further Evidence in Response to Objector’, in response particularly to Mr O’Brien’s statement of 17th January 2017

Regulation 41 of the Local Government Area Changes Regulations 1976 S.I. No.246

FOR THE PRINCIPAL OBJECTOR:

Halsbury’s Laws extract on ‘Presumption of correctness’

Written Note of Closing Submissions

Report of the Head of Legal, Democratic Services and Business Intelligence

Planning Committee – 6 June 2017

PUBLIC RIGHTS OF WAY – APPLICATION FOR A PUBLIC PATH DIVERSION ORDER RELATING TO FOOTPATH NUMBER 4 AT BRYNMAEN FARM IN THE COMMUNITY OF MAWR

Purpose:	To consider whether to accept or reject an application made to this Authority to make a public path diversion order relating to footpath 4 at Brynmaen Farm
Policy Framework:	The Countryside Access Plan 2007-2017
Statutory Test:	Section 119 Highways Act 1980
Reason for Decision:	The application satisfies the legal tests under Section 119 of the Highways Act 1980 and the objection received is not considered sufficiently cogent to cause the application to be rejected
Consultations:	Legal, Finance and Access to Services and all the statutory consultees, including local members, landowners and the prescribed organisations.
Recommendation:	It is recommended that: (1) the application be granted and that a public path diversion order is made, and: (2) if objections are received to the order, to refer the order to the Planning Inspectorate for determination
Report Author:	Kieran O'Carroll
Finance Officer:	James Moore
Legal Officer:	Sandie Richards
Access to Services Officer:	Phil Couch

1. Introduction

- 1.1 An application was made to this Authority on 23rd May 2016 to divert a section of public footpath number 4 at Brynmaen Farm as shown on the attached plan under Section 119 of the Highways Act 1980 (The Act).

2 The Statutory Tests

- 2.1 Under Section 119(1) of the Act, where it appears to a council that, in the interests of the owner, lessee or occupier of land crossed by a public path, or of the public in general the line of the path should be diverted, it may make a public path diversion order.
- 2.2 The applicants are the owner of all the land affected by the proposed diversion and the purpose of the application is to divert footpath number 4 away from the farm buildings to improve their privacy. Therefore, it is easy to satisfy the condition that the diversion is in the interest of the owners of the land crossed by the path.
- 2.3 The effect of a public path diversion order would be to extinguish the current definitive line of footpath 4 and create a new definitive route for the path.
- 2.4 Under Section 119(2), a public path diversion order shall not alter a point of termination of a path or way (a) if that point is not on a highway, or (b) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 2.5 This application clearly satisfies the requirements of Section 119(2). The proposed diversion commences at a point on footpath 4 and the result of the diversion is the movement of the termination point where the path meets the road to another point on the same road roughly 95 metres to the north-west.

- 2.6 If when such an order is made no objections are received within the statutory time period allowed then the Council is able to confirm the order as an unopposed order.
- 2.7 If when such an order is made objections are received within the relevant time period and those objections are validly made specifying the grounds of objection then the Council cannot confirm the order. The Council would need to refer the order to the Planning Inspectorate, an executive agency sponsored by the Welsh Government, for determination.
- 2.8 Under Section 119(6) of the Act the Planning Inspectorate shall not confirm a public path diversion order and the Council shall not confirm an unopposed order unless they are satisfied that the diverted path will not be substantially less convenient to the public having regard to the effect:
- 2.8.1 the diversion would have on public enjoyment of the path or way as a whole;
- 2.8.2 the coming into operation of the order would have as respects other land served by the existing public right of way; and
- 2.8.3 any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.
- 2.9 It is considered that the proposed route will be at least as convenient to the public as the existing one. There is a slight increase in the length of the path. However, this could be viewed as beneficial to the public's enjoyment of the path as a whole rather than as an inconvenience.
- 2.10 The diversion would afford the owners of the farm greater privacy. Land crossed by the new path will fall within the same title as the original and so no new title and no other landowners will be burdened

by its existence. These points will be considered further when discussing the objections received below.

- 2.11 Under Section 119(3), if the Council considers work is required to bring the alternative into a fit condition for use by the public it shall specify the date by when this shall occur and not certify the Order has come into force until the work has been completed.
- 2.12 It is noted that clearance work will be required along with drainage works to improve the ground quality. Further, three integral field gates will need to be installed along the proposed new route. Therefore, these works will need to be completed before any order will take effect.
- 2.13 The applicants have signed a declaration confirming their agreement to pay the costs that may be incurred by the Council for expenses incurred to bring the new route of the path into a fit condition for use by the public.

3 Compensation

- 3.1 Under Section 119(5) before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path, the Council can require that person to enter an agreement with the Council to defray, or to make a contribution towards any compensation payable under Section 28 of the Act.
- 3.2 Under Section 28 of the Act (as applied to public path diversion orders by Section 121(2) of the Act), if it is shown that the value of a person's interest in land has depreciated, or that person has suffered damage by being disturbed in his enjoyment of land as a result of the order, then that person will be entitled to compensation equal to the amount of depreciation or damage.
- 3.3 The applicants have made a declaration in writing that they agree to pay any costs that may be incurred under Section 119(5) for

compensation that may become payable. Therefore, there will be no such financial risk for the Authority.

4 Informal Consultations

- 4.1 Those consultees listed on the first page of this report have been informally consulted regarding the application in accordance with advice given in 'Welsh Government Guidance to Local Authorities' dated October 2016. Such consultations were conducted between 2nd February 2017 and 2nd March 2017
- 4.2 Comments have been received from the representative of the local Ramblers and Gower Society.
- 4.3 One objection has been received from the owners of a nearby property who consider they will be adversely affected by the diversion.
- 4.4 The Ramblers and Gower Society representative states that whilst he has no fundamental objections to the diversion, he points out the need for clearance along part of the new route. He advises that a length of the alternative route is too wet and boggy and he considers that this route would be unacceptable.
- 4.5 These issues will be addressed before any diversion order is allowed to take effect. It is agreed that clearance work will be required along with drainage works to improve the ground quality. The costs incurred in bringing the new path into a fit condition for use will be borne by the applicants.
- 4.6 The owners of a nearby property object on the grounds that they consider:
 - 4.6.1 The entrance to the proposed diversion from the road is opposite their front gate and therefore imposes on their privacy;

- 4.6.2 the proposed entrance is at the top of a hill where the path meets a narrow section of road and walkers would be in danger of colliding with motor vehicles;
- 4.7 Former Councillor Ioan Richard, former ward member for Mawr, has commented that whilst the diversion would relieve one party of privacy invasion, it would create a problem for another. He reiterates the objectors' point that the new path will exit onto a dangerous brow of a hill but the Councillor has clarified that he has not checked the position on site.
- 4.8 The objectors felt that a safer option would be to keep the entrance to the path at its current location where it joins the road and create a path leading from this point north-west along the inside of the hedge to reach the proposed position of the path then following the same diverted route south-west. There would then be no entrance opposite their property and in their view this would be safer. This proposal was discussed with the applicants who wished to continue with their original application route over their land.
- 4.9 The objectors' front gate fronts onto a public road over which pedestrians have a right to walk at any time. Therefore, it is not considered that having a public path entrance on the opposite side of this road to their gate will cause an issue in terms of privacy. In any event, the path entrance will only have migrated 95 metres as a result of such a diversion. The entrance to the objector's home is a wall and gates of at least 6ft high (see Appendix 2).
- 4.10 The objectors already have a public path namely public footpath number 7, running directly alongside and behind their property. Under this proposal, footpath 3 will be situated on the opposite side of a public road.

4.11 The gate at the roadside will be set back from the road slightly and is therefore considered to offer a safe entrance and exit to the footpath.

4.12 It should be noted that these consultations are informally conducted at this stage and no order has yet been made. Therefore, this objection does not constitute a formal objection within the relevant statutory period. If an order is made and if the objectors wish, they can formally object at the relevant time. This would then require the referral of the order to the Planning Inspectorate.

5 Conclusion

5.1 The application has been considered and consultations have been conducted.

5.2 The application meets the requirements of Section 119 of the Highways Act 1980.

5.3 The objection received is not considered sufficiently cogent to warrant the rejection of the application

6 Financial Considerations

6.1 There are no financial implications to this report.

7 Equality and Engagement Implications

7.1 EIA Screening has been conducted and a full EIA report is not required

Background Papers: ROW-00222196/KAO

Appendices

APPENDIX 1 – Plan showing proposed diversion

APPENDIX 2 – Photograph showing front entrance to objector's property

Key

Footpath to be added



Footpath to be deleted



unaffected connecting footpath



Drain

Page 112

Afon Llan

Shingle

Gwynfa

137.2m

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Agenda Item 7

Report of the Head of Legal, Democratic Services and Business Intelligence

Planning Committee – 6 June 2017

PUBLIC RIGHTS OF WAY – APPLICATION FOR A PUBLIC PATH DIVERSION ORDER RELATING TO PART OF FOOTPATH NUMBER 51 AT VOYLART CLOSE, DUNVANT

Purpose:	To consider whether to accept or reject an application made to this Authority under the Town and Country Planning Act 1990 to make a public path diversion order relating to footpath number 51 at Voylart Close, Dunvant
Policy Framework:	The Countryside Access Plan 2007-2017
Statutory Test:	Section 257 Town and Country Planning Act 1990
Reason for Decision:	The application satisfies the legal tests under Section 257 of the Town and Country Planning Act 1990 and the objection received does not provide sufficient grounds to cause the application to be rejected
Consultations:	Legal, Finance and Access to Services and all the statutory consultees, including local members, landowners and the prescribed organisations.
Recommendation:	It is recommended that: (1) the application be granted and that a public path diversion order is made, and: (2) if objections are received to the order, to refer the order to the Planning Inspectorate for determination
Report Author:	Kieran O'Carroll
Finance Officer:	James Moore
Legal Officer:	Sandie Richards
Access to Services Officer:	Phil Couch

1. Introduction

- 1.1 An application was made to this Authority on 2nd October 2016 to divert a section of public footpath number 51 at Voylart Close as shown on the attached plan under Section 257 of the Town and Country Planning Act 1990 (The Act).

2 Consideration of Application

- 2.1 Under Section 257(1) of the Act, the Council may make a diversion order relating to any footpath if satisfied that it is necessary to enable development to be carried out in accordance with planning permission granted.
- 2.2 The applicant was granted planning permission on the 9th September 2016 relating to the replacement of a detached bungalow and detached garage at 3 Voylart Close, Duvant (Application Number 2016/1189)
- 2.3 The grant of planning permission was subject to the following condition: 'No demolition works relating to the existing dwelling shall commence until the Right of Way crossing the site has been formally diverted and a copy of the Diversion Order has been submitted to and agreed in writing by the Local Planning Authority'
- 2.4 The grantee of the permission has therefore made an application to divert footpath number 51 to enable him to carry out the permitted development. It is considered that the applicant can easily satisfy Section 257 of the Act.
- 2.5 The existing route of the footpath is recorded on the Council's Definitive Map as passing through the properties; 1 to 6 Voylart Close. The path is completely obstructed and is thus impassable on the ground. The applicant has taken account of this fact and has proposed not only to divert that section crossing 3 Voylart Close but also to divert the remainder of the obstructed path onto a useable route.

- 2.6 The applicant has received the consent of the owners of all those properties crossed by the path who have all joined the application. The proposal will not only enable the applicant's development but will also provide significant benefits to those properties.
- 2.7 The applicant has received the consent of all owners of the land to be crossed by the alternative path where it has been possible to identify those owners. Some of this land is unregistered and whilst notices addressed to the owners and occupiers were posted on site, it has not been possible to determine their identity. The majority of the proposed alternative path will run along the currently unadopted highway of Voylart Close itself.

3 Consultations

- 3.1 Those consultees listed on the first page of this report have been informally consulted regarding the application in accordance with advice given in 'Welsh Government Guidance to Local Authorities' dated October 2016. Such consultations were conducted between 2nd December 2016 and 6th January 2017.
- 3.2 One objection has been received to the proposal.
- 3.3 If an order is made, notice of making the order will be published and a statutory period of four weeks will be allowed for any objections or representations relating to the order.
- 3.4 If objections are made during the statutory period, the Council will not be able to confirm any such order itself and would need to refer the order to the Planning Inspectorate of the Welsh Government for determination.
- 3.5 If no formal objections are received, the Council will be able to confirm the order as an unopposed order.

3.6 The present informal objection has been made by the owners of the land lying to the south west of number 6 Voylart Close and the grounds quoted are as follows:

3.6.1 The diversion of footpath 51 would restrict access to their land and their use of the road.

It should be noted that footpath 51 in its present position is obstructed and offers no access. The diversion will result in a useable legal route passing along the highway. It is not understood how the diversion could restrict their use of this road. The proposed diversion should have no effect on this issue.

3.6.2 The path has been obstructed for nearly 50 years and has been built over on several occasions deeming the path unusable.

The Council has a duty under Section 130 of the Highways Act to assert and protect public paths and to ensure they are made available for public use. The diversion proposed by the applicant will open a route that has been obstructed to the public for 50 years. This is an advantage to the proposal.

3.6.3 There was a public inquiry held in 1997 regarding footpath 51 and they requested the path be extinguished.

The public inquiry in 1997 is a separate issue. The inquiry related to whether or not evidence was sufficient to realign the path under section 53 of the Wildlife and Countryside Act 1981. It would need to be shown by evidence that the current line was an error and that the path actually existed along the alternative route. The result of the inquiry was that no order could be made under that section. This application is under the Town and Country Planning Act 1990 and is not based on evidence. A diversion order can be made under this Act where the Council is satisfied that it is necessary to divert the path to allow the applicant to implement his planning permission.

3.7 Therefore, the grounds for objection are not considered sufficient to warrant the conclusion that no diversion order be made.

3.8 On the 2nd December 2016, a draft version of this report was circulated to members and landowners including the applicant and the objector to provide them with the opportunity to comment on the information contained. On the objector's comments, the applicant made the following point:

3.8.1 When setting the course of the proposed path care was taken to ensure that the point of entry/exit to the objector's land remained as it was (i.e. at point B on the Plan at Appendix 1) and therefore the situation has not changed.

4 Conclusions

4.1 The application satisfies the requirements of Section 257 of the Town and Country Planning Act 1990 as the proposed diversion is considered necessary to allow the applicant to implement his planning consent.

4.2 The objection received is not considered sufficiently cogent to warrant the rejection of the application.

5 Financial Considerations

5.1 There are no financial implications to this report.

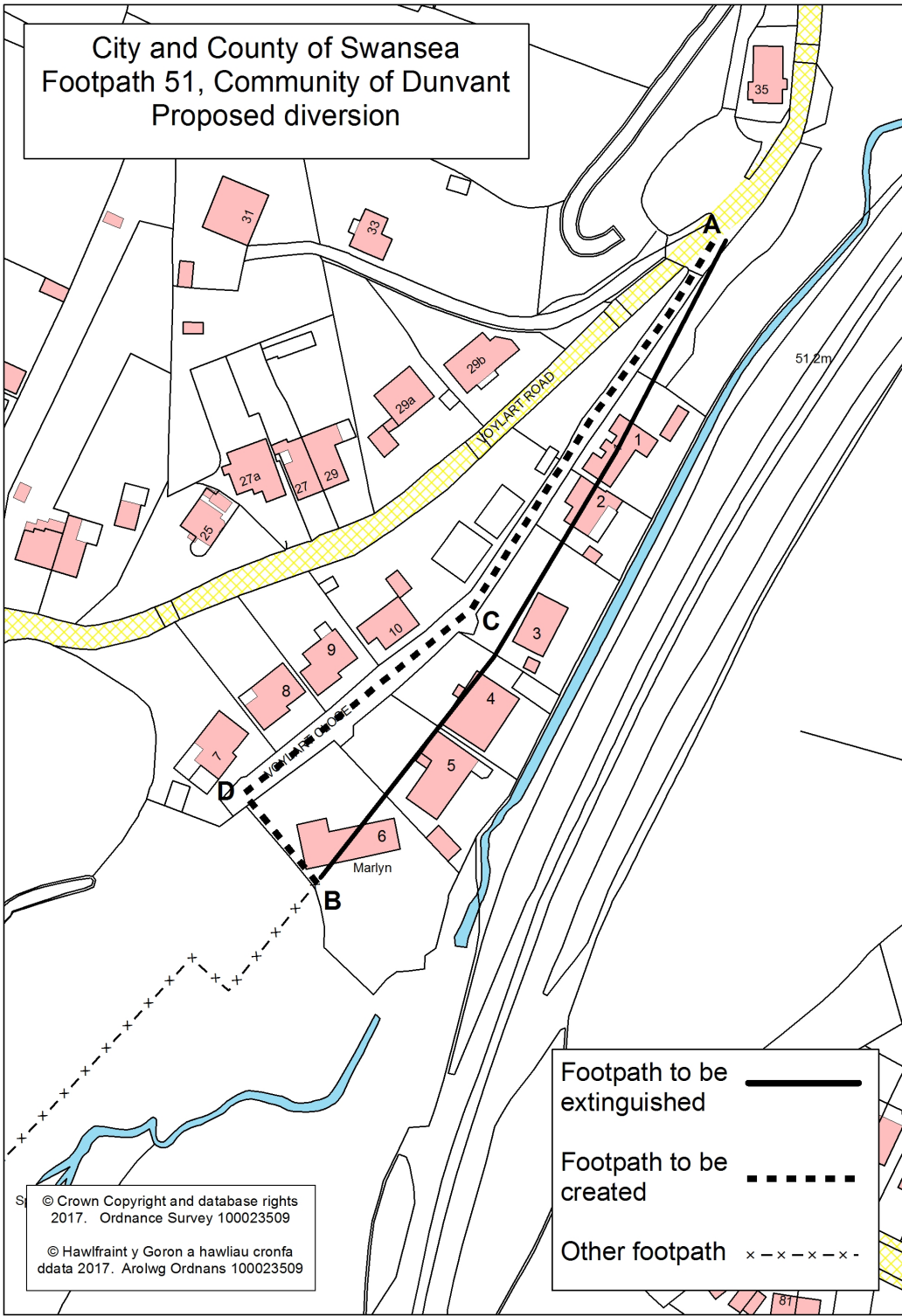
6 Equality and Engagement Implications

6.1 EIA Screening has been conducted and a full EIA report is not required

Background Papers: ROW-00222379/KAO

Appendices:

APPENDIX 1 – Plan showing proposed diversion



Agenda Item 8

CITY AND COUNTY OF SWANSEA
DINAS A SIR ABERTAWE

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

DATE: 6TH JUNE 2017

Bay Area Team Leader Liam Jones - 635735	Area 1 Team Leader: Ian Davies - 635714	Area 2 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 Planning & City Regeneration



CONTENTS

ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
1	2017/0648	<p>Former St Davids Centre And Other Land North And South Of, Oystermouth Road, City Centre, Swansea</p> <p>Outline planning application (with all matters reserved) for the refurbishment, alteration and / or demolition of all existing buildings / structures on the site (except St Mary's Church and St David's Church) and redevelopment of site with indicative access / layout and scale parameters on the north site of a maximum of 1 to 7 storeys and maximum new floorspace of 84,050 sqm comprising retail / commercial /office use (Classes A1/A2/A3/B1) residential (Class C3), non-residential institution (Class D1) and leisure (Class D2), multi-storey car park and redevelopment of south site of a maximum of 40,700 sqm of floorspace comprising a new arena (Class D2), up to 13 storey hotel / residential building (Class C1/ C3), food and drink (Class A3), undercroft car park, potential energy centre. Across both sites, the provision of associated new public open space / public realm and landscaping, new pedestrian and vehicular access and servicing arrangements (including a pedestrian bridge link across Oystermouth Road), provision of new bus stops on Oystermouth Road, new pedestrian access through existing arches along Victoria Quay, relocation of Sir H Hussey Vivian statue, earthworks, and plant.</p>	APPROVE
2	2016/3619/FUL	<p>12-24 Belle Vue Way, Swansea, SA1 5BY</p> <p>Sub-division of existing ground floor to provide 4 retail units with new shop fronts and new residential entrance off Trinity Place. Conversion of existing first and second floors into 1 and 2 bed apartments, addition of 2 new storeys to accommodate additional 1 and 2 bed apartments (total number of 36 self-contained apartments - 18 x 1 bed + 18 x 2 bed apartments) and associated fenestration alterations and external works.</p>	APPROVE
3	2017/0795/FUL	<p>Land Adjacent To Heol Eifion, Gorseinon, Swansea, SA4 4PH</p> <p>Construction of 36 residential units with associated works and car parking</p>	APPROVE

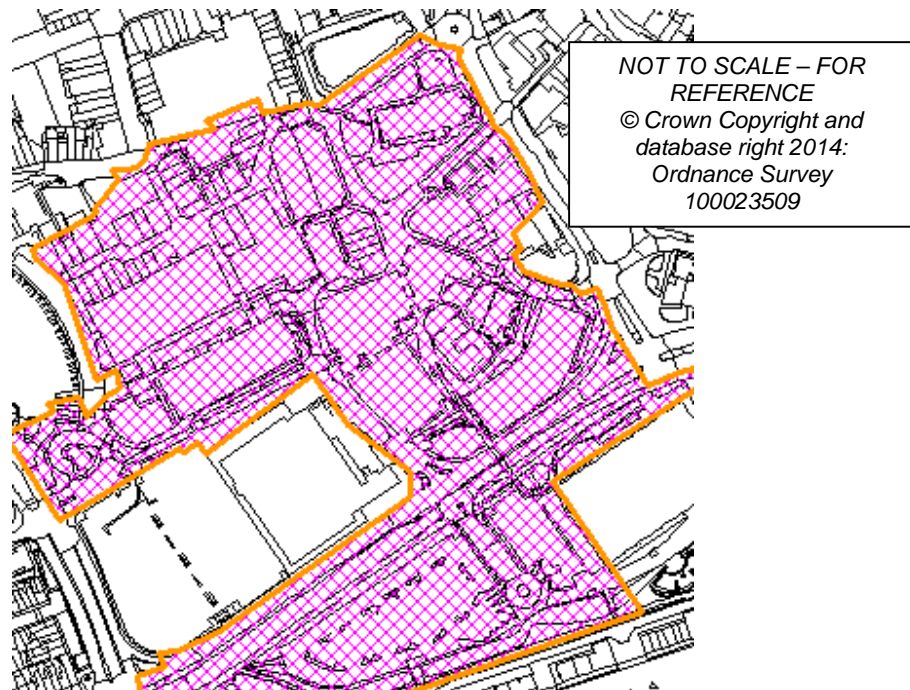
ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
4	2016/1510	Former Four Seasons Social Club, Trallwn Road, Llansamlet, Swansea, SA7 9UQ Residential development comprising of a mix of 41 dwelling units with associated access, landscaping and infrastructure works	APPROVE
5	2017/0262/FUL	23 Portia Terrace, Mount Pleasant, Swansea, SA1 6XW Replacement front bay window to ground floor with fenestration alterations and Juliette balconies to first floor front	APPROVE
6	2017/0196/FUL	3 Bay View, St Thomas, Swansea, SA1 8BB Change of use from residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	APPROVE
7	2017/0257/FUL	3 Beechwood Road, Uplands, Swansea, SA2 0HL Change of use from residential (Class C3) to 5 bedroom HMO (Class C4)	APPROVE
8	2017/0391/FUL	25 Mirador Crescent, Uplands, Swansea, SA2 0QX Change of use from residential (Class C3) to 4 bedroom HMO (Class C4)	APPROVE
9	2017/0840/FUL	107 Wern Fawr Road, Port Tennant, Swansea, SA1 8LN Change of use from 3 bedroom residential dwelling (Class C3) to 4 bedroom HMO (Class C4).	APPROVE
10	2017/0843/FUL	39 Sebastopol Street, St Thomas, Swansea, SA1 8BL Change of use from 2 bedroom residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	APPROVE
11	2017/0844/FUL	3 Benthall Place, St Thomas, Swansea, SA1 8AY Change of use from 3 bedroom residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	APPROVE
12	2017/0845/FUL	40 Danygraig Road, Port Tennant, Swansea, SA1 8LZ Change of use from 2 bedroom residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	APPROVE

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 APPLICATION NO: 2017/0648/OUT
WARD: Castle - Bay Area
Location: Former St Davids Centre And Other Land North And South Of,
Oystermouth Road, City Centre, Swansea,

Proposal: Outline planning application (with all matters reserved) for the refurbishment, alteration and / or demolition of all existing buildings / structures on the site (except St Mary's Church and St David's Church) and redevelopment of site with indicative access / layout and scale parameters on the north site of a maximum of 1 to 7 storeys and maximum new floorspace of 84,050 sqm comprising retail / commercial /office use (Classes A1/A2/A3/B1) residential (Class C3), non-residential institution (Class D1) and leisure (Class D2), multi-storey car park and redevelopment of south site of a maximum of 40,700 sqm of floorspace comprising a new arena (Class D2), up to 13 storey hotel / residential building (Class C1/ C3), food and drink (Class A3), undercroft car park, potential energy centre. Across both sites, the provision of associated new public open space / public realm and landscaping, new pedestrian and vehicular access and servicing arrangements (including a pedestrian bridge link across Oystermouth Road), provision of new bus stops on Oystermouth Road, new pedestrian access through existing arches along Victoria Quay, relocation of Sir H Hussey Vivian statue, earthworks, and plant.

Applicant: The City And County Of Swansea



PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

BACKGROUND INFORMATION

POLICIES

UDP - AS6 - Parking/Accessibility

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

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

UDP - EV2 - Siting

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).

UDP - EV3 - Accessibility

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)

UDP - EV4 - Public Realm

New development will be assessed against its impact on the public realm. (City & County of Swansea Unitary Development Plan 2008)

UDP - EV5 - Art in the Environment

The provision of public art in new developments and refurbishment schemes will be supported. (City & County of Swansea Unitary Development Plan 2008)

UDP - EV6 - Ancient Monuments & Protection of Archaeological Sites

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)

UDP - EV7 - Extensions/Alterations to Listed Buildings

Extensions or alterations to a Listed Building will only be approved where they safeguard the character and historic form of the building. (City & County of Swansea Unitary Development Plan 2008)

UDP - EV33 - Sewage Disposal

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)

UDP - EV34 - Protection of Controlled Waters

Development proposals that may impact upon the water environment will only be permitted where it can be demonstrated that they would not pose a significant risk to the quality and or quantity of controlled waters. (City & County of Swansea Unitary Development Plan 2008)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

UDP - EV35 - Surface Water Run-Off

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)

UDP - EV36 - Development and Flood Risk

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)

UDP - EV38 - Contaminated Land

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)

UDP - EV40 - Air, Noise and Light Pollution

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)

UDP - HC1 - Housing Sites

Allocation of housing sites for 10 or more dwellings. (City & County of Swansea Unitary Development Plan 2008)

UDP - HC3 - Affordable Housing

Provision of affordable housing in areas where a demonstrable lack of affordable housing exists. (City & County of Swansea Unitary Development Plan 2008)

UDP - HC17 - Planning Obligations

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)

UDP - R16 - Major New Development Waste Management Facilities

Proposals for major new developments will be required to incorporate adequate and effective waste management facilities. (City & County of Swansea Unitary Development Plan 2008)

UDP - AS1 - New Development Proposals

Accessibility - Criteria for assessing location of new development. (City & County of Swansea Unitary Development Plan 2008).

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

UDP - AS2 - Design and Layout

Accessibility - Criteria for assessing design and layout of new development. (City & County of Swansea Unitary Development Plan 2008)

UDP - AS6 - Parking/Accessibility

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

UDP - CC1 - City Centre Mixed Use Development

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)

UDP - CC2 - City Centre Retail Core

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)

UDP - CC3 - St David's/Quadrant

The St David's/Quadrant area is defined as the area of highest priority for redevelopment in the City Centre. A comprehensive retail led mixed use regeneration scheme should be brought forward for this area in the short to medium term in order to deliver the necessary revitalisation of the retail core and to enhance the attraction of the City Centre as a regional shopping destination. Any other retail based development, whether within or outside the City Centre, will be evaluated against this aim. Development proposals that would put at risk the comprehensive retail led regeneration of St David's/Quadrant area, or would adversely affect the potential to enhance and redevelop shopping facilities elsewhere within the retail core, will not be supported.

UDP - EC15 - Urban Tourism

Proposals that consolidate the urban tourism resource, by improving the quality and range of attractions, destinations, accommodation and services will be supported at specific locations. (City & County of Swansea Unitary Development Plan 2008)

UDP - AS2 - Design and Layout

Accessibility - Criteria for assessing design and layout of new development. (City & County of Swansea Unitary Development Plan 2008)

SITE HISTORY

App Number	Proposal	Status	Decision Date
None			

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

RESPONSE TO CONSULTATIONS

The Wales Planning Act 2015 introduced the requirement in March, 2016 for applications for major development to submit a pre-application consultation report (PAC). The submitted PAC Report has outlined the pre-application consultation undertaken during the Autumn 2015 (Stage 1) and the Spring 2017 (formal Stage 2). Activities included the provision of a project website, meetings with local stakeholders and interest groups and a 3-day public exhibition.

At the end of the Stage 1 process, nearly 75% of respondents were in favour of the proposals for the development of a mix of uses within the St David's and LC car park sites being united by a broad pedestrian bridge over Oystermouth Road. The key themes in Stage 1 are summarised as follows:

- o Anchor Store, Better Brands (but also local independents) and Retail Mix
- o Too much retail with concern about empty shops
- o Need for another Cinema in the City centre questioned
- o Weather protection particularly for the Oystermouth Road footbridge, restaurants and shops
- o Dislike of student accommodation
- o Ice rink / skateboard park would we welcomed
- o Not enough parking
- o More trees and greenery

The Stage 2 process was focussed on the draft outline planning application and the PAC indicates that there were two common themes in the Stage 2 process:

- o St David's Church replacement church hall
- o Overlooking, noise, daylight and anti-social behaviour particularly from residents in Squire Court and Victoria Quay

The applicant's responses to these issues are summarised in the PAC as follows:

- o ANCHOR STORE, BETTER BRANDS AND RETAIL MIX - A large new department store would be most people's choice for inclusion within the scheme and we will endeavour to provide this. However, there are very few department stores in the market and this may prove difficult. We are equally confident we can deliver new good quality retailers into Swansea thereby making it a far more attractive shopping experience overall.
- o TOO MUCH RETAIL - Independent studies have shown that there is capacity for additional retailing in Swansea. Retailer requirements have changed over the years and shop sizes and locations that once fitted their requirements may no longer be suitable. However, we have found in the past that when more retail is introduced to a city centre it helps to rejuvenate areas by bringing in more shoppers. Any empty units are likely to be occupied by other retailers who are looking for more economic space.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o NEED FOR A CINEMA - We are looking to provide a cinema with a point of difference from the cinemas already operating in the city centre. The new cinema will be focused on providing a different customer experience, with luxurious and larger seating and food and drinks being brought to your seat by the staff. It is likely to be only 3 or 4 screens and will show a wider range of films rather than just 'blockbusters'.
- o WEATHER PROTECTION - A cover strategy has been developed to an outline proposal which includes different strategies for different locations and uses, ranging from architecturally integrated canopies on retail facades, potentially fully covered café / restaurant street and the covered bridge.
- o DISLIKE OF STUDENT ACCOMMODATION - In response to its relatively low popularity and a further review of the mix of uses, student housing is no longer part of the proposals.
- o ICE RINK AND SKATEBOARD PARK - The proposed mix of uses for the site has been developed carefully in line with the Council's planning policy aspirations for the site, and in response to expected demands from operators. The proposals include a significant proportion of leisure floorspace, which could be occupied by a range of leisure operators. This would not preclude an ice rink operator dependant on demand and viability.
- o NOT ENOUGH PARKING - The proposed scheme effectively maintains the current level of parking provision in the city centre and is set at a level that will support the proposals without encouraging excessive use of the private car. This is in line with guidance set out in Planning Policy Wales (PPW) and the Swansea Central Area Regeneration Framework (SCARF). Policy is to reduce/discourage car trips into the centre and encourage increased use of the city's Park and Ride facilities. Parking data provided by the CCS shows that the existing 4 car parks directly affected by the scheme currently combined operate with significant spare capacity during the week and at weekends. A large proportion of this spare capacity is in the St David's car park which currently provides a poor parking and unattractive parking facility.
- o MORE TREES AND GREENERY- The site is currently of very limited biodiversity value, comprising highly artificial and manmade habitats; as such, the proposed redevelopment provides the opportunity to include a range of habitat enhancement measures, which will deliver local biodiversity gains. These are outlined within the Preliminary Ecological Appraisal for the site and have been informed by the landscape proposals. The Sustainability Statement and BREEAM Strategy have accounted for the inclusion of new trees on site and significant ecological enhancement. The planting will be selected to be sensitive to the local natural environment.
- o ST DAVID'S CHURCH - The church hall is proposed to be located in a new building in approximately the same location as it is now. The size and layout of the hall will be based on the requirements of the church and a temporary hall will be provided near the Church during demolition and construction periods. The proposals will maintain access to the church for parking, accessibility and drop-off.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o OVERLOOKING, DAYLIGHT, NOISE AND ANTI-SOCIAL BEHAVIOUR – There will not be any hotel rooms below 5 meters above the podium level, ensuring that overlooking is minimised. Soft landscaping between the LC and the hotel will ensure that the customers do not feel unduly overlooked.

The daylight and sunlight assessment has been based on the maximum parameters so provides a worst-case assessment for the purposes of the outline planning application. Further daylight and sunlight assessment studies will be carried out at reserved matters stage to ensure the best location for the hotel, taking into account the LC's concerns. It is now proposed that the current pathway by the wall will be moved inwards, away from the wall, thus ensuring that the public can't get very close to the wall and look over it. Small areas of the wall will be accessible in order to enjoy the quality of this heritage asset, but they will be chosen strategically and will be kept at a minimum to discourage many people gathering. CCTV cameras and adequate lighting will discourage anti-social behaviour. In addition, we have agreed to plant evergreen hedging to help protect the residents of Victoria Quay from overlooking.

Servicing for the arena will be under the proposed podium. This, combined with the presence of the GWR revetment wall, will ensure that vehicle activity and associated noise is contained.

The existing LC car park operates between 7am to 11pm. The proposed car park will need to be 24-hour operation to support the hotel and arena development. However, during night-time hours parking and servicing activity will be limited.

Design Commission for Wales

Design Review 19 January, 2017

The Design Commission welcomed the return of this scheme to design review and the opportunity to comment on the updated proposals. It was clear that a considerable amount of work had been undertaken since the previous review providing more clarity and certainty regarding various aspects of the proposals and addressing some of the concerns raised in the previous design review. The proposals show significant ambition for this site. Some elements regarding future uses and occupiers are still unknown so the need for flexibility in the proposals was acknowledged. This report should be read in conjunction with the report from the previous review. It will not repeat the points raised previously, rather it focuses on the main points that emerged from this review, which should be considered in the development of the outline planning application stage.

Key action points

- o Refine the vision so that the function, nature and feel of the development is encapsulated within a succinct paragraph and/or diagram. The proposed development will have a significant impact on the identity of Swansea and further clarity is needed as to what will make it distinctive beyond the material selection. The vision should also reflect the desired quality which is of fundamental importance for this part of the city centre. To achieve the desired quality and identity within a realistic budget, it may be necessary to identify the locations/elevations/corners where investment should be focused, and secondary or tertiary elevations where a simpler, more cost effective approach may be appropriate. Overall the appearance of the buildings and the public realm must work in harmony to establish a unified and coherent identity.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o Develop the concept, ideas and programme behind the public realm strategy in further detail alongside the urban design framework and design code for the buildings. The proposed 'green artery' is currently unconvincing and should either be strengthened or an alternative strategy justified. This may include consideration of a primary route that is more urban with clear sight lines, and a secondary route that is greener and more meandering. There is the potential for over-complication if too many concepts are incorporated, so refinement of the ideas may be required.
- o Provide further details and reduce uncertainty regarding the north-south connection and the issues around access between different levels. There must be no doubt that movement between key locations is accessible to all and the number of barriers to movement are minimised. This could be presented as a series of diagrams.
- o Further development of the phasing plans to test different scenarios based on which elements of the scheme may come first and what temporary measures may be needed to achieve the overall vision. This is particularly relevant if the arena is developed during the initial phases as the levels and links across Oystermouth Road will need to be in place. Quick wins and temporary uses would help to maintain momentum and start to change perceptions of the area.
- o Much more detail is required on the sustainability and energy strategies for the overall development. This aspiration has been embodied in the City Centre Strategic Framework, but needs to be articulated in a more convincing and ambitious manner. This has a long term impact for the management and maintenance of the development and must be considered at this stage so that it be fully integrated into the proposals.

Additional points for consideration

- o The document would benefit from further reference to the City Centre Strategic Framework to provide the context for the development and show how the aims of the framework are being satisfied or enhanced.
- o Concerns regarding the impact of the proposed bridge on the quality of the environment of Oystermouth Road remain, but it is accepted that this approach will be pursued. The management and maintenance implications of this dominant piece of public realm infrastructure including all of the steps, hard and soft landscaping need to be understood and factored into future cost plans to ensure that the quality of the public realm can be maintained.
- o Natural surveillance of the bridge should be a key consideration as proposals are developed for the bridge itself and the uses on either side. A plan showing activity at different times of the day may help to determine whether there will be sufficient surveillance and activity on the bridge to ensure that it feels like a safe environment.
- o Maintaining public engagement through the process will be important and how feedback is collected and used should be considered. It is positive to see the previous consultation interpreted and illustrated but future feedback may be more qualitative rather than quantitative and creative approaches may be required to capture this input. The initial steps regarding engagement are encouraging and the direction of travel is supported.

Conclusion to further review

This was the last opportunity to review the scheme before the submission of an outline planning application which is due in March. We would welcome the opportunity to review elements of the development as they come forward at the reserved matters stage.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Statutory Planning Application Consultation

The application was advertised on site and in the local press. 3 residential LETTERS OF OBJECTION have been received making the following points:

1. The proposed hotel should be positioned as far from the residential apartments (Anchor Court, Squire Court, York Court etc.) as is possible on the scheme.
2. That appropriate measures are included in the design/construction of the development - in particular, the hotel - to ensure that the privacy of the existing Marina residents is maintained.
3. That measures are put in place to minimise any disturbance to the residents of the Marina both in the construction phase and ongoing operation of the development buildings.
4. That the 'walkway' originally included in the design to run along the top of the existing wall between the Marina and the car park be completely removed from the design as I see this as a source of major problems both with noise and nuisance issues to the residents of the Marina.
5. Similarly to remove the proposed 'viewing area' - situated at high level again on the wall between York Court and Squire Court as this will inevitably also become a focal point for problems.
6. As a resident living in Victoria Quay I have serious concerns regarding development zone 4, in particular DZ4c. In the planning application it states that it will be "up to 13 storey hotel/residential building (ClassC1/C3)". During the consultation process with the public it was never mentioned that DZ4c would be ever be intended as C3 use (dwelling houses), we were told that it would be a 3* or above hotel.
7. My main concern is that the hotel/block of flats will be built on land opposite my bedroom window, this will raise a number of issues, namely a complete and utter lack of privacy, a huge increase in noise and a substantial decrease of daylight but big increase of artificial light during the evening/night from the outside lighting of the hotel and indoor area.
8. There is also a planned walkway along the revetment wall, we currently have problems with anti-social behaviour and I only see this problem escalating, I also understand that there are plans to have a viewing point along the wall between York Court and Squire Court, again this will be a complete intrusion of privacy for all the residents of York and Squire Court as it looks directly into the bedroom windows of both blocks.
9. Object to this planning application on the ground that I feel very little consideration has been given to the residents of Victoria Quay in regards to the impact of both the hotel/block of flats and the indoor arena being built within such close proximity to residential apartments. The whole of development zone 4 will impact massively on the day to day life of the residents living along Victoria Quay.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

10. I am the owner of a flat in Excelsior. The proposed development of St Davids car park is excessively obtrusive, with much of it being far higher than the existing car park. I believe the proposed building is up to three times as high as the top of the car park. When this flat was purchased there were no plans to demolish the car park and the flat and many others enjoy a clear distant view across towards Mumbles.
11. The height of this new block will create a dramatic visual impact on the whole area around it and there is no identified need for such a high building. It will create a densely developed feel to the whole immediate area and is entirely inappropriate in view of the low rise buildings around it such as the LC2 leisure centre. There could even be views into the leisure centre as well as into adjacent flats which would cause real privacy issues.
12. A low rise development would be acceptable although there is a lack of any evidence of demand for such office space in view of the amount of empty office property in Swansea.
13. This proposed development will blight the whole areas for many years to come during the planning and development phase. In turn this will have a detrimental affect on residents in Excelsior which will also make it very difficult for them to move out by selling their properties. Already values are falling in anticipation of this excessive development.

In addition, the following objections have been received from Tesco, Travelodge, LC & Market Traders Association.

Tesco Objection

ECS Transport Ltd have been commissioned by Tesco Stores to monitor the impact of the application with respect to transportation at the Tesco store and the Wellington Street access.

Tesco are supportive of the principle of developing the wider area which will benefit the wider city centre. However, there are reservations in respect of the calculations of the parking provisions in the TA and Tesco may be required to review the parking controls within the car park.

The primary concern is the proposed alterations to Wellington Street and the implications for customer traffic. Tesco customers currently have priority when exiting the traffic signal junction. The proposed alterations to Wellington Street will require Tesco customers to give way to other traffic movements, which is illogical as Tesco are the greatest traffic generator, and will lead to road safety issues.

The layout is likely to be confusing to drivers as it is contrived and does not best serve the various road users. The introduction of varied priorities will impact on the capacity of the junction, and has not been modelled in the TA. Tesco traffic will be seriously disadvantaged when leaving the store and will lead to a loss of trade.

The Wellington Street / West Way junction is already operating over capacity without considering the likely implications of the alterations.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Travelodge Objection

Travelodge occupy the existing building (known as the Excelsior Building) on Princess Way in Swansea. Our client operates the building as a hotel which will be immediately adjacent to the blocks identified as DZ2a and DZ2d on submitted plan reference 145 'Parameter Plan 04 Building Land Uses'. These blocks are currently identified for a mix of shops (Use Class A1), Financial and Professional services (Use Class A2), Restaurants and Cafes (including Hot Food Takeaways) (Use Class A3), residential dwellings (Use Class C3) and Assembly and Leisure Uses (Use Classes D1 and D2).

It is noted that this is an outline application, with all matters reserved, and that the current proposals do not demonstrate the detailed layout or design of the redevelopment. However, at this stage our client wishes to record their concern regarding the potential impact of the proposals on their business operations specifically with reference to the need for a further hotel, and also potential impact on the amenity of Travelodge's guests. Comments are set out below under specific headings.

Proposed Uses and Need for a Hotel

In principle there is no objection to the provision of town centre uses in the town centre location within which the Application Site is situated. Indeed, such uses are beneficial to Travelodge's business in terms of attracting visitors to Swansea resulting in additional business.

It is acknowledged that Policy EC15 states that proposals within the City Centre that support the 'urban tourism resource' by improving, inter alia, the quality and range of accommodation on offer will be supported, and Planning Policy Wales (PPW) states that there is no requirement to demonstrate 'need' for commercial uses within defined centres. However, local planning authorities, as set out at para 10.4.1 of PPW, are required to take into account "impacts on existing centres", including (para 10.4.2) cumulative effects.

Travelodge are concerned that an additional hotel facility of the size proposed (up to 11,300 sqm) could adversely impact on their existing accommodation offer and the need for a hotel of such size has not been justified within the outline planning application submission. The application has also not considered potential impacts on the existing centre and existing businesses and uses, and makes no reference to potential cumulative impacts as a result of the type of uses proposed. It is therefore requested that further information is requested from the Applicant on this matter prior to the determination of the application. Travelodge would like to reserve the right to comment further on this matter following the submission of additional information.

Noise

Criterion xiii. of UDP Policy EV2 requires that new development must have full regard to the existing adjacent developments, as well as the creation of any environmental pollution to the detriment of neighbouring occupiers in terms of light, air and noise.

A Noise and Vibration Assessment has been prepared and submitted as part of the application, which considers the existing noise climate at the redevelopment site to determine its suitability for the proposed uses. The assessment focuses on the future inhabitants of the scheme and has failed to examine whether the proposed development would preserve acceptable noise conditions for neighbouring occupiers.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The potential adverse impact of noise disturbance both during the construction period (particularly early in the morning, Bank Holidays and weekends), and the longer term disturbance associated with the A3, D1 and D2 uses proposed immediately adjacent to our client's hotel requires careful and informed consideration and it is considered that additional information in this regard should be requested from the applicant.

Loss of sunlight/daylight

The proximity of the northern side elevation of our client's hotel to the block marked DZ2a on plan reference 145, has the potential to cause issues relating to loss of sunlight/daylight for hotel guests staying in rooms on this side of the hotel, and other associated amenity impacts such as overlooking and loss of privacy depending on its height and proximity to the existing hotel.

The planning application is accompanied by a Daylight and Sunlight Assessment. The Assessment identifies low Vertical Sky Component levels due to the proximity of proposed Blocks DZ2a and DZ2d to the Excelsior Building. Again, as with comments made in respect of noise, this assessment concentrates on the impacts and mitigation measures for the future occupiers of the proposed new buildings rather than the users of existing neighbouring buildings, such as our client's hotel guests. 3 Evidently, the potential for loss of sunlight/daylight upon the neighbouring hotel guests is dependent on the height, scale and layout of the new development, which will be determined at the Reserved Matters stage. The design of Block DZ2a will need to be carefully and sensitively considered with these amenity issues in mind, to ensure compliance with UDP Policy EV2 referred to above.

Evidently, the potential for loss of sunlight/daylight upon the neighbouring hotel guests is dependent on the height, scale and layout of the new development, which will be determined at the Reserved Matters stage. The design of Block DZ2a will need to be carefully and sensitively considered with these amenity issues in mind, to ensure compliance with UDP Policy EV2 referred to above.

Chairman of the Market Traders Association - objection on behalf of the Swansea Market traders.

Whilst I accept there was one previous consultation of which I am aware, at no stage were we informed that the existing entrance which directly links the Market with the Quadrant Centre was under threat. The Market is the heart of the city and a major draw to tourism. The Council term it as 'the jewel in the Crown' and yet we potentially find ourselves isolated from the main shopping area and destroying a 44 year symbiotic relationship that has existed between the two. The rents at the entrances are the highest in the Market because they benefit from the entry footfall. As I stated, this potential severance is of serious concern to the 100+ sole local traders who make a living from this location. In our view the removal of this entrance would be of major detrimental effect to the Market and, whilst they may not appreciate it at this stage, the Quadrant itself.

LC Leisure - objection. There is a concern as the hotel will reduce natural day light to the waterpark at the LC. This will be detrimental to the customer experience. In addition customers will be concerned and perceive that they are being "overlooked" by the hotel while they are using the LC waterpark and are in their swimming costumes. Both of the above factors could have a negative impact on the customer experience at the LC and therefore negatively impact the LC as a tourist attraction and as a business.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Glamorgan Gwent Archaeological Trust - No comments.

CADW - Our statutory 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, registered historic parks and gardens, registered historic landscapes where an Environmental Impact Assessment is required and development likely to have an impact on the outstanding universal value of a World Heritage Site. 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 any issues concerned with listed buildings and conservation areas. 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 and conserve parks and gardens and their settings included in the register of historic parks and gardens in Wales.

The application area is located some 115m southwest of scheduled monument GM012 Swansea Castle and 175m southwest of scheduled monument GM441 Original Swansea Castle. However all views towards the development from GM441 are blocked by the extant Castle Buildings. The development will not be seen from ground level of GM012 but will be visible from the wall walk above the hall block and the top of the southern garderobe tower. The application includes a heritage impact assessment which includes information on the setting of GM012 and the probable impact of the development on it. This includes a photomontage showing an indicative view of the proposed development from the top of the southern garderobe tower. This is one of the identified significant views from the castle as it allowed shipping approaching the bay from the west to be observed. From the photomontage we can conclude that the proposed development will alter this view by adding a large solid flat topped structure to it but not obstructing it. In our opinion this will have a very slight but not significant adverse impact on the setting of scheduled monument GM012.

Council's Drainage Engineer -

We have reviewed the submitted Drainage Statement dated 23 March 2017 by Curtins in conjunction with subsequent meeting's, letter dated 16 May 2017 and drawing 060107 CUR 00 ZZ DR X 20008 Rev P02 which has been developed utilising 50mm/hr rainfall to establish run-off/discharge rates and allows for betterment over existing and attenuation volumes for each development zone/phase, which is acceptable to the Authority and recommend that the following conditions are appended to any permissions given.

We would highlight though that DCWW will have the final say over the final discharge rates as a connection to their system will be required using the current approach and recommend they are consulted forthwith.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Dwr Cymru Welsh Water -

Initial Response - 24 April, 2017

In respect of the aforementioned, we can confirm that Dwr Cymru Welsh Water were consulted at pre-application stage under Schedule 1C (Article 2D) and by response (Ref: PPA0001868) it was advised, at the time of the consultation, that we were not able to support the application in its current format.

Parts of the re-development site would be situated in close proximity to a 1650mm public combined sewer where it will result in damage to the public infrastructure and /or our ability maintain it. As such there will be undue risk to the development, the health and safety of its occupants, the health and safety of the operatives responsible to effect repairs as well as undue risk of pollution and detriment to the environment. We have been liaising with the applicants regarding their proposals and upon their request we have carried out a sewer location survey to determine the exact location and depth of the 1650mm public combined sewer. This will enable the applicant to provide further, more accurate plans, detailing what measures will be used to protect the strategic asset. We will continue to work with the applicant until an appropriate solution can be found.

Accordingly, having regard to the above, we would like to provide a **{\b HOLDING RESPONSE}** on this application until such time as the aforementioned information requested has been provided to fully clarify the scope of drainage works and required protection measures at this proposed development site. In relation foul water drainage arrangements, in principle the foul flows can be accommodated within the public combined sewerage system located in the vicinity of the proposed re-development.

Further Response - 22 May, 2017

Thanks for the email and I appreciate the effort of updating the drainage strategy which brings together the various strands of information recently presented.

As discussed we are content to support in principle subject to full details of a scheme to protect the trunk sewer to be submitted via planning condition prior to the commencement of development. It is likely a bespoke Legal Agreement between us and your client will be necessary in order to secure these measures including any arrangements for mitigation in the event of us requiring access to the sewer in the future for maintenance or operational issues.

In regard to the drainage of the site, notwithstanding the limited site investigations to date we will also seek to condition the submission of a drainage strategy, which shall ensure all sustainable measures of SW disposal are explored in advance of a communication to the public sewer.

I trust this is positive for you and your client and therefore I recommend the revised drainage strategy is formally submitted to the LPA, so that we can respond to consultation & provide appropriate conditions.

Natural Resources Wales - We recommend that you should only grant planning permission if you attach the following conditions. These conditions would address significant concerns that we have identified and we would not object provided you attach them to the planning permission.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

We have considered the applicants response to our pre application advice in the pre application consultation report and offer the following comments:

Land Contamination

As stated in our pre-application response, we agree with the applicant that intrusive ground investigation work are required in order to establish the risk of previous land contamination on this development. Therefore we would request that conditions are included

Flood Risk

We have reviewed the Flood consequences Assessment (FCA) provided in support of this application and found to give a reasonable estimation of flood risk to the development (notwithstanding the uncertainties associated with Flood Risk analysis). The FCA highlights that there will be a significant flood risk to the Swansea Central site within the current century as a result of sea level rise due to climate change. Therefore the development of the site would not be compliant with TAN15.

The FCA suggests that development of the site could be made compliant with TAN 15 if suitable flood mitigation options are provided such as construction of new Flood Defences.

It is noted that the FCA indicates that the City and County of Swansea Council has made a formal commitment to develop an acceptable long term proposal for a Strategic Flood Risk Management Strategy through its Cabinet paper "The Management of Future Risks of Flooding from the Effects of Climate Change, 20th October 2016". We recommend a condition is included to ensure that this commitment will be upheld.

Pollution prevention

Would like to see a robust CEMP which details ways of working and pollution prevention measures to ensure no detriment to the Tawe which is failing under WFD during construction and lifetime of development. We recommend a condition is included for the provision of a CEMP prior to construction.

Protected Species

We note from the Ecological Appraisal report that the development area was subject to bat surveys comprising external inspections and assessments of the buildings and trees on site. We advise that you seek the advice of your in house ecologist regarding these surveys. Providing that your ecologist is happy with the nature of the survey information submitted we have no objection to the proposals / no further comment.

Our comments above only relate specifically to matters that are included on our checklist Natural Resources Wales and Planning Consultations (March 2015) which is published on our website at this link (<https://naturalresources.wales/planning-and-velopment/planning-and-development/?lang=en>). We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests, including environmental interests of local importance.

Designing out Crime Officer - Detailed recommendations have been provided by South Wales Police's Designing Out Crime Officer and Counter Terrorism Security Advisor.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Neath Port Talbot Borough Council - While the Authority does not object in principle to the proposal, there are concerns with respect to the increased traffic upon Fabian Way. In terms of planning policy, residential and visual amenity the proposal is not considered to have a significant impact upon Neath Port Talbot.

Head of Environmental Management (Pollution Control) - agrees in principle with the findings of the Noise and Vibration Assessment and recommends a number of planning conditions for the following noise sources: -

Arena Noise:

Given the proposed C1 and C3 use (DZ4c) to the immediate east of the proposed arena and the existing residential uses to the immediate south (Anchor Court/ Squires Court for example) then a condition in-line with the comments put forward in the report would be suitable:

- o "MNL (LAeq, 15min) created by events inside the development and measured at the façade of any noise sensitive receptor with windows to habitable rooms, shall not exceed a level 10dB below the background sound level (LA90, 15min)" Also, "MNL (Leq in the 63Hz and 125Hz octave bands shall not exceed a level 3dB below the background sound level (LA90,15min) in that octave band"

I would also be looking to ensure that live performances are finished by 22:30 as with other events held in the Local Authority.

Plant Noise Criteria:

- o Unless otherwise agreed in writing, 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 cumulative rating level (dBLArTr), that does not exceed the representative night time background sound pressure level (LA90,15min) at the nearest noise sensitive dwelling; in accordance with BS 4142:2014. Methods for rating and assessing industrial and commercial sound.

Given that residential premises on Victoria Quay have habitable rooms at heights in-line and above the current embankment, there is the potential for disturbance to be caused by plant noise. This should be considered during the design phase and mitigating measures put forward.

Delivery Yard Noise - TESCO:

Given the outcome of the BS 4142:2014 assessment carried out, the following condition should be imposed:

- o Unless otherwise agreed in writing, a scheme shall be submitted to and approved in writing by the Local Planning Authority to ensure that all habitable rooms, exposed to noise from the delivery yard, where the rating level (dBLAr, Tr) exceeds the background LA90, t shall have a façade designed to enable the mitigation of the indication of adverse impact as identified by BS 4142:2014. Methods for rating and assessing industrial and commercial sound.

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

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Internal Ambient Noise Levels:

- o Unless otherwise agreed in writing, 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 level of attenuation and/or mechanical ventilation required (if any) can be discussed/agreed upon the outcome of the detailed assessment recommended within section 6.3.8 of the Noise and Vibration Assessment.

Mixed use activity and Noise:

- o Unless otherwise agreed in writing, 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.

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

Informatives should be imposed in respect of construction noise, smoke, burning of materials, dust control and lighting.

Air Quality:

Satisfied with the contents of the Air Quality Report subject to the mitigation measures within the Report through a Construction Environmental Management Plan.

Land Contamination:

Satisfied with the Phase 1 Ground Conditions Assessment (Desk Study) Report subject to conditions.

Highway Observations

1. Introduction

The application is for outline consent only with all matters reserved. It was supported by a Transport Assessment written by Mayer Brown on behalf of the City and Council of Swansea, the scope of which was agreed with CCS Highways. The agents for the application are Savills.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

As an outline scheme, a number of maximum and minimum development parameters have been set. The Swansea Central scheme has been broken down into five distinct Development Zones (DZ) to differentiate key elements of the scheme:

They are spilt into two areas

- o 'North Site' - DZs 1, 2, 3, 5 (City Centre regeneration)
- o 'South Site' - DZ 4 (Arena and Hotel/Residential developments)

As part of the proposals, improved pedestrian connectivity will be achieved between the North and South site through the introduction of a new wide footbridge over Oystermouth Road linking the two sites and the city centre to the waterfront.

2. Car Parking

The existing car parks at St. Mary's (297 space surface car park) and St. David's (460 space MSCP) are being lost and there is a new Multi Storey Car Park proposed at the LC2 Car park site (currently 385 space surface car park, with the proposed arena above the facility). The Quadrant Court car park (517 space MSCP) is being retained.

In summary the loss of the parking spaces are being replaced elsewhere plus an increase to meet the new demand generated. A large scale parking study was undertaken which showed that the majority of the existing city centre car parks are underutilized. The results were as follows:

Car park Name	% occupation weekday	% occupation weekend
Quadrant Court	38	76
St Davids	18	54
St Marys	64	100
Oystermouth Road	58	100

In summary there are 988 spaces spare on a typical weekday and 353 spaces spare on a weekend.

Disabled parking bays will be provided at the scheme's proposed new parking areas in accordance with the minimum disabled parking standards set out in CCS's Parking Standards Supplementary Planning Guidance document (March 2012) which advises a minimum of 6%. The existing disabled car parking spaces around St David's will also be retained. Provision will be made at the proposed new car parks for the installation of electric vehicle charging points as required.

3. Junction Modelling

The junction modelling undertaken (using Transyt) shows no issues during the normal day to day movements. The hours tested were morning peak and afternoon peak on a week day and a lunchtime peak on a Saturday. The only case that showed a failure was with two events and a full shopping day on a Saturday. This can be controlled by conditioning an Event Specific Traffic Management plan such as it put in place for other special events in Swansea.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

In the main the highway infrastructure is to remain the same, the main changes relate to the alterations to the existing Albert Row (which is currently the access to the servicing area of Tesco's Marina as well as giving one access of two accesses to St Mary's Car Park) to a no-through road, and the widening of Wellington Street to allow two way flow to the Quadrant car park, and also to access the Tesco service yard. A revised junction layout would also be required at the junction of the customer access (Tesco's) with Wellington Street. This has been based on a design undertaken by CCS Highways. Concern has been raised from Tesco both regarding their accessing arrangements for the customers and also for the servicing at the rear. In my opinion the proposed changes will not have any detrimental impact on either of those elements.

As a result of the Swansea Central proposals, several improvements and amendments will be made to the local highway network. Details of these proposed junctions to be improved are outlined below:

- o Wellington Street/West Way junction
- o Albert Row/Oystermouth Road junction

4. Servicing/deliveries

Service vehicle routes will be provided to the proposed uses located to the north of Oystermouth Road. The main service route will be taken via Wellington Street, and access to the existing Boots service yard and Tesco service yard will be maintained along this route. To reduce the need for service vehicles to access the main north/south pedestrianised route to the north of Oystermouth Road, an additional service vehicle route to the uses proposed will be provided from Princess Way. The above servicing routes will also allow access by emergency vehicles. Plans illustrating the swept path of service vehicles accessing the proposed service areas described above have been submitted as part of the proposal. These drawings demonstrate that service vehicles can safely use the proposed road and service yard layouts.

The Arena and hotel will be serviced via a separate dedicated service access located on the westbound carriageway of Oystermouth Road to the east of the proposed junction. This access allows access to a service yard to the rear of the Arena and egress from the coach/taxi drop off point. This access will operate as a left in/left out arrangement and a servicing plan will be put in place setting out the City routes vehicles should use when exiting the site. The left in/left out arrangement will minimise impact to traffic on the main road, and service vehicles will be able to take advantage of gaps in traffic created by the proposed signal junction to the east to egress back onto Oystermouth Road. Appropriate 'Keep Clear' markings will be provided to allow service vehicles to exit if traffic is queuing back along Oystermouth Road.

5. Site accessibility/sustainability

Part of the Application also proposes a new footbridge linking to the LC2 but on a slightly changed alignment starting near Iceland at ground level and ending at first floor level of the arena complex. The bridge will be wider than previously and provide a more direct route.

As would be expected of a city centre location, the centre of Swansea is highly accessible by sustainable modes of transport. The proposals are therefore ideally placed to take advantage of this high level of accessibility to walking, cycling and public transport provision and promote the further use of sustainable travel. In addition to the proximity to the Quadrant bus station there are two park and ride sites in operation from 0700 - 1900hrs Mon-Sat:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o Fabian Way Park and Ride Site (550 spaces) - located off the A483, to the east of the city centre
- o Landore Park and Ride Site (550 space) - located off the A4067, to the north of the city centre.

Cycle parking provision within the Swansea Central scheme will be covered and secure, and meet or exceed CCS's minimum cycle parking standards as set out in the CCS Parking SPG. As part of the Swansea Central scheme, large covered and secure cycle storage facilities will be provided at the new proposed St David's and Arena car parks.

A construction method statement will be secured via condition to ensure that the works are carried out in a safe and efficient manner with no detriment to highway safety.

A cycle crossing needs to be maintained at grade across Oystermouth Road and as such the proposed crossing will need to be a toucan crossing to allow shared use. This can be secured by condition

6. Advance signage

The proposed Swansea Central scheme will result in changes to the existing city centre car parking arrangements. It is therefore proposed to install a UTMC compliant Variable Message Signage (VMS) system as part of the Swansea Central scheme, linked to the existing CCS common database. The VMS signage will consist of digital signs located at strategic locations on the approach into the city centre, displaying information regarding the number of free parking spaces at each of the car parks. This information will provide advance information to drivers on where there is currently parking capacity within the city centre, avoiding the need for drivers to circulate around the area looking for a free parking space or trying to enter a car park that has already reached capacity, greatly assisting the free flow of traffic.

7. Conclusions

With the mitigation measures proposed at the affected junctions, and car parking levels identified it is considered that the development can be satisfactorily accommodated without detriment to highway safety. Even considering the uplift in trips to Swansea City centre arising from the development it has been demonstrated that the impact can be managed.

8. Recommendations

I Recommend that no highway objections are raised to the proposal subject to:

1. No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- vi) measures to control the emission of dust and dirt during demolition and construction; and
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: To reduce the likelihood of obstruction of the highway, danger to road users, to conserve public health and local amenity, to ensure satisfactory standard of sustainable development and in order to ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.

2. Cycle parking to be provided in accordance with CCS Standards, details to be submitted to the LPA for approval.
3. An event specific management parking regime to be submitted to the LPA for approval prior to beneficial occupation of the arena.
4. In the event of any of the car parks being required to be cleared of vehicles and pedestrians in an emergency situation, an evacuation management plan should be provided to demonstrate that this can be accommodated within the proposed highway and footway network.
5. Given the proposed amendment to Wellington Street (making it two way) then the existing overspill bus parking spaces would be lost. Provision will need to be made for the relocation of these facilities elsewhere, in accordance with details to be submitted to and approved by the Highway Authority.
6. All Highway Works to be undertaken to Highway Authority Standards and Specification in accordance with details to be submitted for approval to the Highway Authority.
7. Any 'stopping up' of existing adopted highway required shall be undertaken via the Town and Country Planning Act.
8. The at grade crossing at the junction of Albert Row and Oystermouth Row shall be a 'toucan' type to allow for shared cycle/pedestrian use.

APPRAISAL

Introduction

This Outline Planning Application is submitted on behalf of the Council of the City and County of Swansea (CCCS) for the regeneration of land both on the North and South of Oystermouth Road, Swansea. The scheme is currently referred to as 'Swansea Central' and would represent a significant strategic development within Swansea City Centre.

The proposal responds to a unique opportunity to regenerate Swansea City Centre with a vibrant mixed-use development. The development has been a key strategic objective for the city for a number of years, and CCCS has gone to considerable efforts to date to prepare the ground by assembling and clearing areas of land that form part of the scheme. This application represents a major step forward in that process. The scheme is at the heart of the City Centre on brownfield land in a highly accessible location. This application is an exciting opportunity to deliver significant economic growth and to provide an important economic driver for the whole of the Swansea Bay City Region.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Application Site and Surroundings

The application site area covers a total area of 11.4 hectares; with the application site bisected by Oystermouth Road which runs east to west through the site. The northern area includes the Quadrant Shopping Centre and is bounded to the north by Swansea Market, to the east by Princess Way and to the west by Tesco's Supermarket. The southern area (to the south of Oystermouth Road), abuts the LC leisure centre to the east and to the south by the Maritime Quarter.

Running centrally through both regional and local planning policy, particularly the emerging Local Development Plan (LDP), is the recognition that Swansea is the hub of the Swansea Bay City Region but that the City Centre needs a regeneration strategy, both for CCCS and the wider region. The Swansea Central Area Strategic Framework, at page 44, states:

"The comprehensive redevelopment of the St David's /Quadrant Site within the Retail and Leisure Mixed Use Centres is the priority proposal for Swansea's Central Area. Development of the site must deliver a regionally dominant retail and leisure scheme, capable of transformational impact, supported by other complimentary uses and a quality public realm, and create a vibrant and attractive visitor destination".

Land North of Oystermouth Road

This part of the site comprises of an area of approximately 7.68 ha. The area surrounding the development site comprises a mix of commercial and residential development and uses. This part of the site is bounded by Princess Way to the east, the Travelodge hotel, and residential flats in the Excelsior building. Land to the north of the site predominantly comprises retail development associated with Oxford Street and Swansea Market. Tesco and Swansea Bus Station are located directly to the west of the site, whilst Oystermouth Road forms the southern boundary of the northern element of the site. In the northwest corner of the site is the Quadrant Shopping Centre, and includes the Quadrant Shopping Centre multi story car park which are both inside the red line boundary of the outline planning application.

The application site also includes the site of the former St. David's Shopping Centre, the majority of which in addition to Oldway House (a former eight storey office block), was demolished in 2013/14 following an initiative led by CCCS and the Welsh Government. The remaining buildings comprise retail development over two to three floors. Some of the units closest to St. Mary's Square are still occupied. It is now used as a temporary surface car park. The site also includes Llys Dewi Sant, a sheltered housing building adjacent to St David's Church. A three storey red brick building immediately south of St Mary's Church is included within the red line boundary. Anchored by Iceland, this building contains a number of independent retailers. The Travelodge hotel, immediately south of this building is outside of the red line boundary.

Land South of Oystermouth Road

This part of the site comprises an area of approximately 3.78 ha bordered to the north by Oystermouth Road, to the east by Swansea LC leisure centre, and to the south by the listed Great Western Railway Wall and Victoria Quay and South Dock beyond. The land parcel is currently used as a surface car park for the leisure centre which is accessed off Oystermouth Road, alongside associated planted and landscaped area along its fringes.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Heritage

The application site does not lie within a Conservation Area, however, there are a number listed buildings located within the boundary of the application site. The impact of the proposed development on these listed structures are considered in more detail in the Heritage Impact Assessment, and include:

- o Church of St Mary - Grade II Listed Church located at the north east of the application site. Originally Medieval, the Church was subsequently re-built between 1895 and 1899 and between 1954 and 1959.
- o St David's Priory Roman Catholic Church and Presbytery - Comprises of the Grade II Listed Church and the Grade II Listed Presbytery, the Church was constructed in 1847 and subsequently enlarged in 1864 to include the Presbytery. The Church is located north of the St David's multi-storey car park.
- o Pedestal and Statue of Sir H. Hussey Vivian - Located at the junction of St Mary's Square and Rutland Street. It is proposed to re-locate the statue as part of the overall development.
- o Former GWR Revetment Walls - These run along the north side of south dock, along the southern boundary of the site. The structure is Grade II Listed.
- o Former Swansea County Court and Offices - Grade II Listed building to the south of the Church of St Mary. The building is currently being converted to student accommodation.

Proposed Development

The planning application is submitted in outline, with all matters reserved. However, a series of parameter plans are submitted which set out the maximum and minimum quantum of development with regard to building forms and uses. Two illustrative schemes (Option 1 and Option 2) have also been designed to demonstrate how development could come forwards at the site within the prescribed parameters. These illustrative schemes are submitted for illustrative purposes only; it is the parameter plans which are submitted for approval and which will guide future reserved matters proposals for the site.

The proposals would involve the demolition of the remaining section of the St David's Shopping Centre, the St David's multi-storey car park, Llys Dewi Sant (which will be relocated on land on the former Vetch Field), the existing pedestrian footbridge over Oystermouth Road and potentially parts of the Quadrant Shopping Centre to allow the Wassail Square entrance to be remodelled. As indicated above the listed buildings of St Mary's Church and St David's Church will be retained.

As indicated above, the application site is comprised of two distinct parts, land south and land north of Oystermouth Road. The proposals for the redevelopment of the land north of Oystermouth Road include:

- o A development up to a maximum of 84,050 sqm (GIA) of new floorspace, to be made up of a combination of the following land uses (with the total amount of floorspace not to exceed 84,050 sqm):

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- i) up to 68,900 sqm of commercial (non-residential) floorspace, including up to 34,400 sqm of retail use (Use Classes A1, A2 and A3), up to 8,100 sqm of leisure use (Use Class D2), up to 400 sqm of non-residential institutional use (church hall) (Use Class D1) and up to 26,000 sqm of offices and / or non-residential education and training use (Use Class B1 / D1);
 - ii) up to 15,450 sqm (up to 208 units) of residential accommodation (Use Class C3); and
 - iii) up to 19,700 sqm of car park.
- o The construction of new buildings up to 7 storeys above ground floor.

The proposals for the redevelopment of land south of Oystermouth Road are for:

- o up to a maximum of 40,700 sqm (GIA) of new floorspace, to be made up of a combination of the following land uses (with the total amount of floorspace not to exceed 40,700 sqm):
 - i) 10,500 sqm of new arena;
 - ii) up to 11,300 sqm of hotel accommodation (Use Class C1) or residential accommodation (up to 130 units) (Use Class C3);
 - iii) up to 1,600 sqm of restaurant and café use (Use Class A3); and
 - iv) up to 17,300 sqm of car parking.
- o the construction of new buildings up to 13 storeys; and
- o a potential energy centre.

The proposals also involve the provision of new areas of associated new public open space and landscaping which would facilitate improved pedestrian links between the City Centre (northern area) and the Waterfront (southern area) with better accessibility between the two sites (north and south of Oystermouth Road) through the delivery of a new pedestrian footbridge.

The description of development reads:

"Outline planning application (with all matters reserved) for the refurbishment, alteration and / or demolition of all existing buildings / structures on the site (except St Mary's Church and St David's Church) and redevelopment of site with indicative access / layout and scale parameters on the north site of a maximum of 1 to 7 storeys and maximum new floorspace of 84,050 sqm comprising retail / commercial / office use (Classes A1/A2/A3/B1) residential (Class C3), non-residential institution (Class D1) and leisure (Class D2), multi storey car park and redevelopment of south site of a maximum of 40,700 sqm of floorspace comprising a new arena (Class D2), up to 13 storey hotel / residential building (Class C1/ C3), food and drink (Class A3), undercroft car park, potential energy centre. Across both sites, the provision of associated new public open space / public realm and landscaping, new pedestrian and vehicular access and servicing arrangements (including a pedestrian bridge link across Oystermouth Road), provision of new bus stops on Oystermouth Road, new pedestrian access through existing arches along Victoria Quay, relocation of Sir H Hussey Vivian statue, earthworks, and plant."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

EIA Screening

Prior to the submission of the planning application, an EIA Screening Opinion request was submitted to CCS under the provision of Regulation 5 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016. The issued Screening Opinion in Oct. 2016 concluded that no EIA was required to support the application proposals. Following amendments to the draft proposals during the pre-application process, a revised Screening Opinion request was submitted and the revised Screening Opinion was issued in January 2017 and also concluded that the final proposals do not comprise EIA development.

Design

Whilst the proposal is submitted for outline permission with all matters reserved, a number of key issues have been identified which will guide the overall development concept through the phased submission of the reserved matters applications. These issues are outlined within the Design and Access Statement and supported by the parameter plans, the Design Principles document and the Public Realm Strategy.

At this stage, the exact quantum of proposed uses has not been determined and the application therefore builds in a degree of flexibility to allow for scheme evolution dependant on market conditions and demand from operators. Additionally, it is worth noting that the scheme will be delivered through a number of phased developments and reserved matters applications.

The proposed development has been broken down into five distinct but interconnected development zones.

- o Development Zone 1 (DZ1) - Will comprise retail / restaurant / café uses at ground floor with residential above. This block occupies the north-west corner of the scheme fronting the market to the north and the Tesco site to the south. DZ1 sits in front of St Mary's Square and the eastern façade of the building will provide active frontages to activate this space and the central pedestrian route / public realm through the scheme (DZ5).
- o Development Zone 2 (DZ2) - Will comprise a range of uses including retail / restaurant / café / cinema / offices / education use, and potential residential accommodation. This includes the proposed church hall. DZ2 fronts the main public realm route (DZ5) and surrounds St David's Church. Careful design of the public realm around the church will enhance its setting.
- o Development Zone 3 (DZ3) - DZ3 is bound by Tesco to the west and DZ1 to the north. It will comprise a new multi-storey car park with retail / restaurant / café uses at ground floor level to provide animation, and office / education uses above.
- o Development Zone 4 (DZ4) - DZ4 is located to the south of Oystermouth Road and allows for the delivery of car parking, the arena, and a hotel / residential tower building (up to 13 storeys / 57m AOD). There is also provision for retail / restaurant / café uses and a potential energy centre.
- o Development Zone 5 (DZ5) - Comprises the central public realm route running north south through the scheme. DZ5 will also include restaurant / café uses surrounding St Mary's Church.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Access and Movement

The principal vehicular access to the site will be obtained from Oystermouth Road. The outline application is supported by a Transport Assessment, and provides a detailed description of the existing local highway network and assessment of the accessibility of the wider City Centre by sustainable (non) car modes of travel. The transportation and highways issues are discussed in more detail later in the appraisal, however, in summary the development proposals include:

- o several improvements and amendments to the local highway network, including amendments to the layout of Wellington Street, and a new junction layout at the Albert Row / Oystermouth Road junction (i.e. Tesco / Quadrant MSCP entrance;
- o servicing arrangements;
- o pedestrian improvements, including a new improved and updated bridge crossing over Oystermouth Road which will link directly to a new pedestrian route through the City Centre to the north creating a new high quality pedestrian link between the City Centre and the Waterfront. A new high quality signalised at-grade pedestrian crossing will also be incorporated at the reconfigured Albert Row / Oystermouth Road junction;
- o the existing St. Mary's temporary surface and St. David's MSCP car parks will be removed and a new pay-on-foot car park will be provided within DZ3 providing a maximum of 498 spaces and to be accessed from Oystermouth Road. The proposals also include a new provision for vehicles egressing from the Quadrant Court MSCP to exit via the West Way / Wellington junction to the west rather than from Oystermouth Road as they currently do;
- o a new undercroft car park is to be constructed at grade underneath the podium accommodating the arena in the location of the existing LC surface car park. This will provide a pay-on-foot car park with a capacity of 425 spaces, with flexibility to increase by a further 150 spaces (on upper tier) on major event days at the arena. This car park will continue to be accessed from Oystermouth Road;
- o long lay-by areas allowing coach drop off and pick up facilities along the westbound carriageway of Oystermouth Road;
- o large covered and secure cycle storage facilities at the new St. David's and arena car parks;
- o the uses proposed will all operate Travel Plans aimed at both staff and visitors to promote the use of sustainable travel and discouraging single-occupancy private car use; and
- o the implementation of Variable Message Signage (VMS) systems, linked to the existing CCCS database and located at strategic locations on the approach to the City Centre. This will provide advance information to drivers on where there is currently parking capacity within the City Centre.

Planning Application

The outline planning application has been supported with the following documents:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o Parameter Plans and Sections;
- o Illustrative Scheme Drawings;
- o Planning Statement;
- o Design and Access Statement;
- o Design Principles;
- o Transport Assessment;
- o Draft Framework Travel Plan;
- o Archaeological Desk-Based Assessment;
- o Air Quality Assessment;
- o Daylight and Sunlight Assessment;
- o Flood Consequences Assessment;
- o Drainage Statement;
- o Noise and Vibration Assessment;
- o Wind Microclimate Desk Study;
- o Preliminary Ecological Appraisal;
- o Arboricultural Impact Assessment;
- o Phase 1 Ground Conditions Assessment (Desk Study) Report;
- o Townscape & Visual Assessment;
- o Heritage Impact Assessment;
- o Planning Energy Assessment;
- o Sustainability Statement;
- o Economic Impact Assessment, and
- o Consultation Report.

Material Planning Considerations

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

- o Compliance with prevailing Development Plan policy and Supplementary Planning Guidance;
- o Socio-Economic Effects
- o Urban Design and Townscape / Visual impact;
- o Impact on residential amenity including noise impact;
- o Highways, traffic, car parking, access and pedestrian movements;
- o Impact on archaeology and cultural heritage;
- o Flood risk and Drainage;
- o Pollution and ground contamination;
- o Impact on Ecology;

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

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 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

National Planning Wales - PPW (Edition 9, November, 2016)

The Well-being of Future Generations (Wales) Act 2015 places a duty (including Welsh Ministers) that they must carry out sustainable development. The Planning (Wales) Act 2015 introduces a statutory purpose for the planning system in Wales for statutory bodies carrying out a planning function to exercise those functions in accordance with the principles of sustainable development as set out in the Well-being of Future Generations (Act) Wales 2015. Paragraph 4.2.2 states that the planning system provides for a presumption in favour of sustainable development to ensure that social, economic and environmental issues are balanced and integrated, at the same time, by the decision-taker in taking decisions on individual planning applications.

In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Paragraph 4.2.4 states that a plan-led approach is the most effective way to secure sustainable development through the planning system and states there is a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise.

Para 4.9.1 indicates the preference for the re-use of land of previously developed (or brownfield) land should, wherever possible, be used in preference to greenfield sites and that many previously developed sites in built-up areas may be considered suitable for development because their re-use will promote sustainability objectives.

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.

Swansea Unitary Development Plan

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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

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 (A1, A2 & A3), offices (B1), hotels and housing (C1 / C3), community and leisure uses (D1 / D2).

UDP Policy CC2 states that new retail development that maintains and enhances the vitality, attractiveness and viability of the City Centre as a regional shopping destination will be encouraged. Highest priority is placed on enhancing shopping facilities by means of the refurbishment and redevelopment of the City Centre retail core.

UDP Policy CC3 recognises that the St David's / Quadrant area is defined as the area of highest priority for redevelopment in the City Centre. A comprehensive retail led mixed use regeneration scheme be brought forward for this area in the short to medium term in order to deliver the necessary revitalisation of the retail core and to enhance the attraction of the City Centre as a regional shopping destination.

The amplification to this policy makes it clear that the St David's/Quadrant area has been identified as the key development opportunity to deliver the proposed refurbishment and enhancement of the retail core as a regional shopping destination. The regeneration of the St David's/ Quadrant area is crucial to reinforce the prime retail floorspace area within the City Centre and generate the critical mass necessary to achieve the aim of retail led regeneration at this location. The redevelopment of the area as part of a comprehensive retail led mixed use scheme provides an opportunity to provide new modern retail space and a high quality shopping area at the heart of the City Centre. It is further indicated that a detailed Development Brief for the St David's/Quadrant area be adopted as SPG in due course to reinforce UDP policies and provide more detailed guidance in relation to planning, urban design and development principles for the site. A comprehensive retail led mixed use redevelopment scheme in the St David's/Quadrant area will be required to incorporate the following key objectives:

- o Integration with the existing prime retail floorspace, including strong connections to Oxford Street and The Quadrant
- o Vibrant new shopping streets and the provision of new anchor stores that will enhance the quality of retail provision within the core area and attract further retail investment
- o An effective retail circuit that encourages the flow of pedestrians around the retail area
- o A viable and vibrant mixture of other appropriate complementary uses
- o Excellence and distinctiveness in urban design, landscape design and architecture
- o A high quality built edge along the Oystermouth Road frontage that promotes vibrancy and activity
- o Extending and improving the quality of pedestrian routes through the City Centre, the St David's/Quadrant area and its connections with the Waterfront, including the Paxton Street area
- o Landmark buildings and features located at key points
- o Enhanced public realm and the creation of new public spaces, including in the vicinity of St Mary's and St David's churches
- o Integration with the adjoining transport interchange
- o Appropriate levels of well positioned car parking

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Additionally, UDP Policy EC4 sets out the criteria against which all new relevant retail proposals will be assessed against the need for the development, including a sequential assessment, impact on attractiveness, vitality and viability of the City Centre, compatibility with the function, scale and character of the centre, accessibility and highway considerations. Within this context all new retail development should be directed towards the City Centre.

The principle of development on this City Centre is clearly 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 policy compliant.

An objection has been received from the Travelodge on the grounds that the need for the hotel component for the scheme has not assessed the cumulative effects on the existing centre. However, Planning Policy Wales advises that retail, commercial and leisure opportunities (including Class C1 Hotels) should in the first instance be located within established city / town centres which sustain and enhance the vibrancy, attractiveness and viability of these centres. The siting of the hotel within the city centre is therefore the sequentially preferable location. PPW (para. 10.4.1) advises that when determining a planning application for retail, commercial, leisure or other uses complementary to a retail and commercial centre, including redevelopment, local planning authorities should take into account the compatibility with the development plan; the sequential approach to site selection; the impact on existing centres; and transport sustainability. Having regard to the policy support within UDP Policies CC1 & CC3 it is not considered to be necessary to consider the impact on the existing city centre in terms of the quantitative and qualitative need for the development.

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.

The application proposes a maximum of 338 new residential units (but this includes the option of 130 units within the tower on the southern site in lieu of the hotel with 208 on northern site). The applicant (as the Council) has confirmed that a minimum of 30% of the residential element of the scheme provided on site would be designated for affordable housing. Welsh Government Circular on the Use of Planning Conditions for Development Management (Oct, 2014 - WGC 016 / 2014) advises that Section 106 Planning Obligations are the formal means of achieving affordable housing. However, in this instance as the Council (as the developer) cannot enter into a Section 106 Planning Obligation with itself as the Local Planning Authority, it is proposed to use the model condition provided within the Circular. The exact nature of the affordable housing in terms of type, tenure, and size can then be dealt with through the appropriately worded planning condition attached to any planning permission.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

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 the updated Development Plan.

The SCARF identifies a Vision for the Swansea Central Area along four broad conceptual areas and are:

- o Creating a Working Living and Learning Area
- o Delivering a Retail and Leisure Led Mixed Use Centre
- o Connecting the Centre to the Waterfront
- o Developing a City Green Artery

These Area Visions broadly define new roles of the respective parts of Swansea Central Area, and consolidate the 'Retail Leisure Led Mixed Use Centre' as the focus of shopper and visitor activity.

The application site is situated within the St David's / Quadrant area where the key vision theme for this area is Retail and Leisure Led Mixed Use Centre. The area comprises the land to the north of Oystermouth Road and to the south by the Maritime Quarter. The comprehensive development of the St David's / Quadrant site is the priority for Swansea's Central Area. The scheme should be of regional significance and have the potential to be a catalyst for the wider regeneration of the Central Area and is the only location in the Central Area that can deliver a retail leisure led scheme of quality, scale and critical mass appropriate for a Regional centre. The site is identified as the priority for development and the only location in the Central Area that can deliver a Retail leisure led scheme of quality, scale and critical mass appropriate for a Regional centre. Development of this site maximises the overall regeneration benefits to Swansea and the central area, which include:

- o The area lies at the heart of the Central area, in a strategically important location in the Retail Leisure area between Wind Street and the Quadrant, and close to the City's Waterfront;
- o An extension of the Quadrant Centre would provide a focussed and legible shopping destination;
- o It provides an opportunity to extend and strengthen the retail circuit in the retail core
- o The site is highly accessible and has strong sustainability benefits in view of its close proximity to Swansea Bus station;
- o The site presents an opportunity to create improved pedestrian and cycle linkages across Oystermouth Road to the waterfront, giving the City a unique profile and destination interest.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The SCARF also sets out the following key regeneration proposals for the area:

- o Retail and Leisure Led Mixed uses - the site will be developed to create a comprehensive retail and leisure-led mixed use place of a quality, scale and critical mass appropriate for a Regional Centre properly integrating, complementing and not competing with its existing Centre.
- o Active Streets and Spaces - the development will create new streets and spaces with active edges with an urban scale
- o Linkages - north south pedestrian and cycle linkages will be strengthened with improved / new crossing over Oystermouth Road to access the waterfront.
- o Gateway Location - create a new high quality gateway to the centre.
- o Car Parking - provision of high quality car parking for the redevelopment and wider city centre.
- o New public realm and public open spaces - will be innovative and incorporating significant areas of greening
- o Relocation requirements - the relocation of the Llys Dewi Sant residential flats complex is a prerequisite of the redevelopment of the St Davids site. The current separate church hall facility serving St Davids prior will also need to be accommodated within any redevelopment proposals.

The SCARF also sets out the following key development principles and Design objectives:

- o High Quality design- To provide an overall high quality design that contributes to the character of the Centre and the creation of a flagship destination which is properly integrated into its physical environment. Buildings should be high quality and contemporary, define vibrant new streets, gateways and spaces within the area, be innovative in design and an attractive 'shop window' for the Centre along Oystermouth Road
- o Place Making- Adopting a place-making approach to develop a comprehensive vibrant viable retail and leisure mixed use place with a critical mass of development which offers at least one anchor store and associated high street retailing to create a step change in Swansea's retail offer.
- o Urban grain and scale - Create urban blocks with active frontages and an urban grain and scale which provides enclosure and setting for the two churches in particular, and continuity of streets and frontage elsewhere. Seek to rediscover the urban grain of the area, through for example retaining the historic alignment of Rutland Street.
- o Building Heights- Buildings should create a comfortable human scale to pedestrian streets and spaces. Buildings heights of up to six storeys will be generally appropriate along Oystermouth Road to provide a comfortable sense of enclosure relative to Boulevard width.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o Listed Buildings- St Mary's Church and St David's Church will be treated as focal points. A new space should be created around or adjacent to St David's Church that respects the scale and setting of this listed building.
- o Cohesion and Urban scale-There should be a sense of cohesion and urban scale in the buildings. Elevations should generally be expressed as a series of individual joined buildings with a human scale to create visually rich and interesting townscape. Anchor store frontages augmented by the presence of smaller unit frontages and alternative uses above ground floor;
- o Ground Floors- Ground floor areas should have a positive relationship with the public realm. New buildings which address the street with active frontage at the ground floor and above, adopting a layout and scale that provide a good sense of continuity, enclosure and overlooking of the street, achieving high quality urban form;
- o Active Frontages- Dead frontages with entrances and/ or doors will not be allowed along the main streets and spaces. The visual impact of servicing requirements must be minimised. Work with existing landowners to ensure that all buildings around St Mary's Square have active frontage and a finer grain of uses with multiple entrances at street level.
- o Upper Floors- Upper floors should offer interest and natural surveillance through the accommodation of active uses such as residential on upper floors;
- o Green space- Substantially increase green space through innovative design, pocket parks within the streetscape and 'green architecture' with appropriate maintenance resources allocated;
- o Permeability and connections- The development must ensure new streets are permeability offering a choice of pedestrian routes, linkages to the existing streets and retail circuit. This should include an new reinforce north-south street that links across Oystermouth Road to the Marina (former South Dock) and former elevated rail lines as part of the Green Artery vision theme.
- o Llys Dewi Sant/Church Hall- A sheltered residential complex Llys Dewi Sant currently sited within the St Davids redevelopment area will be relocated to another site, and a new hall will need to be provided as part of the redevelopment proposals.
- o Materials- Promote the use of high quality and sustainable materials and workmanship and design which requires less maintenance without sacrificing quality;
- o Legibility and hierarchy-A landmark building and features at key points and in public spaces to provide legibility and hierarchy. These could also provide a marker to the Centre and the route to the waterfront on the Oystermouth Road frontage;
- o Multi Storey Car Park- The St. David's MSCP should be demolished to accommodate positive development that activates the space around St David's Church and which presents a positive active elevation to Oystermouth Road.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o New car parks- The parking provision should either be re-provided within the new St Davids development area or relocated to a new multi-storey car park on the LC car park site. Development on The St Davids/Quadrant and LC car park site should contribute to high quality built edge and activity along Oystermouth Road and other key public elevations.
- o Retail circuit- Strengthen the retail circuit and connections to Swansea Market through enhancing existing entrances. This could include straightening the eastern Quadrant entrance and creation of a new space that brings Swansea Market out into St Mary's Square. New development which should support connectivity and generates legible linkages with the existing retail area and with the seafront.
- o Flexible design solutions- Create flexible design solutions which successfully integrate complementary uses and occupations including residential and community uses, and enable the site and buildings to be adapted to changing requirements of occupiers.
- o Residential uses- Include residential component to accommodate all market sectors, ages and levels of mobility to create a City Centre residential community, provide high levels of natural surveillance, vibrancy and interest, and create a distinctive place both during the day and evening.
- o District Heating - CCS is committed to tackling issues around poverty, climate change and energy efficiency and proposals for a district heating network could address these issues. The development will be required to connect/allow space provision to the proposed district heating network or may choose to develop a district heating network as part of their development proposals.

The SCARF also sets out the following key Accessibility and Movement principles:

- o Attractive Streets and spaces-Creating attractive streets and spaces for pedestrians will be paramount, to make the area more accessible legible and enjoyable. Redevelopment must allow for improved integration of the City, extending the retail circuit and including a significant new link across Oystermouth Road to the waterfront;
- o Accessible streets- All new and improved pedestrian routes should be fully accessible and open 24 hours. These should link to Oxford Street, Castle Square, Princess Way and Oystermouth Road the Market, the Quadrant and existing Tesco store.
- o Service arrangements- The redevelopment of the St David's site will provide the opportunity to reduce and consolidate service arrangements improving the quality of the built environment and safety for pedestrians. Albert Row could potentially be retained for servicing only and the aim should be to minimise the visual impact of service yards and maximise space for ground floor active frontages.

The SCARF also sets out the proposals for Crossing Oystermouth Road to enhance pedestrian and cycle movements between the City Centre and Waterfront, and considers 2 principle Options:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Oystermouth Road Crossing Option 1: This could be a high quality at-grade crossing, similar to the new, at-grade wide and 'straight across' two stage' Toucan crossings constructed as part the Boulevard scheme at the bottom of Princess Way and Wind St. Previous studies undertaken on behalf of the Council in relation to redevelopment of St David's have demonstrated that it is possible to provide an additional, wide, at-grade pedestrian crossing near the junction between Albert Row and the existing entrance to the LC car park. These studies have also shown that as part of an at grade crossing in this location that Albert Row would need to be shut to traffic in order to balance the needs for all users of Oystermouth Road and traffic existing the Quadrant Multi-storey car park would need to be re-routed to West Way.

Oystermouth Road Crossing Option 2: This could be a high quality legible and accessible landmark bridge/ elevated pedestrian street over Oystermouth Road to replace the existing bridge, which would provide views to the waterfront, and surrounding area, and signal the principal pedestrian route to the waterfront from the Retail Leisure Led Mixed Use Centre. This option would need a considerable space to either side for accessible ramps and steps. Albert Row would still need to be shut to traffic in order to balance the needs for all users of Oystermouth Road and traffic existing the Quadrant Multi-storey car park would need to be re-routed to West Way.

The design of the Oystermouth Road crossing(s) at this location must be considered in the context of the form and uses proposed for the sites either side of Oystermouth Road at this location. The configuration of any new link across Oystermouth Road - whether at-grade or at high level, is not being pre-judged at this stage but should be determined as part of a considered approach to redevelopment of the sites outlined above.

Therefore the proposal has been designed to be fully compliant with the SCARF requirements.

Tall Building Strategy SPG

The revised Tall Building SPG was adopted in November, 2016 following public and stakeholder consultation. The proposed development site is located within the 'Consider Zone' which are those areas of the City where tall buildings may have a positive impact, subject to the availability of supporting information to justify the proposals. 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.

Tall buildings can be iconic structures for an individual use, signify areas of regeneration or act as symbols of economic activity. In the context of Swansea, tall buildings can serve a number of functions that:

- o Create a distinctive skyline;
- o Form key landmarks within a legible city;
- o Contribute to a cluster signalling a key gateway or area;
- o Mark important public, civic or institutional uses;
- o Demonstrate a growing economic position and
- o Set a precedent for sustainable development through the application of best practice requirements, maximising densities and proximity to public transport.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The SPG indicates that tall buildings should:

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

The Tall Buildings Strategy is applicable to the whole of the City and County of Swansea. However, the main thrust of the strategy focuses on the central area where tall buildings are considered more likely to be promoted and where infrastructure and services are able to support the development, and includes the City Waterfront, where there an opportunity for clustering; and the Retail and Leisure core, where there an opportunity for City living & greater intensity of scale.

The Tall Building Strategy SPG indicates that proposals will need to demonstrate that the key design principles have been considered and incorporated into the design.

- o Land Uses - The land uses within tall buildings should be compatible and respond to local need. Where possible tall buildings should provide a mix of uses that support a variety of users at different times of the day. Proposals will be encouraged to provide public uses at ground level that support social interaction and inclusion.
- o Scale Form and Massing - Tall buildings should be considered in relation to the urban morphology of the city. Consideration should be given to key townscape principles, the urban block, size of plots, and relationship to the street and adjacent buildings. Tall buildings should emphasise key locations, help define the edges of streets and open spaces. Proposals should consider the human scale of the building at ground level, and clearly define the public and private realm.
- o Conservation Areas - Tall buildings should not damage or detract from the settings of listed buildings, conservation areas, historic parks and gardens and scheduled ancient monuments.
- o Visual -Tall buildings should be of slender proportion, and elegant in design. Tall buildings must consider the importance of near, distant and far views and vistas. Where appropriate, tall buildings should be considered in relation to other landmarks, sightlines and strategic view corridors. It is important that the visual impact is considered from all viewpoints and elevations to ensure that the building does not appear slab-like. Tall buildings must sit within a quality public realm, relating well to adjacent buildings.
- o Transport -Tall buildings can place great demands on the local infrastructure network. Proposals should demonstrate the proximity and accessibility of the building to sustainable transport modes and the quality of links between transport and the site. The impact on the surrounding infrastructure and the potential generation of traffic must be assessed. This will include consideration of access in terms of public transport and the extent to which the services can cope with the increase in demand, car parking provision and demand, and general servicing arrangements.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o Movement, Legibility, Permeability - Tall building proposals will be expected to place great emphasis on achieving high standards of inclusive design. Tall buildings should promote accessibility and contribute to the legibility and permeability of the City. They should act as landmarks to aid movement, orientation and define important routes. Proposals should set to strengthen the urban grain and connections back into the City, enabling users to move about easily and safely on foot.
- o Access, Parking and Servicing - Access to tall buildings should be clearly defined and be directly from the public realm. Where possible, parking, servicing and utility functions should be integrated. Where possible, car parking should be provided underground.
- o Public Realm and Open Space - High quality public realm should form an integral part of the design of the site, creating a sense of place, contributing to local character and identify and promoting safety and accessibility for all.
- o Interaction with the Public Realm - Proposals must maximise interaction at the street level, ensuring active frontages and well overlooked spaces. The positioning of entrances and commercial ground floor units should form a key consideration. There should be no blank inactive frontages at ground floor level. Public ground level access should be promoted with the opportunity to provide public access to upper levels.
- o Adaptable - Tall buildings should be adaptable to ensure flexibility over time, be functional and fit for purpose.
- o Quality - Tall buildings should be designed to be of the highest architectural. Every proposal should set a precedent for future development. The visual quality of the building at ground level is highly important and should be of an appropriate scale and character. High quality detailing and materials will be expected to make positive contribution to the character of the sense of place.
- o Sustainability - Sustainability principles will be used to assess tall building applications.
- o Microclimate - Tall buildings should comprehensively address the impact on the local microclimate.
- o Lighting - Tall buildings must be illuminated at night. Proposals should consider imaginative and distinct lighting techniques to positively contribute to the creation of a unique city nightscape and Swansea identity.
- o Security - Proposals for tall buildings must consider aspects of safety and security, and should encourage the clear definition of public and private space, maximising opportunities for overlooking.
- o Existing Tall Buildings - Applications for the replacement of existing tall building should be assessed on current policy and guidance on the design of tall buildings.
- o Accessible and Inclusive Design - New developments must be designed and managed to address the needs of people that will use them.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Conclusion

Within the national and local planning context, there is a clear support for the principle of the development at this location and the uses proposed. The St David's / Quadrant area is identified as the "highest priority for redevelopment in the City Centre" with the potential to create economic growth and to act as a catalyst for the wider regeneration of Swansea City Centre and its role as a regional shopping and leisure destination. The Swansea Central Area Strategic Framework has identified the potential of the site for redevelopment and identifies a broad range of design objectives for the site which the submitted outline planning application has sought to address.

Fundamental to both national and local planning policy is the town-centre first approach, with Welsh Government and CCS recognising that the centres highest in the retail hierarchy should be the focus for new retail development. Swansea is identified as the hub of the Swansea Bay City Region and is at the very top of both the local and regional retail hierarchy. The proposals clearly comply with these aims in seeking to provide a high quality retail hub in Swansea's accessible centre. Furthermore, the Council's 2015 Retail Capacity Study (GVA) acknowledges that there is the possibility that Swansea can grow its retail market share by diverting expenditure from other out of town destinations. This 'step change' would support additional comparison floorspace in the city and the study identifies that there is an excellent opportunity drive an increase in Swansea's market share by doing this.

Both the UDP and the Strategic Framework recognise that the site should deliver a range of uses as well as retail, including offices, hotels, housing, non-residential institutions, and community and leisure uses. Whilst potentially retail-led in nature, the proposals include the provision of a new arena, leisure, residential and hotel accommodation. There is a clear and substantial support for the redevelopment of the site and the balance of uses are considered both wholly appropriate and to be a direct response to key planning policy directives. The support for the principle of the proposed development and the proposed land uses comes from policy and strategy, and from the fact that there is a pressing need to significantly improve Swansea City Centre's retail offer.

Socio-Economic Effects

An Economic Impact Assessment has been submitted to support the outline planning application in order to consider whether the economic benefits generated by the Swansea Central scheme are well aligned with the economic and social needs of the local area; to consider the regeneration outcomes from the scheme in the context of the strategic regeneration policy aspirations for Swansea and the wider Swansea City Bay Region; and to quantify the direct and indirect economic impacts of the proposed development..

Policy Context

The Swansea Central Area: Regeneration Framework (February, 2016)

The Swansea Central Area: Regeneration Framework (February, 2016) notes that Swansea is the economic driver for the Swansea Bay City Region and needs to perform as the regional shopping and leisure destination and improve opportunities for employment and living. However, at present the Central Area is not meeting its potential. In short the area suffers from poor quality office space, high commercial vacancy rates (standing at 20%), falling footfall (a decrease of 26% between 2009 and 2015) and low numbers of people living and working in the Central Area.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The vision within the framework for the Swansea Central Area seeks to create a mixed-use location with a strong retail, commercial and leisure heart supported by a vibrant resident population. The proposed development falls within the St David's/Quadrant area and the framework states that the key vision theme for this area is a ("Retail and Leisure Led Mixed Use Centre" and emphasises that the redevelopment of the area needs to provide a regionally dominant retail and leisure scheme that will act as a catalyst for the wider regeneration of the Central Area. Any development should seek to create a vibrant and attractive visitor destination that should complement the existing centre and promote city living.

Swansea Bay City Region: A City Deal 2016- 2035

The Swansea Bay City Region City Deal document was submitted to the Chancellor and Secretary of State on 23 February 2016 and forms part of the 'Internet Coast' City Deal bid. The £1.3bn 'City Deal' investment plan was backed by Swansea Councillors on 26 January 2017. The City Deal was signed on 20th March 2017. The number one priority of the City Deal proposal is to improve overall productivity (GVA) growth in the City Region and to achieve improvements in productivity, the City Deal states that the focus will be on developing a large, vibrant and increasingly higher added value business base focusing on high technology jobs. The document outlines a three-pronged approach to achieve this, focusing on the development of digital health, commerce and energy industries in the Swansea Bay City Region. The document also states the importance of establishing Swansea as the vibrant regional capital so that it is integrated with its economic hinterland and Travel to Work Area and to enhance its designation as the City of Innovation.

Swansea Bay City Region - Economic Regeneration Strategy (2013-2030)

The key aim of the strategy is to improve the productivity gap with the aim to improve performance to reach 90% of the UK average. It states that this vision will be achieved by changing the sectoral mix and occupational mix of the economy towards higher value and higher growth sectors and breaks this down into five strategic aims:

- o Business growth, retention and specialisation;
- o Skilled and ambitious for long-term success;
- o Maximising job creation for all;
- o Knowledge economy and innovation; and
- o Distinctive places and competitive infrastructure.

Swansea Retail and Leisure Study (2015)

The Retail and Leisure Study was produced to assist CCS in preparing the Swansea Local Development Plan and was published in February 2016. The study notes a long term decline in the City Centre's comparison goods shopping role partly due to increased competition from out of centre and retail park locations accommodating clothing and fashion retailers. The number and proportion of comparison goods retailers had declined in the City Centre by approximately one fifth between 2006 and 2015. The Study strongly supports the priority for the Council to redeveloping the St David's/Quadrant area and that this area can accommodate all the identified need for comparison goods. The study notes that by 2025 there will be a need for an additional 8,462sqm (net sales floor space) of comparison goods in Swansea.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Key Messages

The main messages emerging from this review of the regeneration-related policy context for the Swansea Central scheme are as follows:

- o The Swansea Bay City Region is currently underperforming in economic terms. Economic activity is being affected by low productivity levels; a dominance of low value and low skill employment opportunities; and health inequalities;
- o Swansea City Centre punches below its weight as a Regional Centre and there is a need to improve the offer of the Swansea Central Area;
- o There is a clear aspiration for the mixed use retail and leisure redevelopment of the Swansea Central area to be of regional quality. The St David's/Quadrant area should accommodate all the projected comparison retail need for Swansea up to 2025. Emphasis is also placed on increasing City Living;
- o Swansea needs to attract higher value and more specialised knowledge and innovation based businesses to create a robust and diversified economy; and
- o A significant proportion of the projected office demand should be located within the Swansea Central area.

Economic Impacts

The economic impact assessment has been based on the two illustrative mixed use schemes for the Swansea Central site. Options 1 and 2 are illustrative schemes intended to demonstrate how the outline planning application (which sets a range of maximum and minimum parameters for building heights and land uses) could be accommodated on the Swansea Central site.

The proposed development will include a significant construction phase and is calculated would generate 787 person years of temporary construction employment which equates to £53.3 million in gross added value to the local economy. Given the scale of building activity, there is considerable scope to provide training, apprenticeships and work experience in a range of construction trades. The Beyond Bricks and Mortar initiative run by CCS aims to ensure that local people, especially young people and those who have been out of the job market for some time, are given opportunities of meaningful training and employment. The construction phase of the Swansea Central scheme will create a wide range of opportunities for targeted recruitment and training delivered in partnership between the main contractor and the Beyond Bricks and Mortar team at the City and County of Swansea.

The commercial floor space in Swansea Central will create a range of permanent employment opportunities. Based on each of the two illustrative schemes, it is estimated that the scheme will create between 1,045 and 1,108 FTE permanent jobs (after allowing for a displacement of all employment) once all phases of the development have been constructed and fully occupied. However, after allowing for displacement, leakage and multiplier effects, the net additional jobs are reduced to between 917 and 972 permanent jobs. This is calculated to represent a gross value added to the local economy of between £35.2 million and £37.3 million annually. The economic benefit will be enjoyed in full and in perpetuity from the point at which the Swansea Central scheme is fully occupied.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The new residential population at the Swansea Central site will generate additional demand by increasing household spending in the local area. Based on the net addition of 79 to 107 new households (based on the illustrative scheme options) this is estimated that the gross additional household expenditure to be between £1.32million and £1.78 million per annum. There is also likely to be a benefit in Council Tax receipts and Non-Domestic rates revenue.

The proposed development would therefore clearly comply with Welsh Government guidance to support economic and employment growth through the regeneration of Swansea City Centre, in particular the objectives of TAN23 (Economic Development) for the planning system to recognise and give due weight to the economic benefits associated with new development. The development will provide significant economic benefits to the City of County of Swansea.

Urban Design and Townscape / Visual impact

Urban Design

Introduction

The Swansea Central masterplan proposals comprise the regeneration of a significant 11.4ha area of Swansea City Centre for new mixed use development. The outline planning application in the form of a masterplan will set the framework for a bold new quarter of the city centre which will be contemporary in character yet distinctively Swansea, redefining and creating streets and spaces, whilst bringing life back to the city centre.

Design process

The proposed masterplan has been developed by the Design Team as a result of extensive positive pre-application dialogue with the public, stakeholders and CCS officers. This has ensured that the outline planning application and supporting information was submitted with all the major issues resolved beforehand and which has facilitated an expedite assessment and reporting of this major outline planning application.

The outline planning application comprises 3 masterplan place making aspects:

- o The comprehensive Design and Access Statement sets out the extensive site and context analysis, whilst explaining and justifying the proposals. This includes an indicative scheme that has been used to test and refine the requirements and ultimately demonstrates one way to deliver the scheme.
- o The suite of parameter plans sets out the spatial fixes and flexibility for the scheme. For example, this fixes the general location and alignment of key streets and spaces whilst setting out the flexibility for building height, building lines to create a range of variable volumes that activate and enclose the public realm.
- o The design principles are defined for each development zone that set specific requirements for land uses, massing, urban design and materials.

Ultimately this creates a robust masterplan and place making framework that achieves the balance of fix and flexibility to guide and co-ordinate future reserved matters applications that will contain the architectural detail. This is standard practice for a large scale mixed use scheme of this nature that will be built out in a number of phases.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

City and County of Swansea Council has prepared the Swansea Central area for regeneration through a number of land purchase and demolitions. Whilst the area includes the two important heritage assets of St Mary's and St David's Churches which both have vibrant congregations, the levels of footfall around the public realm area is relatively low and the area is characterised by underused buildings and car parking. Although the area does include a pedestrian footbridge over Oystermouth Road, this is not legible from St Mary's Square and the ramp gradients are not accessible to all. The masterplan proposal is to clear the existing poor quality buildings which are of little architectural merit and to redevelop the existing temporary surface car parking which is an underuse of prime urban land whilst retaining the churches as heritage and cultural anchor points to embed distinctiveness into the new place.

Swansea Unitary Development Plan Policy

UDP Policies EV1 (Design), EV2 (Siting / Location), EV3 (Accessibility), EV4 (Public Realm) and EV5 (Art in the Environment) provide the general development and design principles for new development with the objectives of:

- o To upgrade the visual environment and image of the area;
- o To promote locally distinct, innovative design sensitive to the location and setting;
- o To ensure the public realm and new development is accessible for all;
- o To promote inclusive design in all developments; and to promote resource efficient buildings and layouts in all new development.

Swansea Central Area: Regeneration Framework (SCARF) - Feb. 2016.

The starting point for the masterplan proposals is the regeneration strategy for the City Centre. This was reviewed and updated in 2015 as the Swansea Central Area Regeneration Framework (SCARF). The regeneration framework for Swansea city centre (SCARF) document 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. This addresses the whole city centre from High Street Station to Parc Tawe, to Swansea Bay and Westway. Within the City Centre, the St David's / Quadrant area which corresponds to the current masterplan proposal is identified as a priority regeneration area. It sets out a spatial vision and key principles for the priority St David's regeneration areas as follows:

- o Link the city centre to the waterfront and address the severance of Oystermouth Road
- o Ensure the public realm has a green artery
- o Create new public spaces
- o Ensure an urban scale
- o Treating listed buildings as focal points
- o Ensure active frontages and truly mixed uses

The SCARF document includes an indicative concept plan showing the main spatial requirements such as the new and reinforced streets, key public spaces around the churches and buildings containing mixed uses with an urban scale and active frontages.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Design and Access Statement

The Design and Access Statement in support of the masterplan proposals is founded upon a comprehensive site and context analysis. This includes analysis of the history and evolution of the area since medieval times, an audit of current movement and connectivity, assessment of built form/ architectural quality, assessment of the setting of listed buildings that form anchor points with the regeneration area and identification of key views. The analysis also draws on the wider city with an assessment of the height/ width ratios of existing streets to inform the design of new streets within the regeneration area. The masterplan has been informed by significant testing of the indicative scheme through the pre-application process through parameter sections (based on accurate survey of existing building heights) and assessment of the 3 dimensional computer model that allows eye level perspective views to be tested.

Design Commission for Wales

The proposals for the Swansea Central masterplan have been subject of a programme of Design Review sessions with the expert impartial Design Commission for Wales (DCfW). They have a longstanding supportive position in respect of the regeneration of Swansea City Centre; they commented on the draft SCARF document and have reviewed other key projects such as the Mariner Street student accommodation tall building scheme and the Kingsway public realm proposals. The DCfW comments have sought to refine and improve the proposals whilst recognising the flexible nature of the outline planning application masterplan. They have endorsed the place making principles and although they have questioned the need for the pedestrian bridge over Oystermouth Road they have accepted that it is an integral element of the scheme and is required to accommodate the volumes of people associated with the Arena.

"The proposals show significant ambition for this site. Some elements regarding future uses and occupiers are still unknown so the need for flexibility in the proposals was acknowledged."

In the most recent Design Review that took place in January 2017, the DCfW highlighted a number of issues that have been summarised below and all been addressed in the final outline planning application submission (the full comments are included elsewhere in the Planning Committee Report):

- o Refine the vision to be succinct and reflect the desired quality.
- o Develop the public realm strategy; specifically the green artery concept
- o Ensure that there are no barriers to movement for all
- o Clarify the requirements for the sustainability and energy strategy
- o Ensure cross referencing to the SCARF document to provide the strategic context for the proposals
- o Concerns remained at the impact of the proposed bridge on the quality of the environment of Oystermouth Road, but it was accepted that this approach will be pursued.
- o The need for natural surveillance of the bridge to ensure a safe environment
- o Maintain public engagement through the process.

The Vision

In response to the Design Commission for Wales comments, the Design and Access Statement sets out the masterplan vision to 'create a unique destination for Swansea and ultimately for the Welsh South coast. It will deliver a vibrant new piece of city fabric within the heart of Swansea City Centre and create a high quality retail/ leisure-led destination.'

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Whilst the Swansea city centre has moved in the post-war period from High Street to Oxford Street, the intention of the masterplan is not to shift the centre again. Instead the proposal is to strengthen the linkage between the existing city centre and the waterfront whilst accommodating a ranging of mixed uses that cannot currently be accommodated within the existing building stock.

Streets and Spaces

The masterplan proposal is based upon the concept of a walkable city where the public realm is permeable and activated by mixed uses. A key element of this proposed city quarter is the southern extension of the alignment of Whitewalls to cross Oystermouth Road in order to link the city core to the waterfront area and new Arena destination to the west of the LC2. This addresses the key requirement of the SCARF document to improve connectivity between the city centre and waterfront. The eye level visuals within the Design and Access Statement demonstrate that although there is minor scope to vary building lines in the masterplan, the disposition of blocks and the scale of the Tower and Arena buildings ensure that there is always a legible marker for the waterfront area.

Although outside the scope of the masterplan proposals, the design and access statement demonstrates that the main north south pedestrian route could be continued south between the Arena and Tower to cross the marina on a new bridge, then cross Trawler Road to grade to link to Swansea Bay at St Vincent's Crescent. It is stressed, however, that this is not part of the current application and would need to be considered as part of a separate initiative / application.

The masterplan for the area to the north of Oystermouth Road sets a framework for a permeable network of streets and spaces to create mixed use urban blocks that reinterprets the city character in a contemporary manner, whilst the area to the south accommodates larger scale blocks, spaces and uses that is reflective of the industrial nature of the area with new parking and a significant new Arena and adjacent hotel tower.

The masterplan retains Oystermouth Road as the main traffic artery (it is one of the busiest non-trunk roads in Wales) and extends the 'Boulevard' public realm treatment from Princess way to the junction with Westway. This will include tree planting and wide shared pedestrian / cycle paths. A pedestrian crossing is proposed at street level, but the main pedestrian movement will cross Oystermouth Road on a proposed wide pedestrian footbridge.

The masterplan retains the alignment of Rutland Street which can be traced back to medieval times as the route of the city defences. The masterplan proposes that this will become much improved street linking St Mary's Square to Princess Way and onwards to Museum Park/ waterfront area as well as becoming a key area for the spill out of space for restaurants. The masterplan street structure also reinforces the east-west routes to accommodate the current pedestrian flows to Tesco.

The masterplan is founded upon a sequence of new and improved public spaces surrounded by active frontages of mixed use buildings. Whilst there is flexibility on the exact size of the new spaces and public realm treatments there will certainly be the following:

- o New public square at the east entrance of the Quadrant and new direct legible outdoor entrance into Swansea market. This space is proposed to be called Wassail Square to reflect the lost place names of central Swansea.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o Enhanced public realm around St Mary's Square including improved access for all to the green space around the church through alterations to perimeter wall which will require a future listed building consent application.
- o New public space around St David's church that improves the setting of this listed building. This space is deliberately of a smaller scale in comparison to St Mary's Square to provide variety and to respond to the smaller scale of St David's Church. This will include an area of shared space public realm to allow vehicles to access the Excelsior apartments car park whilst ensuring pedestrian priority.
- o The pedestrian footbridge itself over Oystermouth Road is proposed as a 'street bridge' with a generous width and potential planting on the bridge and/or a cover. Therefore the bridge is conceived as a public space in its own right and the landing points at either end are also defined as important public spaces with an emphasis on digital place making that links into the City Region Deal.
- o The top level of the proposed decked car park on the south side of Oystermouth Road is conceived as a green space for public use including informal play with subtle integration of over flow parking using reinforced grass surfacing.

A key aspect for all these spaces set out in the masterplan is the need for active frontages to ensure vibrancy and safety in these new and improved public spaces. Therefore whilst there may be flexibility in the appearance of the buildings and the range of uses that they could contain, there are specific requirements for entrances, commercial frontages and natural surveillance from upper floor uses linked to the key public realm areas.

Like the public spaces, there is flexibility in the design of the new and improved streets such as the paving materials. However it is certain that the streets will provide the connected network as set out in the masterplan albeit with some variations to the alignments and they will certainly address the green artery requirements of the SCARF document with the degree of street trees and planting to be resolved at the reserved matters stage. Furthermore, whilst there is scope to push and pull the building lines by +3m/-6m in some areas, there are minimum street widths and public space dimensions to ensure that a quality and attractive pedestrian orientated public realm is created. To give an example, the main north south pedestrian street is required to have a minimum width of 11m. This is intentionally narrower than the post war streets in Swansea such as Kingsway to emphasise the human scale and the masterplan street width to building height ratio is more akin to the enclosure of the Victorian city that was lost in the WWII bombing. It is positive to recreate the traditional street dimensions as part of a contemporary place, as opposed to the post war streets which were overly wide with buildings that lack scale. This still allows sufficient street width to facilitate pedestrian movement and accommodates a range of elements including planting to deliver the green artery concept; spill out tables and chairs of food and café uses; emergency vehicle access/ out of hours servicing and space for kiosks/ street furniture/ seating.

The Wind Microclimate Desk Study review of wind effects arising from the masterplan layout has identified a potential issue with the east-west route that links to Garden Street as this faces the prevailing south westerly wind. This route cannot be relocated or realigned and as a result it may create localised wind effects at the intersection with the main north south route to the waterfront. However it is considered that this can be adequately mitigated through a combination of building design and public realm treatment at the reserved matters stage.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Whilst there is some flexibility in the masterplan, the pedestrian footbridge over Oystermouth Road is a key element of the scheme. This generates the need to ramp up approximately 6m from the existing ground level to the proposed deck level. This can be achieved by a gentle street gradient on the north side of Oystermouth Road that links into the new buildings on either side. To the south, the pedestrian footbridge ties into the top level of the proposed decked car park at the level of the original rail lines. An approach utilising various ramps, lifts and steps down from the raised level down to the existing public realm of the LC2 and National Waterfront Museum is then adopted to address the level differences between these areas.

Public Realm Strategy

The masterplan is supported by the Public Realm Strategy. This suggests how the streets and spaces could be designed including the areas where full or partial street cover could be incorporated to provide protection from the elements. The strategy also requires that the public realm materials should comprise either natural stone already present in the city or high quality concrete paving. The key difference is the suggestion to use these materials to create contemporary paving patterns and this will be explored in detail at the reserved matters stage.

The public realm strategy also highlights the potential to incorporate a range of public art features, and this could reflect the significant history of the area or perhaps emphasise the links to the waterfront. It could include permanent legacy features, but equally could be a range of participatory events or event performance. It will be important to ensure that this element is provided and this can be ensured through a condition requiring further development of a public realm strategy prior to the submission of the first reserved matters application along with a mechanism to implement the events/ activities and installations contained within the public art strategy.

The masterplan also highlights the need for public realm and building design to address secure by design considerations including counter terrorism at the Reserved Matters stage so that they are integrated into the overall design. The key design objectives are:

- o To incorporate non-invasive, passive security design features into the build of the public realm;
- o To incorporate counter-terrorism measures into the design which do not create concealed or unregulated spaces and more in keeping with the surrounding architecture; and
- o To ensure robustness of design

Development blocks

The masterplan defines 5 'Development Zones' as the broad spatial framework for different land uses, built forms and architecture. These zones are then further sub divided into separate blocks which represent the footprint of individual buildings or groups of joined buildings as follows:

- o DZ1 - retail area with residential above
- o DZ2 - diverse range of mixed uses including cafes/ restaurants, leisure, office and educational with residential above.
- o DZ3 - primarily a multi-storey partially wrapped by office or residential to provide an active frontage
- o DZ4 - larger scale uses to the south of Oystermouth Road with podium car park and Arena and Tower developments above

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o DZ5 - the key public realm area linking St Mary's Square to the Arena and waterfront area is identified as a development zone in its own right.

It is likely that the different blocks within the Development Zones will be developed in a number of phases potentially to the detailed designs of different architects for different uses. The masterplan sets out a place making framework that provides a balance of flexibility and fixes to co-ordinate the blocks in terms of building lines and heights. This take into account the relationship to listed buildings, movement routes, desired levels of flexibility within blocks, key views, urban scale and positive areas of public realm.

In a similar manner to the streets and spaces, there is some flexibility in the exact disposition of the edges of the blocks. There is a definite requirement for the range of building blocks as shown in the building footprint plan and this provides differing levels of flexibility for the building lines to be pushed forward or pulled back depending on the context. The blocks to the north of Oystermouth Road are required to have an 'urban grain and urban scale' in response to the context of the established city centre. A further level of control is provided for the block frontages such as the requirements for active frontages and corner treatments but this does leave a wide range of flexibility for detailed design at the Reserved Matters stage. Similarly the masterplan prescribes a minimum building height to ensure a consistent urban scale around the two churches and allows differing levels for maximum heights in response to key views and gateway opportunities.

The range of potential uses is also set out for each block. The mix of uses indicated in the indicative scheme demonstrates the intention to create a truly mixed use scheme with less than 20% of the floor space given over to retail and a greater proportion of potential leisure uses. Whilst the scale is flexible, the base requirement for an urban scale will not allow single storey single use buildings, this means that the buildings must be multi-level to make best use of the land and this will provide space for vertically mixed uses including offices, city living and possibly cultural uses on upper floors. This in turn will make the area feel more attractive through uses that open and close at different times and also safer by means of natural surveillance of public spaces from the uses on upper floors.

Development Block DZ1

The DZ1a block provides new separate entrances to the Quadrant Shopping Centre and Swansea Market as well as an important active frontage onto the west side of the main north south pedestrian route to the waterfront. The range of upper and lower building heights requires a building of urban scale with upper floor residential accommodation to increase the quantum of city living. The proposal for the new entrance to the Quadrant Centre would straighten the 'kink' from the internal mall to align with the axis of St Mary's Church to increase visual connectivity, legibility and sense of place.

In respect of this issue, this has attracted an objection from the Market Traders Association; however, it is proposed that the existing pedestrian route running west-east through the Quadrant Centre will be re-aligned to follow the path into the new Wassail Square by removing the existing 'New Look' building. This will allow an independent south-eastern access directly into the Market from Wassail Square which would raise the profile of the Market and in turn would benefit from the increased footfall that would result from the proposed development.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Development Block DZ2

The key aspect of the DZ2 zone of the masterplan is the requirement for a fine grain block structure with buildings of urban scale that accommodate truly mixed uses. This ensures a walkable area with pedestrian priority that is vibrant and diverse and the masterplan strikes a good balance of fix and flexibility for this area. Whilst there is some flexibility in terms of building line there is a definite requirement for new streets and the new space relating to St David's church. There is a general requirement for 'urban scale' blocks that are between 18-22m (as a reference the ridge of St David's Church is 19m). The exception in this zone is DZ2d that has to balance the scale necessary to make a gateway statement onto Oystermouth Road without harming the setting of the listed church. This results in a maximum height of 32m that is of similar scale to the adjacent Excelsior building but is required to be step down to a maximum of 22m where the north elevation faces the church (further commentary on the scale relationship to St David's Church is dealt with in the heritage section of this report). This block could contain a mixture of uses from offices to cinema.

Furthermore, block DZ2a within this zone allows the option of retaining, refurbishing and recladding the existing red brick building of the St David's Shopping Centre with ground floor colonnade that currently contains Iceland and Cranes music shop. This block could contain a mixture of new food and café uses at ground floor with other uses above including potentially a boutique cinema. DZ2a is complemented by block DZ2b which has an urban scale and could accommodate residential above food/café uses. Finally DZ2c could accommodate a library as a civic use with potential residential or office above.

Development Block DZ3

The proposed block at DZ3 provides a key role in screening the rear of the Tesco food store whilst defining the main north south link. There is limited flexibility in terms of building line and height due to the constraints of this location. It is envisaged that this block will accommodate a multi storey car park of up to 500 spaces and the masterplan requires that this is wrapped by active frontage at ground and first floor on the main pedestrian route potentially comprising commercial space at ground level and residential or office above. There is potentially a constraint due to a sewer easement on Albert Row (to the rear of Tesco) and the masterplan allows sufficient flexibility to build over this area if agreement can be reached with Welsh Water, or alternatively to keep this sewer area free of development (this issue is covered in more detail in the Drainage Section). This latter approach would still maintain the alignment and street width of the key north-south route to the pedestrian footbridge and ensure that active frontages are accommodated to wrap the east elevation of the multi storey car park.

Development Block DZ4

The nature of the blocks known as DZ4 to the south of Oystermouth Road accommodate larger landmark buildings and larger format uses in recognition of the fact that this area was never part of the historic city grain but instead accommodated industrial uses and transport infrastructure. The 500 space decked car park would reinstate the level of the former elevated rail lines and on top of this podium the masterplan defines blocks for the Arena and Tower. This elevated area would allow servicing of the Arena to be concealed below the podium which ensures that the public realm is not compromised and the amenity of the residents is not affected by late night HGV movements.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The proposed Arena will be a landmark building and significant regional destination, and this will draw significant numbers into the city for concerts, events conferences etc. The volume for this block (DZ4b) has been tested to ensure that the functional requirements can be accommodated and it is understood that established Arena operators have confirmed that this footprint is sufficiently flexible to accommodate an auditorium for up to 3,500 people. The design principles require an outward focus on the ground floor so that cafes/ bars/ restaurants are accessible to ensure a vibrant area even when there no events. The Arena itself is essential a large box which can be dressed in a distinctive manner. The parameters plans set modest flexibility in terms of building lines and maximum/ minimum heights but there is architectural flexibility to explore a range of design concepts at the Reserved Matters stage. The current indicative scheme for the Arena suggests a 'coal' reference to reflect the fact that the former area of rail lines was used to marshal coal trucks prior to tipping into ships for export.

The DZ4 area also includes the footprint and height range for a landmark tower building that could be residential, or hotel or a mixture of the two sited between the proposed Arena and existing LC2 building. The masterplan sets a height range of 41-51m (above existing ground level) for this tower which equates to approximately 13-17 storeys. This means that this tower will be a tall building that therefore must meet the requirements of the adopted Tall Building Strategy Supplementary Planning Guidance. This requires that the tall building is slender and elegant with a distinctive skyline and active frontages at ground level. To address this, the masterplan defines a maximum footprint and sets a width to height ratio to ensure slenderness and also requires that the elevations are articulated to incorporate vertical elements to achieve the appearance of a cluster of slender vertical forms relative to the height. For reference, the proposed tower is approximately half the height of the Meridian Quay tower which is 107m above ground level and this relationship can be seen in the Townscape and Visual Impact Assessment verified views. The masterplan scheme has been subjected to the Wind Microclimate Desk Study which has reviewed the potential wind effects on the surrounding public realm and adjacent buildings such as the Arena and Tower. This has identified that the Tower will create down draught effects but that this can be mitigated through the elevation design and incorporation of canopies which can be positively incorporated as architectural features at the Reserved Matters stage.

The Arena and Tower are not in physical contact with the listed GWR revetment wall and there is no change to the historic fabric of this but the scale of these new buildings will change the visual setting of the heritage asset. It is considered that this is an acceptable dramatic relationship that preserves the heritage assets whilst bringing significant levels of activity into the area. Furthermore the accommodation of the decked car park with the podium level equivalent to the original rail lines is considered beneficial to make the heritage structure easier to understand and appreciate. The impact on the listed GWR revetment is considered in more detail within the Cultural Heritage Section.

A concern throughout the design process has been the nature of the frontages at ground level along Oystermouth Road. The main pedestrian movements will be at the higher level using the footbridge; however the masterplan still requires that the ground level is active through footways, cycle route, provision of bus stops and pedestrian entrances to access the upper level by means of steps/ ramps/ lifts. This approach is to create points of activity as opposed to utilising the active frontages of buildings and will be made attractive through the use of materials include green living walls. This reflects the fact that this is a very busy traffic corridor but equally does not ignore the area as a 'place'.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Architecture

Whilst there is no defined architectural style set at the outline stage within the masterplan, there is a requirement to take an architectural approach that reflects the history and culture of Swansea in a contemporary manner. The illustrative scheme including the eye level views demonstrates one way that this could be addressed. However, it is likely that the different blocks will be developed in a number of phases potentially to the detailed designs of different architects for different uses. The masterplan strikes a balance to co-ordinate the detailed design whilst allowing sufficient flexibility for innovation and individual expression.

The wide footbridge across Oystermouth Road would be a street bridge and the masterplan emphasises the need for a sculptural design incorporating planting and/ or a canopy that addresses both the approach from either side as well as the route passing below.

The masterplan sets requirements for the types of materials that can be used in the various blocks. It sets out a range of six materials from which two are expected to be used on each building and there is a requirement that opposing buildings on the other side of the street cannot use the same materials. The six materials allow for a wide range of architectural expression whilst reflecting aspects of Swansea's distinctiveness and ensuring a high quality scheme. They are:

- o Copper cladding - drawing on the metallurgical history of the Swansea Valley
- o Terracotta (ceramic) cladding - drawing on the pottery history of the site and wider area
- o Stained glass - reflecting Swansea role at the centre of teaching this art form
- o Iron Oxide-pigmented concrete - this is a modern version of the stonework that can be found throughout the city
- o Corten Steel - drawing on the metallurgical history of the Swansea Valley
- o Brickwork - this is used extensively throughout the city but the requirement in the masterplan is that brickwork should not be used for more than 25% of the elevations and must be used in a 3d rather than flat manner.

This range of materials allows sufficient variety whilst ensuring a clarity and quality of place. Some of the materials will be better suited to use as accent and feature materials whilst others will form the dominant treatments of the building elevations. Some of the buildings and uses will lend themselves to a sculptural use of materials such as the Arena and multi storey car park frontages, whilst other buildings will have a traditional solid to void ratio to accommodate vertically mixed used and the materials will be applied to the elevations along with commercial glazed frontages and residential fenestration. Clearly all materials will need to be fully assessed and this will require composite sample panels to be provided at the Reserved Matters stage.

Wind Microclimate Desk Study

The study has assessed the wind microclimate for existing site conditions and the maximum built out of the development parameter plans to ensure that a conservative assessment is undertaken within the context of existing surrounding conditions. In general the existing site conditions are relatively sheltered from westerly prevailing winds therefore it is expected that there are no exceedances of the safety criteria. In terms of comfort, the wind conditions are expected to be generally suitable for their existing uses, and with the introduction of the proposed development, inclusive of current soft landscaping proposals, wind conditions within the site and the surrounding area are expected to be acceptable in terms of pedestrian comfort and safety with the exception of a number of localised regions:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- o South western facades of buildings DZ4b and DZ4c may cause potential downdraughts as they are exposed to the prevailing westerly winds. Subsequently, windier conditions may prevail in some localised areas for the intended uses.
- o The gap between buildings DZ1a and DZ3 is aligned with the prevailing westerly wind, hence the winds are potentially funnelled through and cause less favourable wind conditions.
- o The sharp corners of buildings DZ2c and DZ2d, wind conditions would have the potential for exceedance of the pedestrian safety and comfort criteria.

In order to minimize any adverse wind effects a number of mitigation measures for these areas have been suggested such as the use of soft landscaping, canopies and screens and the incorporation of recessed entrances. It is recommended that the wind mitigation measures are developed as part of the reserved matters design stage when detailed of building facades and public realm/landscape become available and validated via boundary layer wind tunnel testing. It is proposed to impose a condition for the incorporation of suitable mitigation measures.

Townscape and Visual Impact

The maximum volumes of the masterplan blocks (maximum heights and building lines) have been visually tested in the submission of the Townscape and Visual Impact Assessment (TVIA) that includes a seascape assessment that sets out eye level views from public vantage points. The TVIA (including seascape) baseline report provides a summary description of the scheme and provides commentary on how the baseline may affect or direct the wider pattern of development. The report presents a range of constraints and opportunities relative to the townscape, landscape, and visual issues, recommendations provided to inform the development proposals to ensure sensitivity to identified constraints and a realisation of available opportunities. The report then goes on to describe the development proposed, particularly in relation to landscape and visual mitigation proposals and assesses within the subsequent TVIA to follow this baseline report, the resulting effects of the completed development on landscape and visual receptors. The TVIA concludes that the existing urban environment contributes very little to the City Centre at present and the regeneration proposals present an opportunity to improve the appearance and character of the existing built form. Additionally, there is an opportunity to strengthen the connection between the City Centre and Swansea Bay Waterfront.

Effects on Visual Amenity

The preparation of the TVIA has been used as an iterative design tool to refine the masterplan and also to assess the visual impacts of the proposal. In order to ascertain the likely visual receptors to assess the visual impacts of the proposed development, a total of 16 photoviewpoints were selected to represent a variety of views available for public vantage points. Visual effects relate to changes that arise in the composition of available views as a result of changes to the landscape, to people's responses to the changes, and to the overall effects with respect to visual amenity. Additionally, Visually verified montages (VVM's) have been produced for 10 no. of the photoviewpoints to aid the visual assessment. It should be noted that the visuals cannot show the windows, articulation and architecture because this has not been designed at the outline planning stage. Therefore the masterplan volumes are represented as grey forms in a series of accurate montage views to represent the development zones and the maximum heights and minimum street widths in line with the parameter plans. The heights proposed are shown as the maximum heights but in reality the shapes of the 'blocks' and the material finish will change the perception of the development considerably.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Conclusions

The view testing demonstrates that the masterplan blocks to the north of Oystermouth Road are generally of an urban scale similar to the scale of the existing built form. However DZ2d is considerably taller to act as a gateway building onto Oystermouth Road. As indicated in the heritage section, the height impact on the setting of St David's Church is mitigated by the top floors being set back facing the church. This will certainly create a dramatic relationship befitting of a city environment, but the detailed design must be carefully handled.

The heights have also been tested in relation to the view from the tower of Swansea Castle in response to the consultation request by Cadw to assess the impact on the scheduled ancient monument. There is no proposed development of excessive height in proximity to Swansea Castle and whilst elements of the scheme, namely DZ2d, the tower and arena will be visible from the top of the tower, this will be in the context of the wider cityscape and this is not considered to be a negative effect. A view from Castle Square has also been tested (Photoviewpoint 1) and this shows that the masterplan proposals would have a neutral effect on this public space.

Clearly the taller Tower and Arena to the south of Oystermouth Road will have a greater visual impact and to assess this, a number of views have been tested as follows:

The view from Trawler Road to south of the South Dock marina is tested in Photoviewpoint 4; this shows that the massing of the Arena and Tower will be significant features rising high above the rear of the existing Victoria Quay properties. This will be a dramatic juxtaposition of scale and the architecture delivered at the reserved matters stage will need to be of the highest quality with a distinctive skyline. From elevated public vantage points such as Kilvey Hill (Photoviewpoint 9) and Nicander Parade, on the edge of Townhill (Photoviewpoint 8) the proposals will integrate with the existing built form. The use of a roof scape and colours of materials will be important in this regard.

Photoviewpoint 12 taken from the sands of Swansea Bay at low tide offers a panoramic view of the waterfront development including the Meridian Quay tower and associated development. From this particular vantage point the Arena will not be visible and but the tower can be seen rising up above the linear form of the existing waterfront development. It can be seen in this view that the scale of the proposed tower is similar to the scale of the existing lower tower that forms part of the Meridian Quay development. The Meridian Quay tower itself is still significant taller and there are no issues of visual coalescence. Once again the architectural treatment will be important and it is considered that the proposed tower will help to mark the city centre when viewed from Swansea Bay.

Photoviewpoint 13 is a cityscape view that tests a key heritage relationship in terms of the setting of the grade II* Swansea Museum in the context of the Maritime Quarter Conservation Area. This view demonstrates that the tower could be partially visible above/beyond the museum but this will vary on the exact final siting of the tower to the north or south with block DZ4c. Whilst the tower is partly visible in this view it is only a minor element and this is not considered to detract from the character of special interest of Swansea Museum. This view also shows the visibility of DZ2b and whilst this is a taller block on the north side of Oystermouth Road; in this view it has a similar scale as the existing Salubrious Place development. Clearly the articulation, architectural treatment and materials at the Reserved Matters stage will all be important to integrate sensitively with this cityscape.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Photoviewpoint 15 tests the visibility of the masterplan massing on the key approach into the city centre along Fabian Way crossing the River Tawe. This shows that all the proposed masterplan blocks north of Oystermouth are concealed by the existing built form. The Arena also is not visible, however the tower will be a significant feature that will visually coalesce with the Salubrious Place dome from some aspects. Whilst the basic grey block of the tower appears crude and monolithic in this view, this is indicative of the scale and massing only at this stage and the masterplan design principles require the articulation of the massing as well as the use materials to ensure slenderness and elegance. This can be ensured at the reserved matters stage.

Photoviewpoint 16 tests the view from Abernethy Square to the south of the marina adjacent to the Captain Cat sculpture. This shows that the tower will be visible rising beyond the roof of the grade II listed former warehouse that now forms part of the National Waterfront Museum within the Maritime Quarter Conservation Area. The upper part of the Arena would also be visible. Whilst these would be significant new additions to the skyline, they would add interest and quality to the skyline and emphasise the location of the city centre.

Urban Design / Visual Impact Conclusion

The regeneration scheme proposed has employed good practice urban design principles which will guide the delivery of a high quality design and will improve the character of the City Centre. The density, diversity, mix of uses and building types proposed comprise a strong sustainable urban design approach which will help to realise the concept of a vibrant core. Pedestrian movement and cyclists have been incorporated into the scheme considered within the outline design and the general public will experience a user friendly space where pedestrian movement and public amenity is prioritised; The new bridge over Oystermouth Road and the new orientation of the main retail street will link the retail and public realm to the waterfront / leisure zone (DZ4). The proposed bridge will give the road and the core a new identity and views the new landscape podium will be available from the bridge in south facing views. On approach to the City Centre, the scheme will be seen in the three gateway approaches identified in supplementary planning guidance. The buildings and in particular, the tower, proposed will contribute to the legibility of the City Centre's core on approach to Swansea, and in longer ranging more elevated views. Overall, the beneficial effects of the scheme heavily will outweigh the potential adverse from a townscape and visual perspective.

The comprehensive masterplan including indicative scheme has allowed detailed assessment of the proposed scheme. It is considered that the masterplan would set a framework for a walkable, vibrant, truly mixed use and attractive new quarter of Swansea City Centre as a key aspect of regeneration within the City Region. It is also considered that the accompanying parameters plans and design principles form a robust place making framework which strikes the right balance between fixing key aspects of the place making approach whilst allowing sufficient flexibility for innovation and alternative scenarios. Clearly the articulation of the massing and architectural approach will need close scrutiny at the reserved matters stage, but it is not considered that any aspects are unacceptable at this strategic outline stage.

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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

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.

Residential Impact on Victoria Quay

The Arena massing and location has been tested in relation to the residential amenity of the Victoria Quay properties to the south. This was highlighted as a key issue through the statutory Pre-Application Consultation process that was carried out to engage with residents and stakeholders prior to the submission of the outline planning application (this is dealt with in a separate part of this report). The Arena will not result in additional overlooking of the properties in Penryce Court and York Court as the proposed building is generally inward looking and any possible roof terrace would be located at the high level above the ridge height of the existing flats. It will not result in overshadowing given that sun path swings anti-clockwise from east to west, however it will result in a greater sense of overbearing that cannot be mitigated but which is also not considered to be excessive to the point of unacceptability. The as built records for the Victoria Quay properties have been reviewed and it is noted that the rooms affected are generally bedrooms and kitchens whereas the main living rooms are unaffected because these properties have primary outlook to the south towards the marina. Therefore on balance, the regeneration benefits of the Arena as an integral element of the mixed use scheme is considered to outweigh the harm caused in terms of residential amenity.

The masterplan also allows for the tower footprint to be positioned north or south within the DZ4a block depending on the treatment of the ground floor active frontage. The relationship to Squire Court on Victoria Quay has been tested based on the worst case (closest) scenario. To avoid loss of privacy due to overlooking, the masterplan only allows tower windows above the height of the top floor windows of Squire Court as shown on page 169 of the Design and Access Statement. This means that there is no direct overlooking between windows and instead the tower windows would look over the roof of the Victoria Quay block towards the sea. Furthermore as the tower is to the north of this block, there would be no issues of overshadowing given the sunpath to the south. However it must be acknowledged that there will be a significant overbearing effect on the flats within the eastern end of Squire Court due to the scale of the tower that cannot be mitigated. It is noted that the rooms affected are generally bedrooms and the main living rooms are unaffected as these properties have primary outlook to the south towards the marina. Therefore on balance, the regeneration benefits of the tower as an integral element of the mixed use scheme is considered to outweigh the harm caused in terms of residential amenity.

Whilst there is currently a public walkway along the top of the grass bank abutting the GWR revetment wall, this area is used by only a small minority of people. However the proposal for a new public realm podium at this level will increase pedestrian numbers and could reduce the privacy of the existing flats along Victoria Quay. This was highlighted at the pre-application consultation stage and the masterplan requirements were amended to address this by setting the future public walkway back away from the edge of the stone wall to increase the privacy distance and to incorporate screens that double as balustrades to block direct overlooking to the flats opposite. There is however still public access to the wall edges in the areas that correspond to the parking areas on Victoria Quay where there are no opposing residential windows.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Daylight and Sunlight

The application has been accompanied by a Daylight and Sunlight Statement, the preparation of which has been used the key reference document I- Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice, which is widely recognised as defining good practice and is used extensively in drafting planning policy and in assessing planning applications. It is intended to be used in conjunction with BS 8206 Part 2: 2008 Code of Practice for Daylighting and Lighting Guide 10: Daylighting and Window Design, and its guidance is intended to fit in with their recommendations. There are two measurements of daylight or sunlight referred to in the BRE Guide and used in this report. These are Vertical Sky Component - measuring the total amount of skylight available on the face of a building and Probable Sunlight Hours which is the long-term average of the total number of hours during a year in which direct sunlight reaches the unobstructed ground.

The daylight and sunlight assessment is based on the maximum development parameters, which are assumed to represent the worst-case scenario in terms of daylight and sunlight. The detailed design development through the reserved matters submissions would offer opportunities to further improve the daylight and sunlight penetration within and around the site.

For the outline planning application, the purpose of the daylight self-assessment is to demonstrate the potential for good daylighting. Therefore, the focus is on quantifying the daylight falling on to the facades, rather than the penetration of daylight in to the building. Assessment of actual interior daylighting, typically based on the Average Daylight Factor (ADF), room depth and the position of the no-sky line, would be undertaken as part of the detailed, reserved matters application(s) for each development zone. In summary, the Daylight and Sunlight Assessment concludes that for most of the proposed development, daylight availability is sufficiently good that conventional window design is likely to provide good internal daylight. The exceptions are at low level, where other buildings are in fairly close proximity. In these circumstances, the likely use class would be retail / A3 outlets, which do not generally have a requirement for good daylight. Where this is not the case, special measures (larger windows, shallow-plan rooms, articulated massing allowing dual aspect windows) could be needed to ensure adequate daylight.

Similarly for the purposes of the outline planning application, the sunlight self-assessment has sought to demonstrate the potential for good sunlight. Therefore, the focus is on quantifying the sunlight falling on to the facades, rather than the penetration of sunlight in to the building. Assessment of actual sunlight availability for each room, based on probable sunlight hours for the winter and annual periods respectively, would be undertaken as part of the detailed, reserved matters application(s) for each development zone.

The Assessment highlights that due to the site's essentially flat topography and city centre location, with its attendant scale and density, not all proposed maximum parameters facades benefit from good levels of solar exposure. Of the 29 facades analysed, 15 show good sunlight availability, when treated as a whole and subjected to the good practice tests. Facades that are either north-facing or in close proximity to other buildings have lower levels of solar exposure. However, there is significant variance across all facades. To minimise breaches of the good practice recommendations, the use classes could be arranged such that residential units (and any other accommodation having a particular requirement for sunlight) are arranged on the upper storeys with facades benefitting from good sunlight availability.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Single-aspect dwellings with low solar exposure could be avoided, unless there are compensating measures, such as a good view of St David's Church, St Mary's Church or the wider city.

The proposed development incorporates new open space around St David's Church, which would likely meet the good practice recommendations for sunlight, even if the development plots around St David's Church were built out to the maximum parameters. As the sunniest part of the open space, the area to the northwest of the church would be suitable for a garden and/or seating.

Based on the maximum parameters, the modelling indicates some breaches of the guidance on daylight impact assessment in respect of the Excelsior building, properties on Victoria Quay, St David's Church, the LC Swansea leisure centre and 10-12 St Mary's Square. Potentially significant impacts could be mitigated through design development, primarily in the massing and positioning of buildings within DZ2a, DZ2d, DZ4b and DZ4c. Given the assessment is based on a 'blocky' parameter plan, representing the maximum bulk and massing of proposed buildings, there is considerable scope for refinement such that impacts are avoided or limited.

With regard to sunlight, the proposed development would have no significant impacts on either existing buildings or open spaces requiring sunlight. Overall, the proposed development has the potential to be acceptable at reserved matters stage, so there are no reasons in respect of daylight or sunlight for not approving the outline planning application. In summary, the proposals are considered to be generally compliant with the requirements of the adopted residential design guide. The amenity impacts on the residential units 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.

UDP 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:

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

Policy AS5 also requires development proposals to consider access requirements for pedestrians and cyclists. Whilst 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The application has been accompanied by a Transport Assessment (TA) to assess the highway and transportation matters related to the outline development proposal. The TA been updated following due consideration of comments received during the formal Pre-Application Consultation (PAC) process. The Swansea Central Area: Regeneration Framework (SCARF), document sets out its aspirations for the redevelopment of the city centre of Swansea, that the city centre and which should be based around the key principles of strong linkages and integration:

"Strong linkages and integration will be key to the success of the redevelopment proposals so that they form part of a connected city centre with improved permeability to the waterfront, specifically via strong links to / through the Waterfront development opportunity."

The proposed scheme has been designed around this key transportation principles, and provides an overview of the existing local highway network, an assessment of the accessibility of the city centre by sustainable (non-car) modes of travel, an overview of relevant local and national transportation policies, a detailed assessment of the development proposals including access, parking and servicing arrangements, a detailed assessment of the traffic impact of the proposals and a detailed assessment of the impact of the proposals on the operation of the local highway Network.

Travel Plan

The TA states that a "Sustainable transport solution in relation to the scheme to ensure ease of access and egress, including servicing is one of the key transportation principles behind the scheme. With this in mind, a draft overarching Framework Travel Plan for the scheme has been prepared and submitted as part of the application. This site wide plan will be developed as the proposals evolve and through discussions with CCS. It is anticipated that as each phase of development progresses, each operation will operate their own Travel Plan, based on the site wide Travel Plan, aimed at both staff and visitors. The Travel Plans will contain a range of measures and incentives aimed at amending existing travel habits by promoting the use of sustainable travel and discouraging single-occupancy private car use.

Development proposals

Oystermouth Road bisects the site into two distinct areas ('North' and 'South' Sites) and as part of the proposals, improved pedestrian connectivity will be achieved between the North and South site through the introduction of a new wide pedestrian/cycle bridge over Oystermouth Road linking the two sites and the city centre to the waterfront.

Parking and Access - North Site

As part of the North Site proposals both the existing St Mary's (297 spaces) and St David's (460) car parks will be removed and a new Multi Storey Car Park (MSCP) car park providing a maximum of 498 spaces will be provided at DZ 3. The new MSCP car park will be accessed from Oystermouth Road to the south via the Albert Row/Oystermouth Road signalised junction which will be reconfigured as part of the development scheme. A number of residents parking spaces for the proposed residential units within the scheme will be provided in the MSCP.

As a result of the new parking arrangements at DZ 3, vehicles egressing the Quadrant Court MSCP will have to exit via the West Way/Wellington St signalised junction to the west instead of the Albert Row/Oystermouth Road junction as they currently do.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Therefore, the layout of Wellington Street will be amended as part of the proposals to allow two-way flow to and from the Quadrant Court MSCP to achieve this.

Parking and Access - South Site

The South site will be accessible on-foot and cycle from the city centre, bus station and train station via the proposed pedestrian/cycle bridge link over Oystermouth Road. It is proposed to construct a new undercroft car park underneath the Arena in the location of the existing Waterfront surface car park. This pay-on-foot car park will have a capacity of 425 spaces, which can be increased by 150 spaces to a total of 575 spaces on major event days at the Arena. This equates to an increase of 40-190 space compared to the existing Waterfront car park.

The proposed Arena car park will be in operation 24hrs a day to support the proposed hotel Development, although hotel users will also be able to park at the new St David's car park and other city centre car parks generally. Surrounding streets, including the marina area to the south of the proposed Arena site, are protected by parking restrictions, discouraging any off-site parking by Arena users. Access to the new Arena car park will be taken from Oystermouth Road via the reconfigured Albert Row/Oystermouth Road signalised junction which will be improved as part of the development scheme. In addition, it is proposed to construct a long layby along the westbound carriageway of Oystermouth Road in front of the Arena which will be long enough to allow six coaches to park to drop off and pick up visitors. After these coaches have dropped people off, it has been agreed with CCS that lay over locations will be provided at nearby park-and-rides sides and at Bracelet Bay for coaches to wait at until they need to collect visitors from the Arena. This coach lay-by will also serve the LC2 building. Direct and convenient access between the Arena car park and the LC2 building will be provided along Victoria Quay via the existing pedestrian archways in the GWR revetment wall. This route will be upgraded to provide a suitable pedestrian walkway facility.

Cycle Parking

Minimum cycle parking standards for land uses within the centre of Swansea are set out in CCS's Parking Standards Supplementary Planning Guidance document (March 2012). The TA indicates that cycle parking provision within the Swansea Central scheme will be covered and secure, and meet or exceed CCS's minimum cycle parking standards. In particular, as part of the Swansea Central scheme, large covered and secure cycle storage facilities will be provided at the new St David's (North) and Arena (South) car parks.

Pedestrian Improvements

As previously outlined, a key feature of the Swansea Central scheme is a new improved and updated bridge crossing providing a strong linkage between the city centre and the Waterfront. The proposed bridge will link directly to a new pedestrianised traffic-free route through the city centre to the north which will connect into existing routes which lead onto the railways station, creating a new high quality, permeable link between the city centre and the waterfront for pedestrians and cyclists. This will help to connect the City Centre to the Waterfront, linking the northern and southern sites together and would contribute to the provision of the green artery through the central area which are both key visions within the Swansea Central Area Regeneration Framework (Feb. 2016).

It is proposed that the bridge will be for pedestrian use only with cyclists having to dismount to cross the bridge and ample cycle parking will be provided across the scheme for cyclists to use when accessing pedestrian-only areas.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The bridge will also be able to be accessed via steps, a lift and DDA compliant ramps from the footways along Oystermouth Road as well as from lifts from the Arena and St David's car parks. A new high quality signalised at-grade pedestrian crossing will also be incorporated at the reconfigured Albert Row/Oystermouth junction proposed as part of the Swansea Central scheme. In addition to the above, pedestrian routes will be provided between the new Arena car park and the footway along the southern side of Oystermouth Road.

Highway Improvements

The Swansea Central proposals would require several improvements and amendments to the local highway network.

Wellington Street/West Way junction

As a result of the proposed changes to the St David's area all traffic exiting the Quadrant Court MSCP will re-join the local highway network via the Wellington Street/West Way junction. In order to achieve this, the layout of Wellington Street will be amended to allow traffic leaving the Quadrant Court MSCP to be able to access the West Way junction. The amended junction layout will still allow vehicles to access the existing Tesco car park which will also be accessed from Wellington Street. The proposed layout will involve widening Wellington Street to allow two-way flow to and from the MSCP and the provision of separate arms to and from the West Way junction to allow traffic to access the Tesco car park.

An objection to the proposed alterations to Wellington Street has been submitted on behalf of Tesco which are outlined above. These issues have been addressed by the TA consultants (Meyer Brown) on behalf of the applicant. It is indicated that the proposed alterations to the existing layout of Wellington Street are necessary to allow two-way traffic flow to and from the Quadrant MSCP, as following the implementation of the Swansea Central scheme it will no longer be possible for vehicles to exit the MSCP via Albert Row junction onto Oystermouth Road.

It is not agreed that the proposed layout will be confusing or will result in any significant congestion at the Tesco car park for the following reasons. The layout has been designed to be easily understood and is based on a CCS Transportation scheme previously considered at this location. Tesco's customers will still have priority over Wellington Street traffic when entering the Tesco car park and this will be reflected in the road markings and signals to ensure the Tesco access is kept clear of queueing vehicles. There will be gaps in traffic leaving the MSCP that will allow Tesco customers to exit the Tesco car park. The proposed layout also gives priority to arrivals at the Tesco car park over traffic leaving the MSCP.

The alterations to the West Way / Wellington Street junction have been modelled as part of the TA and have also been subject to sensitivity testing. The modelling results indicated that the proposed layout would operate below capacity and with minimum queuing. Furthermore, it is indicated that the improvement works that have recently been completed along West Way will improve capacity at the junction further benefitting Tesco customer traffic. The proposed highway improvements can therefore be accommodated without detriment to road capacity or safety.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Further to this issue there has since been a positive and constructive discussion between the Consultants and Tesco's, with a view to agreeing the final detailed design for the improvement scheme for Wellington Street incorporating the Tesco store access, provides an optimum layout that is mutually acceptable to all parties. The planning condition in relation to the highway improvements will allow for the detailed design to be subject to further consultation involving Tesco.

Albert Row/Oystermouth Road junction

The existing Albert Row/Oystermouth junction will be replaced by a new junction layout and the proposals will incorporate new bus stops located on the eastbound and westbound carriageways of Oystermouth Road, and as mentioned previously a new coach lay-by will be provided serving the Arena. The westbound carriageway of Oystermouth Road will be widened to incorporate a right-turn lane into the new St David's car park, thereby allowing access into that car park from both the east and westbound carriageways of Oystermouth Road. The southern arm of the new junction will allow access to the new Arena car park with access controlled via barriers. A dedicated right-turn lane will be provided into the Arena car park from eastbound carriageway of the Oystermouth Road. The proposed junction layout will incorporate a high quality signalised pedestrian crossing. The submitted tracking drawings showing the swept path of vehicular manoeuvres at this junction demonstrate that vehicles can safely use the proposed road layout.

Traffic Impact

The TA has assessed the traffic impact of the Swansea Central scheme in respect of the parking demand within the city centre and the impact on the surrounding road network, and for this purpose account has been taken of the additional non-retail / leisure uses proposed estimated to be an uplift of 11% applied to the existing city centre parking demand. The TA has concluded that the junction modelling provides a robust assessment of the traffic flows and that the local highway network will continue to operate satisfactorily following construction of the Swansea Central scheme.

Conclusions

The Head of Transportation has accepted the conclusions of the TA and indicates that the proposed highway improvements to the affected junctions, the proposed uplift in car parking demand / trip levels can be satisfactorily accommodated within the highway network without detriment to highway safety subject to the imposition of appropriate planning conditions.

The highway design for the proposed road improvements would ordinarily be secured by way of a Section 278 Agreement under the Highways Act 1980, however, in this instance as the Council is the developer, it may not enter into such an agreement with itself as Local Planning Authority, and these would need to be secured by planning condition. This would cover all highway construction works within the existing and new highways, Traffic Regulation Orders, Road Closure Orders, temporary traffic management layouts and associated traffic signage and interactive car park signage (i.e. variable messaging).

As a result of the proposed development, sections of the existing highway would need to be stopped up so that it ceases to be highway as it would instead form part of the built development.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

There is a separate process for the developer to follow involving an application to Welsh Government under Section 247 of the Town and Country Planning Act 1990 (as amended). It would be prudent for this process to be commenced soon after any planning permission has been granted.

Impact on Cultural Heritage and Archaeology

Cultural Heritage

The outline application has been accompanied by a Heritage and Impact Assessment which sets the heritage significance of the area and the buildings and historic features within it. It considers the current proposals and evaluates the heritage impact that these would have and where appropriate identifies potential mitigation.

The application site area lies largely outside the medieval settlement with the Church of St Mary and St Mary's Square being at its southern extent. Medieval Swansea was centred around the castle built c.1100 by Henry Beaumont, Earl of Warwick and the town received its charter in 1153. The St Mary's area is believed to be a late 12th /early 13th century extension to the town and by the 14th century there were town walls with a town gate at the south corner of what is now the churchyard. Although the church is not recorded in 1291 architectural fragments that have been uncovered are stylistically of an earlier 13th century date. After c.1300 Swansea remained much the same size until the 18th century. Despite development of a trading dock in 17th century, the major industrialisation did not begin until the late 18th century, led by John Vivian. Coal, copper and tinplate flourished and brought great wealth to Swansea. The 1852 map shows an urban street pattern across much of the northern part of what is now the development area and the town aspired to having elegant Georgian terraces. Below that was Victoria Station and its associated railway infrastructure and further south were the tracks delivering the coal to the South Dock, cut in 1859. In February 1941 Swansea was severely blitzed and after the war a major rebuilding was undertaken creating the unremarkable character of much of the centre of Swansea and laying out the current Oystermouth Road. The St David's Shopping Centre was laid out in 1982 with a range of red brick buildings and a multi-storey car park to the south.

UDP Policy EV2 (xi) indicates that new development should have regard to the desirability of preserving the setting of any listed building, whilst UDP EV6 seeks to protect, preserve and enhance Scheduled Ancient Monuments and their settings. UDP Policy EV7 states that alterations to a listed building will not be permitted unless they safeguard the character of the listed building and the historic form and integrity of the building.

The proposed development directly affects six Grade II listed buildings within the development area:

- o Church of St Mary
- o Swansea County Court and Offices
- o Pedestal and statue of Sir H Hussey Vivian
- o St David's Priory Roman Catholic church
- o Presbytery at St David's Priory Roman Catholic church
- o Former GWR revetment wall along north side of South Dock, Victoria Quay

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Additionally, although outside the proposed development area, the most significant heritage structure in the wider context is Swansea Castle, which is a Scheduled Ancient Monument and Grade I Listed Building.

Heritage Impact of proposed changes

This part of Swansea has experienced regular change resulting in an historic character made up of isolated individual buildings and structures, and in particular the important historic buildings of St Mary's and St David's churches stand out. The regeneration of a significant quarter of Swansea City Centre will have an effect on a number of designated heritage assets in terms of visual changes to the setting and physical alterations. It should be noted that the physical changes to listed buildings will require future listed building consent applications to be approved; however the masterplan has been tested to ensure that these changes are acceptable in principle but the detail will be need to be addressed in future

St Mary's Church

Whilst there is thought to have been a church on this site at the heart of the medieval city since Norman times, the current building dates from post war reconstruction. St Mary's Church has the advantage of having a protected setting by virtue of its churchyard, however, the proposals will change the setting of this grade II listed church through the regeneration of two sides (south and west) of the elevations that enclose St Mary's Square. It is one of a number of tall buildings in the centre of Swansea, and there are significant vantage points from where the city centre can be viewed, in which the tower of the church is prominent. The church tower remains a landmark building in particular, from the south-west and this view could be compromised by building competing tall buildings in close proximity to it. The area proposed for regeneration currently lacks architectural quality and active frontages however they are of a scale that ensures the church remains the focal point. The proposals would comprise of contemporary architecture and the scale parameters ensure a consistent urban scale to positively define the space without dominating the setting of the church, thus ensuring that the church tower will continue to be a city landmark. This has been tested using the parameter sections based on accurate survey information and the indicative 3d model which includes multiple eye level perspective views as set out in the Design and Access Statement.

The levels of active frontage around the square would be increased making the area more vibrant and the materials would reflect the tones of the church stonework. As well as the mixed use urban blocks, a single storey, pavilion café is proposed adjacent to the south-west corner of the Church grounds. Whilst this would reduce the visibility of the church from the corner, it will provide active frontage and could be designed in a sensitive contemporary manner to complement the setting of the church. Furthermore the historic analysis demonstrates that there were earlier city buildings lining the perimeter to the church as shown in the 1850s OS plan reproduced on page 19 of the Design and Access Statement. Therefore it is considered that the setting of St Marys would be enhanced by the proposals. There is also potential for a future listed building consent application to amend parts of the boundary wall to improve access for all to the raised grass area. This area does contain historic burials without headstones and it is considered that this could be achieved in a sensitive manner to facilitate a significant improvement of public realm and increased access to green space within the city centre as part of the green artery concept.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

St David's Church and Presbytery

The regeneration proposals would also create a new public space around the grade II listed St David's Catholic Church. This church currently has a significantly degraded setting due to poor quality remnants of the St David's shopping development and an open expanse of a surface car park. Unlike St Mary's, this church was not designed as a focal building and the historic mapping shows that St David's was until the post war period embedded into an urban block with the south east elevation onto St David's Place and north east elevation onto Rutland Street forming a street corner building within a dense urban fabric.

The masterplan sets building lines of the blocks around the church to ensure a positive setting and useable area of public realm. The masterplan also requires a consistent urban scale around this space with buildings at least 11m high and provides scope for block DZ2d (to the south of St David's Church) to step up some 25m above the current ground level to form a focal building of similar scale to the Excelsior Building in relation to the southern aspect onto Oystermouth Road. Whilst this block is significantly higher than the listed building (in comparison the ridge level of the church is some 12m above ground level), the massing impact on St David's Place is mitigated by a requirement for the building to be stepped down on the elevation facing the church which then steps up. This is shown in section GG on page 133 of the Design and Access Statement. Therefore the scale at street level would feel similar to St David's, whilst in longer views such as along Rutland Street, the development of DZ2d would rise up above the church. The indicative visuals in the Design and Access Statement show this as a tiered building with horizontal bands, however there is flexibility in the massing of the upper levels and the architectural treatment. Therefore whilst the setting of St David's would change considerably, the scale is considered acceptable and the detail design of DZ2d will need very careful treatment at the reserved matters stage.

The masterplan proposals retain the St David's presbytery garden and garage. This will ensure privacy for the occupant of the presbytery. The stone walls surrounding the church on all sides are curtilage listed and are proposed to be retained within an improved area of public realm with parking within the church yard removed to create a green space that will improve the setting of the listed building.

Sir H Hussey Vivian

The present setting of the statue of Sir H Hussey Vivian makes a negative contribution to its significance. The statue originally stood in Castle Square (1886) and was moved to Victoria Park in 1936, and was re-sited in its current position in 1982 when the St David's shopping centre was opened. There is therefore no significance attributed to the current siting of the statue and the setting of the listed feature is compromised by the current poor quality architecture and public realm treatment in this location. The further relocation of the statue (potentially as part of a new modelled Wassail Square to the west of St Mary's Church) will benefit from proposals to move it to a better location as part of a wider public realm and in a position where it is not so likely to be approached from the rear. This will require a separate application for Listed Building Consent.

GWR revetment wall

The southern extent of the regeneration area is bounded by the grade II listed pennant stone retaining wall that originally supported high level lines and marshalling yard for coal trucks waiting to be tipped into ships for distribution.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Since Swansea Victoria Station was redeveloped for the current LC2 and the elevated rail infrastructure removed there is no trace of the railway heritage that dominated this area and as a consequence the GWR revetment wall has lost context and is poorly understood within Swansea. Furthermore the current presentation with earth bank facing the LC2 car park does not allow easy understanding of the original purpose of this structure.

The masterplan proposal is to replace the current surface car park with a decked car park which has a top level at approximately 5.5m above ground level which reflects the level of the original rail lines. Whilst this would diminish the visibility and setting of the structure from the north, as noted above the current earth bank is modern feature of no historical significance. Furthermore it is considered that the reinstatement of the original rail line level would improve the understanding and appreciation of this structure. The proposal is also for a future listed building consent application for physical changes to this wall in three areas:

- o Removal of the remaining grass bank to accommodate undercroft car parking and servicing of the proposed arena.
- o Opening up of blind arches at the eastern end to increase pedestrian permeability from the LC2 area to the South Dock marina at ground level
- o Adding a new railing of industrial character the entire length of the existing wall top to meet modern safety standards and to ensure sufficient privacy for the residential properties immediately to the south.

These changes will be considered in detail in the future listed building consent application; however it is considered that they represent sensitive and considered change that strikes a balance between preserving the heritage assets and facilitating regeneration of the city centre.

County Court building

The former County Court building is not directly included in the development proposals but is sufficiently close to be impacted by it, however, as long as the scale and materials of the new build proposals are sympathetic then the listed building should not suffer any negative impact.

The Heritage Impact Assessment (HIA) has also assessed views to and from Swansea Castle. The existing redevelopment in its vicinity means that these are limited but the Castle can be glimpsed from the edge of St Mary's churchyard and this view would not be adversely affected by the proposed development. Ground level views from the Castle towards the proposed development area are largely obscured. The HIA assumes that the development area would be visible from the wall-walk above the Hall of the Castle and from the top of the southern garderobe tower but it is a closed monument with none of the internal areas of the castle open to the public. Even with specially arranged access to assess the impact, it was found that the wall-walk above the Hall cannot be reached and it is understood it has been closed for health and safety reasons for several decades. It is only from the high level of the garderobe tower that more distant views can be had. CADW, in its statutory role of assessing the likely impact on the Scheduled Ancient Monument of Swansea Castle, has confirmed the conclusions of the Heritage Impact Assessment and their opinion would have a very slight but not significant adverse impact on the setting of scheduled monument GM012.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Conclusion

As a new quarter to Swansea City Centre the perimeter of the masterplan development will be close to a number of listed buildings. Given that the masterplan proposes an urban scale for the majority of the northern area that reflects the traditional Victorian scale, there is no impact on the setting of the former Courts Building on the corner of St Mary's Square (Grade II), Cross Keys (Grade II) 2-3 Princess Way (Grade II) and York Place Baptist Chapel (Grade II). The visual settings of the Listed warehouse that forms part of the National Waterfront Museum (Grade II), Pump House (Grade II) and Swansea Museum (Grade II*) are all affected by the larger scale Arena and Tower elements. This is assessed in the Townscape and Visual Impact Assessment through accurate eye level visuals which are discussed later in this report. However the main finding is that whilst the visual settings of these listed buildings will change due to the masterplan scale to the south of Oystermouth Road, this is considered acceptable in the context of a much improved cityscape and with the caveat that the detailed design at Reserved Matters stage will be crucial.

The masterplan area is in close proximity to both the Wind Street Conservation Area and the Maritime Quarter Conservation Area where the statutory test requires that the visual setting is preserved or enhanced. This has been tested using the visuals of the indicative scheme and verified Townscape and Visual Impact Assessment from key views. This confirms that aspects of the masterplan scheme will be visible from these conservation areas and that the effect will be positive with the scale and potential design of the new buildings enhancing the urban cityscape of these designated conservation areas.

The proposed regeneration will also have a positive effect on undesignated heritage in that the masterplan layout of streets retains the diagonal alignment of Rutland Street which corresponds to the medieval city plan. There is also an opportunity to highlight the location of the former West (Wassail) City Gate at the junction of Whitewalls and Rutland Street through public realm design and possibly public art. Whilst Swansea Market is a modern structure, it is potentially the best post war building in the city and has historic and cultural significance. The proposals will improve the eastern entrance to the market through the creation of a new public space. The height of the adjoining masterplan block (DZ1) has been limited to improve the visibility of the distinctive curved roof that symbolises the market hall. The undesignated heritage is also reinforced through the masterplan proposal to reintroduce historic 'lost' street names such as Wassail Street, Orange Street and Frog Street.

Archaeological Impact

The application is accompanied by an archaeological desk based assessment in following advice from the archaeological advisors (Glamorgan Gwent Archaeological Trust) to the local planning authority, and reviewed information held by the Regional Historic Environment Record (HER), the National Monuments Record (NMR), Scheduled Ancient Monument and Listed Building information, as well as examining aerial photographs, cartographic and documentary sources.

UDP Policy EV6 requires that where proposals affect sites and areas of archaeological potential, applicants will be required to provide an assessment or evaluation of the archaeological or historic importance of the site or structure, the likely impact on the site and the measures proposed to preserve, enhance and record features of archaeological interest.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

A total of 303 sites of archaeological interest were identified within the study area, of which 43 were located within or immediately adjacent to the development area.

The proposed development is envisaged as having a 'Severe' effect on a site within the St David's Shopping Centre) and assumes for the purposes of the assessment that the whole of the existing shopping centre will be removed but this is not envisaged as part of the masterplan proposals. The development has been assessed as having a 'Minor' effect on 36 further sites and an indirect effect include a 'Slight' impact on six further sites. The majority of directly affected sites are Post-medieval or Modern sites of Category 'C' or 'D' interest, which are well evidenced on historic mapping and in documentary sources, and which are already likely to have undergone significant disturbance. Of greater interest, however, is the possibility of encountering remains associated with the medieval town, including the town defences, burgages and potentially structures (such as the Old Rectory relating to the Hospital of the Blessed St David. The documentary and cartographic sources suggest that medieval activity was concentrated east of Rutland Street and in the area of St Mary's Church, and therefore it is in this area that the greatest opportunity of encountering remains exists. It is therefore recommended that an archaeological evaluation should be made, following the demolition of any structures east of Rutland Street/Place. Although it is likely that any medieval structures will have been significantly disturbed by later development, an evaluation would be useful in determining the exact nature of any surviving medieval remains and has the potential to significantly advance our knowledge of this part of Medieval Swansea.

It is also recommended that an archaeological watching brief be undertaken on all ground intrusive works associated with the development, although again its focus is likely to be on the eastern area of the site. An archaeological watching brief would also be useful in establishing whether any further remains relating to the Post-medieval pottery industry may survive. An archaeological watching brief would also mitigate any impact on any surviving remains relating to the other Post-medieval or Modern structures, although previous work on the west of the site suggests that the possibility of finding remains in this area is limited: hence it is suggested that the focus of the watching brief be concentrated on the eastern side of the site. Additionally, the intensive history of human activity in the area highlights the possibility of discovering previously unknown sites of archaeological interest within the development area. The provision of an archaeological watching brief during all intrusive groundworks would mitigate the impact on the archaeological resource.

Drainage and Flood Risk

Drainage

Albert Row 1650mm diameter public combined sewer

The pre-development advice on sewer easement requirements identified a constraint on the development proposals in some areas by sterilising significant areas of land from being built upon, in particular with regard to the alignment of the 1650mm diameter public combined sewer in Albert Row. Discussions DCWW indicated a preference to retain their statutory easements, but agreed to consider alternative options provided by the applicants for protecting /reducing the easement zone around the sewers. Several options were discussed, in particular relating to the main existing sewer along Albert Row, on the basis that they provided a safe maintenance/working space over the public sewer whilst significantly reducing the area of land sterilised for new development. DCWW confirmed that they would consider an alternative proposal that provided a minimum 6m-high clearance to the soffit of an over-sailing building.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

The applicants have engaged positively with DCWW during the submission of the outline planning application. In direct response to the comments made by DCWW with regards to the 1,650mm diameter public combined sewer below Albert Row and the position of the proposed multi-storey car park in Development Zone DZ3, an alternative design proposal has been agreed involving the construction of the foundations of the car park building either side of the sewer consisting of concrete secant / contiguous piled walls with concrete beams. The amended proposals for the multi-storey car park would allow for sufficient space for future sewer replacement if required, and DCWW have indicated they are prepared to support the scheme in principle subject to full details of a scheme to protect the trunk sewer to be submitted via planning condition prior to the commencement of development. This will require an agreement with DCWW in order to secure these measures including any arrangements for mitigation in the event access to the sewer in the future is being required for maintenance or operational issues.

Surface Drainage

The application is supported by a Drainage Statement which has had regard to the provision of Sustainable Drainage Systems (SuDs) within the proposed surface water drainage system for the redeveloped site. The provision of the surface water drainage system has been subject to consultation with CCS Drainage Engineer and additional supporting information has been submitted in the form of a development storm discharge Plan which illustrates existing and proposed storm flows from each zone within the development, which is based on the following:

- o proposed storm discharge at 20% betterment over existing;
- o catchment areas taken as 100% except Zone DZ5 St Mary's (where some permeable surfacing is allowed for);
- o attenuation sized to accommodate 100 year events plus 30% climate change;
- o catchment areas are based on planning development zones simplified to include adjacent highway land or retained building areas;
- o it is intended to discharge surface water to the pipe network since infiltration to the ground is negligible in this location.

The CCS Drainage Engineer has reviewed this information and confirmed that it is acceptable to the Authority and recommended the incorporation of appropriately worded conditions to any permission given, in order to develop a detailed drainage strategy as part of the submission of subsequent reserved matters applications.

Flood Risk

Under Policy EV2 new development must have regard to whether the proposal would be at risk from flooding, increase flood risk off-site, or create additional water run-off. Similarly Policy EV36 states that new development, where considered appropriate within flood risk areas, will only be permitted where developers can demonstrate to the satisfaction of the Council that its location is justified and the consequences associated with flooding are acceptable.

A Flood Consequences Assessment (FCA) has been submitted in support of the application. The City Centre of Swansea is considered to be at risk from tidal flooding. The main source of flooding originates from the lower reaches of the River Tawe, when tide levels are sufficient to overtop the right (west) of the river and Swansea Marina lock gates and the overland flow paths threaten the central area. Additionally, the underpass along the promenade on Oystermouth Road would also allow tidal flood water to flow into the Sandfields and City Centre.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

There are additional flood risks from fluvial (river), wave overtopping and pluvial (surface water) flood risks. The baseline flood risk from all sources has been assessed for both present-day and future climate change scenarios over a 100 year period.

It is considered that the present-day (2017) flooding consequences from both tidal and fluvial sources are acceptable for the proposed Swansea Central development site. However, as a result of climate change and predicted sea level rise, the consequences of tidal flood risk will become unacceptable in the future. Projections indicate that tidal flood consequences will be acceptable until circa 2080, after which an alternative flood risk management approach would be required. This would involve a strategic flood defence scheme to defend the City Centre of Swansea against tidal inundation from the lower reaches of the River Tawe. The primary feature of such a defence strategy would be the construction of a raised defence along the right (west) bank of the Tawe, from New-Cut Road Bridge to tie-in with higher ground to the south of the Marina Basin and such works would necessitate additional works to compensate for the reduction in the width of the flood corridor.

The results of the modelling simulations of the predicted effect of climate change over the lifetime of the development (2117) indicate that the majority of the proposed development will be at an acceptable level of risk from wave overtopping. The majority of the site lies within acceptable limits of the assessment criteria for new development contained in TAN15. However, some areas of the site do fail the acceptance criteria. Additionally, the pluvial modelling has identified that the Swansea Central site is potentially at risk of surface water flooding.

When viewed in the context of current climate change predictions, it is clear that a strategic flood defence scheme will also be needed to protect Swansea against the risk of flooding from wave overtopping into the future. Much of the existing City Centre will be affected by the increase in flooding that is predicted to occur as a result of climate change.

The Council of the City and County of Swansea has made a formal commitment to develop a long term proposal for a Strategic Flood Risk Management Strategy for the Swansea Central Area through its Cabinet paper, The Management of Future Risks of Flooding from the Effects of Climate Change, 20th October 2016. It is considered that the development and implementation of a flood defence strategy for Swansea will ensure that the proposed Swansea Central Site development will continue to have acceptable flood consequences in accordance with TAN 15 over the development lifetime.

This commitment to implement the long term flood risk strategy is acknowledged by Natural Resources Wales who have recommended that a condition is included to ensure that this commitment will be upheld. However, the FCA projects that the flood site to the site would be acceptable until circa 2080, and therefore it is considered unreasonable a planning condition to this effect. WG Circular on the Use of Planning Conditions of Development Management advises that 'Grampian' conditions should not be imposed when it is not reasonable to expect the required action being performed within the time limit imposed by the permission. In this instance, it is considered that the commitment by CCS to develop a long term proposal for a Strategic Flood Risk Management Strategy for the Swansea Central Area is sufficient.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Pollution and ground contamination

Air Quality

An Air Quality Assessment has been submitted to support the outline planning application and describes the existing air quality within the study area, considers the suitability of the site for the proposed development and assesses the impact of the construction and operation of the development on air quality in the surrounding area.

The main air pollutants of concern related to construction are dust and fine particulate matter (PM10), and for road traffic are nitrogen dioxide (NO₂), PM10 and PM_{2.5}. The proposed development includes for provision of a potential energy centre at the site. The design of any such energy centre is currently unknown at this outline application stage, but it can be designed to ensure that significant adverse effects on air quality will not occur. Therefore, an assessment of the effects of the potential energy centre emissions has been scoped out of this assessment and will be dealt with, if necessary, at reserved matters stage when details of any energy centre will be known such that a meaningful assessment can be undertaken (and which can specify any mitigation that may be required).

UDP Policy EV2 states that new development must have regard to the physical character and topography of the site and its surroundings by having full regard to existing adjacent developments and the possible impact of environmental pollution from those developments, as well as the creation of any environmental pollution to the detriment of neighbouring occupiers (including light, air and noise. In addition, UDP Policy EV40 on Air, Noise and Light Pollution states that development proposals will not be permitted that would cause or result in significant harm to health, local amenity, natural heritage, the historic environment or landscape character because of significant levels of air, noise or light pollution. Planning permission should not be granted for development that would cause significant harm to air quality by virtue of emissions from the development itself or the additional new traffic movements it would generate. Neither will permission be granted where a development is proposed that would increase the number of exposed individuals in an area likely to fail UK air quality objectives (proposed or in Regulations).

Construction Impacts

During demolition and construction, the main potential effects are dust annoyance and locally elevated concentrations of PM10. However, based on the guidance issued by the Institute of Air Quality Management (IAQM) on the assessment of dust from demolition and construction, it is concluded that provided appropriate mitigation is in place which can be secured by planning condition in respect of a Construction Environmental Management Plan, the residual effects of construction impacts on air quality are assessed as being not significant.

Road Traffic Impacts

The Assessment identified 11 sensitive locations where impacts from road traffic related to the proposed development are likely to be the greatest and additionally 4 receptors are identified as future residential receptors. The Assessment acknowledges that one Air Quality Management Area (AQMA) has been declared in Swansea due to exceedances of the annual mean NO₂ objective. The Swansea Central application site is not located within the AQMA which is approximately 440m north of the development site. In addition, reference is made to the automatic monitoring station operated by CCS and the NO₂ diffusion tubes which are deployed by CCS at a number of locations.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

There are no predicted exceedances of the NO₂, PM₁₀ and PM_{2.5} air quality strategy objectives at any of the existing receptor locations in close proximity to the site and therefore the air quality effects of road traffic generated by the proposed development are considered to be not significant and as such no additional traffic mitigation is therefore required to reduce the direct effects of the development on local air quality.

The Head of Environmental Management (Pollution Control) has accepted the conclusions of the Report and has raised no objections subject to the imposition of a condition requiring a Construction Environmental Management Plan to be submitted.

Noise and Vibration

A Noise and Vibration Assessment has been prepared to accompany the planning application, outlining the existing noise climate at the proposed development site in order to determine its suitability for the proposed use. The assessments detailed herein have been undertaken on the basis of the parameter plans. It is anticipated that there will be no significant vibration impacts associated with the operation of the proposed development and as such has been scoped out of the assessments undertaken.

TAN 11 'Noise' published in 1997 provides guidance on how the planning system can be used to "minimise the adverse impact of noise without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens of business." Whilst UDP Policy EV40 states that development proposals will not be permitted that would cause or result in significant harm to health, local amenity, natural heritage, the historic environment or landscape character because of significant levels of air, noise or light pollution.

Proposed Assessment

A baseline sound survey has been undertaken to establish the prevailing sound climate across the site. The results of the survey form the basis of a number of assessments to determine the suitability of the site for the proposed uses. The development has the potential to generate noise in the form of building services noise, noise breakout from retail and eating/drinking establishments and noise associated with the operation of the arena, other leisure uses and hotel. As the proposals relate to outline application proposals for the site, it is considered that noise impact on the surrounding area from the proposed development can be controlled via suitably worded planning conditions and the subsequent reserved matters approvals.

Proposed Commercial Use (A1/A2/A3)

Noise generated by the proposed retail units including shops, restaurants, cafés and drinking establishments can normally be controlled through the planning conditions and licensing in respect of hours of operation and management. For potential A1 use, the principal potential noise impacts are expected to be associated with deliveries and building services plant. As part of the detailed design an assessment should be undertaken of the likely noise impact associated with deliveries. With due consideration to appropriate siting, operational times and mitigation measures, the likely noise impact associated with deliveries is not likely to be significant.

Proposed D2 Use (Arena and Cinema)

Noise associated with the operation of the arena should not cause any significant effect providing the music noise levels comply with specified limits. With appropriate design consideration it is believed that the limits proposed are achievable.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

A detailed assessment will need to be undertaken at the detailed design stage in order to ensure it complies to the proposed limits.

Plant Noise Emission Criteria

The proposed future plant noise will need to conform to specified emission targets.

Noise Associated with Development Traffic

The assessment of the likely noise impact associated with development traffic has been based on the provided traffic flows for the surrounding road network within the Transport Assessment. Calculations indicate that noise associated with additional vehicular movement on the surrounding road network is likely to have a negligible impact on future noise levels.

Suitability of Site for Residential Development

In assessing the site's suitability for residential development, two main noise sources have been considered:

- o Noise impact due to the existing delivery yard associated with the 24-hour Tesco Superstore on the western boundary of the site; and
- o The noise impact due to road traffic flows on the local road network.

A 24 hour Tesco Superstore is located to the west of the proposed development site. The delivery yard serving the store is located directly west of the proposed residential and mixed use area DZ3 as per the parameter plans. The initial numerical assessment of sound levels at the nearest proposed noise sensitive receptor indicates that the operation of the existing delivery yard is likely to result in a less than adverse impact during the daytime and an adverse impact during the night-time. Scope exists to introduce uprated acoustic glazing and acoustic ventilation measures into the design of residential facades overlooking the services yard to reduce the potential noise impact of the delivery yard and a suitably worded planning condition can be imposed requiring that potential noise from the existing delivery yard is considered in the specification of the building fabric of the proposed residential development.

An acoustic model has been used to determine the likely internal sound levels due to calculated environmental sound from road traffic noise in the 2021 future assessment year. The calculated incident sound levels have been used to determine the likely internal sound levels due to external noise ingress in notional dwellings across the site. Based on the typical construction details, the calculated internal noise levels across the majority of the site are likely to fall below 35 dB LAeq,16hours and 30 dB LAeq,8 hours. Facades overlooking Oystermouth Road, Albert Row and Princess Way are likely to require uprated but readily available acoustic glazing and acoustic ventilation. Based on the results of the noise survey and the assumed building fabric constructions, the suggested internal noise levels are therefore capable of being met during both daytime and night-time periods. The site should therefore be considered to be suitable for residential use.

Therefore, the assessment concludes that from a noise impact perspective, the site is suitable for the proposed development. The Head of Environmental Management (Pollution Control) agrees in principle with the findings of the Noise and Vibration Assessment and recommends a number of planning conditions in order to control the potential noise sources.

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Ground Contamination

The outline planning application is supported by a Phase 1 Ground Conditions Assessment (Desk Study) Report. The Phase 1 desk study identifies historical land uses at the Site, reviews the likely ground conditions and assesses the potential for land contamination. The assessments also include appraisal of pertinent geotechnical information, review of the potential for mining to affect the Site and discussion of the likely geological / geotechnical constraints at the Site.

UDP Policy EV38 states that development proposals on land where there is a risk from contaminated or landfill gas will not be permitted unless it can be demonstrated that measures can be taken to satisfactorily overcome any danger to life, health, property, controlled waters, or the natural and historic environment.

The Report has identified the various historic land uses across the site area including residential areas, railways yards / tracks, saw mills / timber yards, breweries, gas works (Tesco site), etc. which represent a potential source of contamination. In addition, the Report has identified the potential risk from unexploded ordnance from the Second World War and indicates that the Zetica Regional Unexploded Bomb Risk plan for Glamorgan indicates there is considered to be a High risk of unexploded bombs in the Swansea area.

The Report concludes that the potential risk of contamination on-site ranges from Low to Moderate/low and is associated with a localised hotspot contamination and exposure to construction workers and groundwater. No radon protection measures are considered necessary as part of the proposed redevelopment and there is not considered to be a risk from coal mining on-site or in the nearby surrounding area. Based on the findings of this assessment, the Report concludes that it is considered that the Phase 1 Desk Study is sufficient to support the planning application with respect to land contamination and ground stability onsite and that ground investigation works can be secured in the future by way of planning conditions. This investigation may comprise the drilling of boreholes to establish ground conditions on-site, including lateral and vertical extent of Made Ground. Monitoring wells will be installed in boreholes to allow for monitoring of groundwater and ground gas levels. Soils and water samples should be taken to assess the potential for contamination associated with identified historical and current land uses on-site and in the immediate surrounding area. In addition, as Swansea is at a High risk from unexploded bombs (UXB), a detailed UXB survey will need to be undertaken across the Site. Any intrusive investigations will require scanning at 1m intervals by a suitably qualified engineer to enable progressive clearance of ordnances.

Natural Resources Wales and the Head of Environmental Management (Pollution Control) agree with the applicant that intrusive ground investigation work are required in order to establish the risk of previous land contamination on this development and that these works can be secured through planning conditions.

Ecological and Arboricultural Impact

Ecology

The planning application has been accompanied an Ecological Appraisal which has reviewed existing ecological data (including an existing desk study and Phase 1 habitat survey (PB, 2015)) and this was supplemented by an update habitat survey and external building inspection to determine suitability for use by roosting bats.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

These conclude that the site is of very limited ecological value, comprising highly artificial and manmade habitats, with limited potential to support protected or notable species. Three of the buildings on site support features with 'low potential' to support roosting bats which are the listed buildings of St David's Priory Church, St. Mary's Church and the Old Court House. These buildings are to be retained within the proposed redevelopment, and as such, no specific mitigation or compensation measures are considered necessary.

No significant effects on ecological features are anticipated as a result of the proposed redevelopment, however recommendations for precautionary mitigation measures are provided in relation to breeding birds and invasive species, to ensure compliance with relevant wildlife legislation (principally the Wildlife and Countryside Act, 1981 (as amended)). Habitats on site at the time of the survey were found to have the potential to support common and widespread nesting birds. Any vegetation removal should be timed to avoid the bird breeding season, or a check undertaken to confirm their absence, in order to ensure compliance with the Wildlife and Countryside Act 1981 (as amended).

In order to support compliance with national and local planning policy and with regard to the Environment (Wales) Act, 2016, ecological enhancement measures are also being proposed. These include the inclusion of appropriate planting within the overall Public Realm / Landscaping Strategy to improve local biodiversity and specific measures such as bat and bird nesting boxes. In conclusion, assuming the mitigation measures are adopted, there are no ecological constraints from the proposed redevelopment.

Arboriculture

The application is accompanied by an Arboricultural Impact Assessment which provides an assessment of the impact of the proposals upon trees and makes recommendations for mitigating any negative impacts. It is highlighted that the design has been developed with careful consideration to minimise the impact on the most important trees and to enhance tree cover across the site. There are Tree Preservation Orders within the site and neither does the site encroach into a Conservation Area. The Assessment has surveyed 197 individual trees and 16 tree groups to inform this report, which based on the proposed parameter plans, 102 individual trees and 10 tree groups have been identified for removal to facilitate the development. However, these trees are predominantly of low value and relatively young trees, and the tree removal will be mitigated by a comprehensive landscape scheme, with an appropriate variety of tree species and therefore the loss is considered to be acceptable. The remaining 101 tree features will be retained and integrated into the development and sufficient space and adequate protection measures will be set out to ensure that retained trees are not damaged during the phased pre-construction and construction works to enable their successful development post-construction. It is recommended that the reserved matters application is supported by an Arboricultural Method Statement (AMS) and detailed Tree Protection Plan. The AMS will provide details on sequencing of tree protection in relation to the phasing of works and suitable methodology relating to any works within Root Protection Areas (RPA) and/or works to above ground tree parts.

Conclusion

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

National and local planning policies indicate that the Swansea Central scheme would deliver a policy compliant proposal and would provide the economic growth for the regeneration of Swansea City Centre and strengthen its role as a regional shopping and leisure destination within the Swansea City Bay Region. This is supported by the design objectives and vision within the Swansea Central Area Strategic Framework.

The UDP and the Strategic Framework support a Retail Leisure led mixed use scheme and the provision of the new arena, leisure and hotel accommodation would support the aspiration to improve Swansea as a visitor destination. The proposed land uses are supported by planning policy and the objective of providing a step change in the retail provision and improved leisure offer.

This is a significant development within the City Centre and would also have an impact on the surrounding area, however, taking into account all the material considerations, it is considered that the proposed development would not have an unacceptable detrimental impact upon the wider environment and that any negative impacts can be ameliorated by the imposition of the appropriately worded planning conditions.

Approval is recommended subject to the following conditions:

RECOMMENDATION

APPROVE, subject to the following planning conditions:

- 1 The proposed development shall be implemented in accordance with the approved Parameter Plans and Sections, Design and Access Statement, Design Principles and Public Realm Strategy which set out the vision, objectives, urban design principles, development strategy, masterplan, accessibility and movement, scale, quantum of development, building concept, infrastructure, environmental sustainability and structural landscaping principles of the 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
- 2 Prior to the commencement of development of an individual phase, a phasing programme of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details approved under Condition 3, or required by the conditions of the permission and the approved phasing programme. The approved phasing programme shall be reviewed and re-submitted for the further approval of the Local Planning Authority as necessary.
Reason: To ensure that the development is carried out in a logical and comprehensive manner in accordance with sustainable urban design principles.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- 3 Applications for the approval of the details of the means of access, appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') for each phase of the development shall be submitted to and approved in writing by the Local Planning Authority before any development begins on each respective phase and shall be supported by a Design and Access Statement for that phase and shall accord with the Parameters Plans and Sections and related plans referred to in Condition 1 of this planning permission.
Reason: To ensure that each phase of the development corresponds to the approved development; and to ensure the development is carried out with best practice in relation to design and the built environment.
- 4 Any application for approval of the reserved matters shall be made to the Local Planning Authority not later than five years from the date of this permission.
Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that development is begun within a reasonable period.
- 5 The development shall begin either before the expiration of seven 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: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that development is begun within a reasonable period.
- 6 A phased landscaping scheme for the site shall be submitted as part of the reserved matters for each phase and the scheme as approved shall be carried out in accordance with the phased scheme. The landscaping shall follow the principles outlined in the Public Realm Strategy and shall include details of a Public Art Strategy. Any trees, shrubs or plant material which die, become seriously damaged or diseased within 5 years of planting shall be replaced by trees of a similar size and species to these already planted, unless otherwise agreed by the Local Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved Public Realm Strategy.
- 7 A landscape / public realm and public art management plan for each phase including management responsibilities and maintenance schedules for all landscaped / public realm areas shall be submitted to and approved by the Local Planning Authority prior to the occupation of any phase of the development. The landscape management plan shall be carried out as approved.
Reason: To ensure that the landscaped areas are adequately maintained in the interests of visual amenity.
- 8 All reserved matters applications shall be accompanied by details of the proposed levels for each phase of the development indicating its relationship to the adjoining land and any changes to the site itself. The development shall be completed in accordance with the proposed 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

9 All reserved matters applications shall be accompanied by details and disposition of the external finishes for each phase of the development and shall accord with the aspirations outlined within the approved Design and Access Statement and the Design Principles documents. The pattern of application of the external finishes shall be completed for each phase of the development in accordance with the approved scheme.

Reason: In the interests of visual amenity.

10 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.

11 All reserved matters applications shall be accompanied by details of all wind mitigation measures for each phase of the development and shall be referenced to the wind microclimate assessment. The wind mitigation measures 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.

12 The development shall not begin on any residential building until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme as a phased component and shall meet the definition of affordable housing in Annex B of Technical Advice Note: 2 Planning and Affordable Housing or any future guidance that replaces it. The scheme shall include:

- i. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units/bed spaces;
- ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- iii. the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing] if no affordable housing provider is involved;
- iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason: In order to ensure that adequate provision is made for affordable housing within the proposed development in accordance with Unitary Development Plan HC3 and the Council's adopted Supplementary Planning Guidance - Planning Obligations.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

13 Prior to the commencement of each phase of the 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 each site shall 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 of the site.

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. The site investigation results and the detailed risk assessment (2) and, based, on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

Reason: It is considered that the controlled waters at the site are of a sensitive nature and contamination is known/strongly suspected at the site due to its previous mixed industrial uses.

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

Reason: To demonstrate that the remediation criteria relating to control water 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- 15 Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure that longer term remediation criteria relating to controlled waters have been met. This will ensure that there are no longer remaining unacceptable risks to controlled waters following remediation of the site.
- 16 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.
Reason: Given the size/complexity of the site it is considered possible that there may be unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated.
- 17 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express 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.
- 18 Foul water and surface water discharges must be drained separately from the site. All foul drainage must be connected to the public sewerage system. No surface water shall connect (either directly or indirectly) to the public foul sewerage system. No land drainage system shall discharge into the public sewerage system.
Reason: To protect the integrity of the public sewerage system and prevent contamination.
- 19 No phase of the development hereby approved shall be occupied until a scheme for the comprehensive and integrated foul water, surface water and land drainage for that phase of the development has been implemented in accordance with details to be submitted to and approved by the Local Planning Authority.
Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment or the existing public sewerage system.
- 20 Prior to the commencement of any development, a strategic site wide surface water drainage strategy for the site, based on sustainable drainage principles, shall be submitted to and approved in writing by the Local Planning Authority. The strategy should be based upon a SUDS hierarchy, as espoused by the CIRIA publication 'The SuDS Manual, C753'. 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 runoff before it leaves the site or joins any water body.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

Reason: To ensure a satisfactory and sustainable means of surface water drainage, to prevent the increased risk of flooding and ensure future maintenance of these.

- 21 Any reserved matters application shall include a detailed surface water 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 surface water drainage is available 'upfront' to serve development individual phases, and to prevent the increased risk of flooding to third parties.

- 22 Prior to the commencement of development within Development Zone DZ3, a scheme shall be submitted to and approved in writing by the Local Planning Authority, to protect the 1650mm diameter public combined sewer below Albert Row. The scheme shall incorporate measures for mitigation in the event of a requirement for access to the sewer in the future for maintenance or operational issues. The development shall be constructed in accordance with the approved scheme.

Reason: In order to safeguard the integrity of the 1650mm diameter public combined sewer and to allow access for future maintenance if required.

- 23 Prior to the commencement of each phase of the development a Construction Site Waste Management Plan (CSWMP) for the control, management, storage and disposal of demolition waste / excavated material shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter take place in accordance with the approved CSWMP.

Reason: To ensure the appropriate management and storage of waste generated on site to reduce the risk of pollution and to ensure sustainability principles are adopted during development.

- 24 Prior to the commencement of each phase of the development a Construction Environmental Management Plan (CEMP) detailing all necessary pollution prevention measures for the construction shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter take place in accordance with the approved CEMP.

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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- 25 Prior to the commencement of each phase of the development a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The approved Construction Method Statement for each phase of the development shall be implemented and adhered to at all times.
Reason: In order to minimise traffic impacts on the surrounding highway network.
- 26 No development shall take place on any phase of the development 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 for that phase which has been submitted to and approved 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.
- 27 No development or site clearance shall commence until the local planning authority have been informed in writing of the name of a professionally qualified archaeologist who is to be present during the undertaking of any excavations in the development area so that a watching brief can be conducted. No work shall commence until the local planning authority has confirmed in writing that the proposed archaeologist is suitable. A copy of the watching brief report shall be submitted to the local planning authority within two months of the archaeological fieldwork being completed.
Reason: To allow for the studying and recording of this site of archaeological interest.
- 28 Prior to the occupation of any phase of the development, a car parking management strategy (including cycling provision) for that phase shall be submitted to and approved in writing by the Local Planning Authority. No phase of the development shall be brought into beneficial use until the parking facilities associated with that part of the development have been laid out and are available for use. The approved car parking strategy shall be implemented in accordance with the approved phasing plan pursuant to condition 2.
Reason: To ensure that each phase of the development is provided with adequate car and cycling parking provision.
- 29 Each phase of the development shall be occupied in accordance with a Travel Plan which should accord with the recommended measures within the submitted Framework Travel Plan which shall be submitted to and approved in writing by the Local Planning Authority, prior to the first occupation of the phase. The Travel Plan shall include arrangements for monitoring and recommending adjustments to the Travel Plan in consultation with the Local Authority.
Reason: In the interests of sustainability and to prevent unacceptable highway congestion
- 30 The proposed highway engineering details shall be implemented in accordance with a phasing programme for each phase of the proposed development, and the detailed design shall be subject to further consultation and assessment, shall be submitted to and approved by the Local Planning Authority and shall include the following:
- i) improvements to the Wellington Street / West Way junction;
 - ii) replacement Albert Row / Oystermouth Road traffic-signalised junction, which shall incorporate an at grade crossing of a 'toucan' type to allow for shared cycle/pedestrian use.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- iii) provision of bus stops along Oystermouth Road;
- iv) new pedestrian / vehicular and servicing arrangements;
- v) Traffic Regulation Orders;
- vi) associated traffic signals;
- vii) Variable Message Signage.

Reason: In the interests of highway safety.

- 31 Prior to the beneficial use of each phase of the development, details of vehicular servicing, including the timing of deliveries, shall be submitted to and approved in writing by the Local Planning Authority. The vehicular servicing of the site shall thereafter take place in accordance with the approved details.
Reason: In the interests of highway safety.
- 32 Prior to the beneficial use of each phase of the development, details of a Waste / Refuse Management Plan (including recycling facilities) for if future operation shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter take place in accordance with the approved plans.
Reason: To ensure the management and movement of refuse within the site in the interests of site safety.
- 33 Prior to the beneficial use of the Arena, an Arena Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This should incorporate details of the parking management, emergency evacuation and the hour of operation.
Reason: In the interests of safety and in order to protect the amenities of the surrounding area.
- 34 No development, including demolition work, shall commence on site until an Arboricultural Method Statement has been submitted for each phase of the development and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved method statement and all protection fencing, ground protection, and construction methods shall be retained intact for the duration of the development hereby approved, and shall only be removed, or altered with the written approval of the Local Planning Authority.
Reason: To ensure the protection of retained trees on the site whilst the development is being carried out.
- 35 No retained trees shall be cut down, uprooted, destroyed, pruned, cut or damaged during the construction phase other than in accordance with the approved 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 the same location and that tree shall be of a size, species as specified in writing by the Local Planning Authority.
Reason: To ensure the protection of the retained trees during construction works.
- 36 The detailed ecological enhancement measures as outlined in the Ecological Appraisal shall be incorporated as part of the submission of reserved matters into each phase of the development prior to that part of the development being occupied.
Reason: In order to enhance the ecology of the site in accordance with the Environment (Wales) Act, 2016.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- 37 Prior to the beneficial use of the Arena, a scheme shall be submitted to and approved in writing by the Local Planning Authority to provide the following:

"MNL (LAeq, 15min) created by events inside the development and measured at the façade of any noise sensitive receptor with windows to habitable rooms, shall not exceed a level 10dB below the background sound level (LA90, 15min)"

Also, "MNL (Leq in the 63Hz and 125Hz octave bands shall not exceed a level 3dB below the background sound level (LA90,15min) in that octave band"

To clarify 'Background sound level (LA90, 15min) has the same meaning as in BS4142:2014. Methods for rating and assessing industrial and commercial sound: "A-weighted sound pressure level that is exceeded by the residual sound at the assessment location for 90% of a given time interval, T, measured using time weighting F and quoted to the nearest whole number of decibels"

Reason: To protect the occupiers of the neighbouring residential properties against noise emanating from the Arena.

- 38 Prior to the beneficial use of any phase 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 cumulative rating level (dBLArTr), that does not exceed the representative night time background sound pressure level (LA90,15min) at the nearest noise sensitive dwelling; 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.

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

Ensure that all habitable rooms, exposed to noise from delivery yards, where the rating level (dBLAr, Tr) exceeds the background LA90, t shall have a façade designed to enable the mitigation of the indication of adverse impact as identified by BS 4142:2014. Methods for rating and assessing industrial and commercial sound.

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

- 40 Prior to the beneficial use of any phase 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

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.

- 41 Prior to the beneficial use of any phase 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.
Reason: To protect the proposed residential use against noise emanating from the commercial activity.

- 42 Prior to the beneficial occupation of any Class A3 unit within the development, a method of ventilation and fume extraction shall be submitted to and approved in writing by the Local Planning Authority. The scheme for each unit 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.

INFORMATIVES

- 1 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).

- 2 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 is 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2017/0648/OUT

- 3 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
 - 4 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: AS6, EV1, EV2, EV3, EV4, EV5, EV6, EV7, EV33, EV34, EV35, EV36, EV38, EV40, HC1, HC3, HC17, R16, AS1, AS2, CC1, CC2, CC3, EC15.
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PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2

APPLICATION NO:

2016/3619/FUL

WARD:

Castle - Bay Area

Location:

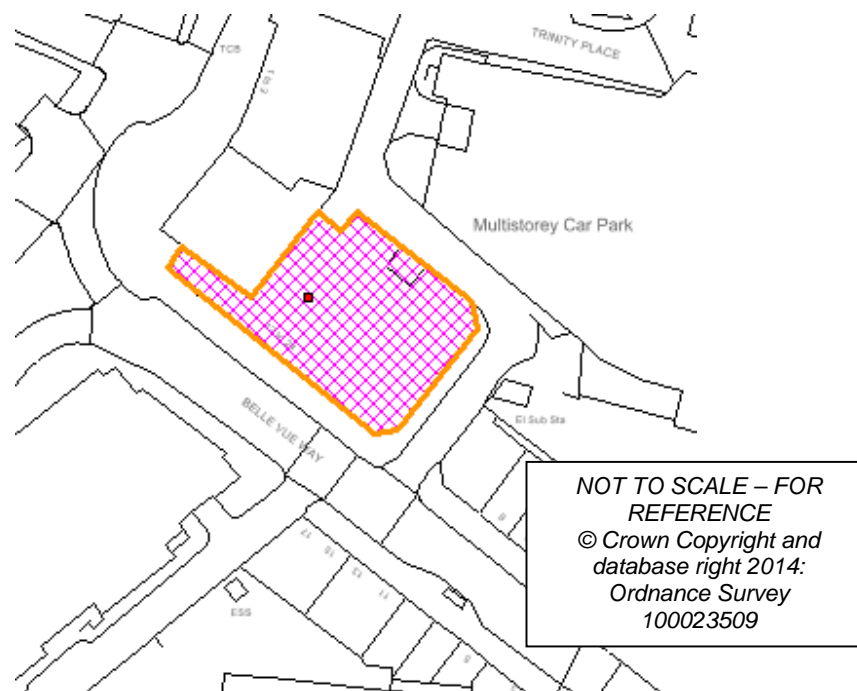
12-24 Belle Vue Way, Swansea, SA1 5BY

Proposal:

Sub-division of existing ground floor to provide 4 retail units with new shop fronts and new residential entrance off Trinity Place. Conversion of existing first and second floors into 1 and 2 bed apartments, addition of 2 new storeys to accommodate additional 1 and 2 bed apartments (total number of 36 self-contained apartments - 18 x 1 bed + 18 x 2 bed apartments) and associated fenestration alterations and external works.

Applicant:

Mr Mike Dawson Estateways plc



BACKGROUND INFORMATION

POLICIES

UDP - EV2 - Siting

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).

UDP - EV3 - Accessibility

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)

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

UDP - EV4 - Public Realm

New development will be assessed against its impact on the public realm. (City & County of Swansea Unitary Development Plan 2008)

UDP - EC4 - New Retail Development

All new retail development will be assessed against need and other specific criteria. (City & County of Swansea Unitary Development Plan 2008)

UDP - CC1 - City Centre Mixed Use Development

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)

UDP - HC8 - Over the Shop Housing

The conversion of vacant or underused floorspace above commercial properties to residential use will be encouraged, subject to;

- i) Satisfactory design considerations,
- ii) Compatibility with nearby uses, and
- iii) Appropriate pedestrian/cycle access and parking arrangements.

(City & County of Swansea Unitary Development Plan 2008)

UDP - HC6 - Flat Conversions

Proposals for the conversion of larger dwellings and vacant or under-utilised commercial and industrial buildings to flats or similar will be permitted subject to a set of defined criteria including the effect upon residential amenity; overintensive use of the dwelling or building, effect upon the external appearance of the property and the locality; effect on local car parking and highway safety; and adequate refuse storage arrangements. (City & County of Swansea Unitary Development Plan 2008)

UDP - EV13 - Shopfronts

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)

UDP - AS5 - Walking and Cycling

Accessibility - Assessment of pedestrian and cyclist access in new development. (City & County of Swansea Unitary Development Plan 2008)

UDP - AS6 - Parking/Accessibility

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

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2016/3619/FUL	Sub-division of existing ground floor to provide 4 retail units with new shop fronts and new residential entrance off Trinity Place Conversion of existing first and second floors into 1 and 2 bed apartments, addition of 2 new storeys to accommodate additional 1 and 2 bed apartments (total number of 36 self-contained apartments - 18 x 1 bed + 18 x 2 bed apartments) and associated fenestration alterations and external works.	PDE	
2016/0506	Pre- Application - Proposed sub division of ground floor to provide 4 retail units, with basement storage, provision of 36 apartments on upper floors and associated external alterations	PREMI X	07.04.2016
2005/1873	Retention of use of part of second floor from wholesale warehouse (Class B8) to restaurant (Class A3)	APP	26.10.2005

RESPONSE TO CONSULTATIONS

The planning application was advertised in the local press and on site by notice date 1st March 2017. NO RESPONSE.

Pre-application consultation report (PAC)

The Wales Planning Act 2015 introduced the requirement for pre-application consultation in respect of applications for major developments which came into force in March 2016 and the requirement for applicants to submit the pre-application consultation report (PAC) as a validation requirement for applications made after 1 August 2016. The agent submitted the PAC report as part of this application submission. Responses received detailed below:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

GGAT	No objection
CADW	No Objection
Dwr Cymru Welsh Water	No objection
NRW	No objection
Welsh Government	No objection
LPA Highways	see comments
National Grid	No objection
Coal Authority	No objection

One letter of objection was received as part of the PAC process from the occupier of the adjoining business use (PAC report page 14) raising concerns that the proposed development will cause noise disturbance for a long period of time.

Head of Transportation: - I recommend that no highway objections are raised to the proposal subject to:

1. The doors opening onto the rear of the site at ground floor level (retail units) should open inwards and not outwards.
2. The applicant to provide a sum to the value of £23,000 prior to beneficial occupation of any part of the development for Section 106 Highways enhancements to walking/cycling.
3. A parking strategy to be submitted for approval to deal with the lack of parking facilities being made available for use by the residents.
4. Cycle parking in accordance with the approved plans to be laid out and maintained as such in perpetuity.
5. Before the development hereby permitted is occupied arrangements shall be agreed in writing with the local planning authority and be put in place to ensure that no resident of the development shall obtain a resident's parking permit within any controlled parking zone which may be in force on in the area.
6. No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during demolition and construction; and
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: To reduce the likelihood of obstruction of the highway, danger to road users, to conserve public health and local amenity, to ensure satisfactory standard of sustainable development and in order to ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

Urban Design: - The above application seeks the redevelopment and extension of the existing building with works comprising of:

- o sub-division of existing ground floor to provide 4 smaller retail units with new shop fronts and renovated interiors, 2 of which have access to basement storage areas;
- o introduction of a new residential entrance and core off Trinity Place;
- o conversion of existing first and second floors (currently open plan) into 1 and 2 bed apartments around a central internal atria;
- o addition of 2 new storeys above to accommodate additional 1 and 2 bed apartments;
- o third floor facade to be brick faced to match floors below, with the existing parapets and coping raised;
- o fourth floor facade set back from existing facade line with a metal clad finish.
- o total number of 36 self-contained apartments proposed (18 x 1 bed + 18 x 2 bed apartments).

Comments:

- o The amendments to the current proposals address my previously raised points from the pre-application and are considered acceptable.
- o The proposed splayed residential entrance adds interest to the façade and improves legibility for this entrance.
- o The new larger ground floor windows and street facing entrances for all the proposed retail units as well as the corner entrance for retail unit 4 are strongly welcomed to add visual interest and encourage activity to enliven the streetscene in this location.
- o The proposed coloured half frames/surrounds for the upper floor windows are welcomed to add visual interest and colour to the existing homogenised elevations. Details of the appearance and robustness of the fixings of these should be considered. In order to ensure a crisp finish these should have secret or minimal internal fixings which are robust enough to avoid high wind shearing effects.
- o The more vertically emphasised windows to the recessed top floor are welcomed to provide more vertical emphasis to the building mass and an appropriate contrast to the 1st - 3rd floors below which are of different materiality and set forward of this.

In summary the proposals are welcomed to provide a new mixed use development which will help to reinvigorate the visual appearance and levels of activity in this location.

Pollution Control: - No objection subject to conditions

Planning Obligations:

Education: - There is no request for a Developer's Contribution towards Education in respect of any of the named catchment schools in question from this proposed development due to the limited impact of the low number and type of flats involved.

Parks: - No comments or objection

Housing Enabling: - This site falls within the Castle Ward, Central Sub Area, the Local Housing Market Assessment indicates a high need for affordable housing. Require 30% affordable housing onsite, a mix of 1 & 2 bedroom DQR complaint flats.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

The affordable housing units shall be transferred to the Council/RSL. (mix/tenure to be agreed). To ensure affordability they need to have either a low or nil service charge applied.

APPRAISAL

Introduction

This application is reported to Committee for decision as a major development which meets the development threshold.

In terms of the planning history for this site, the existing building was formerly occupied by JT Morgan an independent department store built around the 1960's. After many years of successful trading JT Morgan went into administration around 2008 and the building has been subsequently vacant, despite efforts to secure a new retail use. The existing building is three storeys in height with an existing basement formerly used for storage, staff and servicing. The upper floors are mainly open plan and were previously used as retail trading space.

Application Site and Surroundings

The above site lies within the Swansea Central Area Regeneration Framework (SCARF) designation (February 2016)

The Regeneration Framework presents a Masterplan which focuses on development opportunities in a Retail and Leisure Led Mixed Use area and identifies a future role and function for a range of Complementary Areas set within the context of a Vision for the 4 following broad areas:

- o Creating a Living, Working and Learning Area
- o Developing a Retail Leisure Led Mixed Use Centre
- o Connecting to the City Waterfront
- o Creating a Green Artery

The application site is located within the Swansea Central Area - Mansel Street/Alexandra Road Appraisal Area. The Key Vision Theme for this area is the City Living, Working and Learning.

Proposed Development

The application seeks the conversion of the existing ground floor to provide 4 retail units with new shop fronts and new residential entrance off Trinity Place. The conversion of existing first and second floors into 1 and 2 bedroom apartments, addition of a third and fourth floor to accommodate additional 1 and 2 bedroom apartments (total number of 36 self-contained apartments - 18 x 1 bed and 18 x 2 bed apartments) and associated fenestration alterations.

The proposed extensions are to comprise of a new 3rd floor which matches the proportions, materials and appearance of the existing floor below whilst the proposed 4th floor will be set back from these and will be finished in metal cladding.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

Material Planning Considerations

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

- o Principle of development having regard to Development Plan Policy and Supplementary Planning Guidance;
- o Townscape and visual impact;
- o Impact on residential amenity;
- o Highways, traffic, car parking, access and pedestrian movements;
- o Affordable Housing

Principle of development

In terms of the location the site itself is contained within the 'City Centre Action Area', as specified within the UDP. In this respect the development of the site for mixed use residential and retail A1 units is supported in principle by development plan policy.

Policy CC1 supports the development of the following uses within the city centre; retailing and associated uses, office, hotels, residential institutions and housing, community and appropriate leisure uses and marine related industry. This policy also supports the re-use of historic buildings and the redevelopment/enhancement of post war buildings will be encouraged and proposals will be considered against the following criteria: impact on existing uses or residential amenity, potential for noise, disturbance and pollution, traffic generation, access and parking, and in the case of retail development, the criteria specified in Policy EC4.

Policy CC5 requires all new development schemes to make a positive contribution to enhancing the City Centre's environment. A programme of improvements will be implemented and, where appropriate, developer contributions will be sought towards this process.

Policy HC8 encourages the conversion of vacant or underused floorspace above commercial properties to residential use subject to: satisfactory design considerations, compatibility with nearby uses, and appropriate pedestrian/cycle access and parking arrangements.

Policy HC6 states that proposals for the conversion of larger dwellings and vacant or underutilised commercial and industrial buildings to flats or other self-contained units of accommodation will be permitted subject to satisfaction of the following criteria:

- i. In the case of buildings with an employment use, it can be demonstrated that the current or previous use is no longer viable,
- ii. There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance,
- iii. The development would not result in an over-intensive use of a dwelling or building,
- iv. There would be no significant adverse effect on the external appearance of the property and the character of the locality,
- v. There would be no significant adverse effect on local car parking and highway safety, and
- vi. Appropriate refuse storage arrangement can be provided.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

Further consideration can be given to the remaining design criteria in the paragraphs below along with the requirements of UDP Policies EV1, EV2, EV3, EV4 and EV13 and the relevant Adopted SPG including:

- o Swansea Central Area Regeneration Framework (SCARF) (February 2016)
- o Places to Live Residential Design Guide (2014)
- o Planning for Community Safety (December 2012)
- o Planning Obligations (March 2010)
- o Car Parking Standards (March 2012)

Subject to compliance with the above mentioned policies and guidance it can be considered that the principle of development is acceptable.

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

Townscape and visual impact

Policy EV1 of the UDP requires new development to accord with 11 specified objectives of good design. In this respect, the proposal was subject to pre-application advice and the current proposals have addressed the points raised during the pre-application process.

The proposed splayed residential entrance adds interest to the façade and improves legibility for this entrance. The new larger ground floor windows and street facing entrances for all the proposed retail units as well as the corner entrance for retail unit 4 add visual interest and encourage activity to enliven the streetscene in this location.

The proposed coloured half frames/surrounds for the upper floor windows add visual interest and colour to the existing homogenised elevations. Details of the appearance and robustness of the fixings of these should be considered. In order to ensure a crisp finish these should have secret or minimal internal fixings which are robust enough to avoid high wind shearing effects. The details can be secured by an appropriate condition.

The more vertically emphasised windows to the recessed top floor provide more vertical emphasis to the building mass and an appropriate contrast to the 1st - 3rd floors below which are of different materiality and set forward of this.

Given the scale of the surrounding buildings, it is not considered that the proposal will look out of place and will effectively integrate with the general scene as a whole. On this basis it is considered that the proposal is appropriate to its local context in terms of scale, height, massing, elevational treatment, materials and detailing, layout, form, mix and density. It is also considered that the proposal will provide a significant contribution to bring a vacant and underused building back into beneficial use and provide a much needed enhancement of the general street scene.

The site is also well linked in an accessible manner to adjacent attractions and areas of public realm and the city centre shopping areas. The site is located on a bus route and has good access to the public transport network, with the Train Station and Quadrant bus and coach station all within walking distance. The site is also in close proximity the National Cycle Network. Accordingly it is considered that the proposal accords with the requirements of Policy EV3.

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

Policy EV4 of the UDP states that where development and ancillary features impact on the public realm designs should ensure that schemes integrate with areas to produce spaces that result in quality townscape and building frontages that actively engage with the public, that are "people friendly" in terms of perceived and actual safety levels, and provide attractive detail through the use of high-quality, durable materials. In this respect the main entrance to the residential accommodation is off Trinity Place, and along with the retail units to ground floor and level of glazing and active frontage to the road, it is considered that the proposal will provide for a good deal of natural surveillance at all times of the day. The proposal is considered in compliance with the provisions of UDP Policy EV4.

Impact of residential amenity

In the first instance the principle of a mixed use development at this location is supported by development plan policy. The application site is located within the SCARF Swansea Central Area - Mansel Street/Alexandra Road Appraisal Area where the key vision is City Living, Working and Learning.

Residents therefore should realistically expect a level of activity akin to a mixed use urban area rather than a suburban location. It is not considered that the proposal would result in demonstrable unacceptable level of disturbance from this proposed residential use that would be considered so harmful in a mixed use urban area that would warrant a recommendation of refusal.

Consideration can also be given to Adopted SPG entitled 'Place to Live Residential Design Guide'. Whilst this 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 relevant requirements of the Residential Design Guide include:

- * Density and Mixed Uses - the design guide highlights the importance of maximising density in accessible locations. The site is well served by public transport, walkable to the city centre and a cycle ride to the various university areas and as such is located in a highly accessible location. Furthermore the scale, height and massing of the proposed development would not appear out of place at this location.
- * Community Safety - Legible and welcoming entrances - a key requirement for all forms of development is that the entrances are legible (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.

A new residential entrance and core are introduced to the Trinity Place façade to give access to the residential apartments.

- * Privacy and Amenity - The Design Guide also sets the requirement to avoid cramped living environments in high density developments and it is considered that the density is appropriate for city centre living.

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

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. At this location within the city centre there are no adverse impacts on the residential amenity of any existing residential uses, or any adverse impacts on the surrounding business uses from the proposed residential use.

The Authority's Pollution Control Officer has raised no objection to this proposal subject to conditions being imposed to deal with sound insulation measures for habitable rooms, building services plant noise details, details of condensing units and schemes of ventilation and fume extraction for the commercial units and control of amplified sound from the site. Such conditions would be reasonable in the interests of providing for an acceptable development. As such it is considered that the proposals are compliant with the requirements of UDP policies and the adopted residential design guide in relation to residential amenity impacts.

Highways and car parking

Planning Policy Wales 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 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.

Moreover, as stated within the Swansea Central Area: Regeneration Framework (SCARF) under Section 5: Framework for Regeneration and Movement which seeks to promote sustainable transport by reducing car dependency and with regard to the central area car parking standards provide the following advice:

To facilitate new land uses and regeneration initiatives in the Central Area which align with the aims, objectives and proposals of the Regeneration Framework, such as 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 contribution 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.

The Head of Transportation has raised no highway objection subject to a number of conditions. It is reasonable to assume that walking is a viable and growing means of travel which this development should be designed to promote.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

In such circumstances, in order to provide for an acceptable form of development that integrates with the surrounding infrastructure 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, this can be secured via a Section 106 Planning Obligation to require the developer to provide a sum to the value of £23,000 for Highway enhancements to walking and cycling.

A parking strategy is also requested to be submitted to deal with the lack of parking facilities being made available for residents of the developments; and arrangement put in place to ensure that no resident of the development shall obtain a resident's parking permit within any controlled parking zone which may be in force on in the area.

However, this is a city centre site where there is no parking available on site to serve future residents. Residents would either be non car owners or have to use the public car parks within the area. Therefore it is not considered reasonable or necessary to request a parking strategy or control parking permits as this is controlled by a separate process. Cycle parking is being provided on site and can be secured by an appropriate condition to encourage alternative forms of transport.

On this basis, it is considered that the scheme complies with the aims and requirements of policies EV1, EV2, AS1, AS5, AS6 and the Adopted Supplementary Planning Guidance 'Parking Standards' in regard to the impact of the development upon highway safety in the area.

Planning Obligations - Affordable Housing

This site falls within the Castle Ward, Central Sub Area, the Local Housing Market Assessment indicates a high need for affordable housing. There is a requirement for 30% affordable housing onsite, a mix of 1 & 2 bedroom DQR complaint flats. The affordable housing units shall be transferred to the Council/RSL. (mix/tenure to be agreed). To ensure affordability they need to have either a low or nil service charge applied. This will be secured through the Section 106 Agreement.

Other Issues

Impact on archaeology and cultural heritage

In response to the pre application consultation submitted by the developer's agent, Glamorgan Gwent Archaeological Trust (GGAT) raised no objection to this proposal.

Flood risk and Drainage

In response to the pre-application consultation submitted by the developer's agent, Dwr Cymru and NRW raised no objection to this proposal.

Pollution control

The Authority's Pollution Control Officer has recommended conditions in relation to sound insulation for habitable rooms.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

The nature of the proposal is such that it would not result in any environmental pollution issues nor would it result in the creation of any environmental pollution to the detriment of neighbouring occupiers in terms of light, air and noise. No objection has been received from the Authority's Pollution Control Division subject to conditions

Impact on ecology

An informative is recommended in relation to bats/birds.

Response to public consultation

No formal response to public consultation has been received. It is noted that an objection was received with the PAC report submitted by the agent. As addressed in the previous paragraphs, a degree of noise and disturbance has to be expected during any building project, but hours of operation are more properly controlled by environmental health legislation and would cease on completion of the project. It is not considered that there would be any demonstrable unacceptable impacts of noise from the proposed residential use on any surrounding business uses that would be so harmful to warrant a recommendation of refusal.

Conclusion

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WCFG Act"). In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WCFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WCFG Act.

In conclusion it is considered that the details submitted in accordance with development plan policy subject to conditions and Section 106 Agreement. It is considered that the proposals would bring a long term vacant building back into beneficial use in accordance with the regeneration aims of the Swansea Central Area Regeneration Framework City Centre. Approval is therefore recommended subject to first entering into a Section 106 Agreement.

RECOMMENDATION

APPROVE subject to the completion of a Section 106 Planning Obligation to include the following clauses:

- 1. Affordable Housing**
 - a. This site falls within the Castle Ward, Central Sub Area, the Local Housing Market Assessment indicates a high need for affordable housing. Require 30% affordable housing onsite, a mix of 1 & 2 bedroom DQR complaint flats. The affordable housing units should to be transferred to the Council/RSL. (mix/tenure to be agreed). To ensure affordability they need to have either a low or nil service charge applied.**

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

2. Highway Infrastructure

S106 financial contributions to the sum of £23,000 to fund:

- a) **Walking and Cycling Enhancement - the off-site improvements to the pedestrian/cycle infrastructure to further enhance and promote sustainable travel and fund a new toucan crossing at the junction of Belle Vue Way with Alexandra Road.**

If the Section 106 Obligation is not completed within 3 months of the foregoing resolution then delegated powers be given to the Head of Planning and City Regeneration to exercise discretion to refuse the application on the grounds of non-compliance with policies AS1,AS6, EV1, EV3, HC6 and HC8 of the City and County of Swansea Unitary Development Plan (November 2008).

and 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: EX(0)110 Site location plan; EX(0)111 Red line plan; EX(0)100 Existing basement plan; EX(0)101 Existing ground floor plan; EX(0)102 Existing first floor plan; EX(0)103 Existing second floor plan; EX(0)104 Existing roof plan; EX(0)300 Existing south elevation; EX(0)301 Existing east elevation; EX(0)302 Existing north elevation; P(0)100 Proposed basement plan; P(0)101 Proposed ground floor plan; P(0)102 Proposed first floor plan; P(0)103 Proposed second floor plan; P(0)104 Proposed third floor plan; P(0)105 Proposed fourth floor plan; P(0)106 Proposed roof plan; P(0)200 Proposed section A-A; P(0)201 Proposed section B-B; P(0)300 Proposed south elevation; P(0)301 Proposed east elevation; P(0)302 Proposed north elevation; Design and Access Statement December 2016; received on 13th December 2016.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 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. The sound insulation works shall be completed as approved before occupation of any residential unit and thereafter retained in perpetuity.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

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

- 4 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 $D_{nT,w} + (Ctr)$ of 50dB for the ceiling/floor between the commercial and residential uses and be verified by the appropriate testing methodology upon completion. The scheme shall be completed as approved before any part of the development hereby approved is brought into beneficial use and thereby retained in perpetuity.

Reason:- To protect the proposed residential use against noise emanating from the commercial activity.

- 5 Prior to commencement 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) at the nearest noise sensitive dwelling; in accordance with BS 4142:2014. Methods for rating and assessing industrial and commercial sound. Any approved measures shall be retained thereafter in accordance with the approved details.

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

- 6 The applicant shall conduct and submit to the Local Planning Authority the results of, an air quality assessment of the potential impact upon the proposed development of the surrounding local area.
- o The assessment shall consider the seven key pollutants within the National Air Quality Strategy and Air Quality (Wales) Regulations 2000 as amended by the Air Quality (Amendment) (Wales) Regulations 2002 and should pay particular attention to the 1 hour NO₂ objective and NO₂ annual mean objective.
 - o In addition the assessment should also pay particular attention to the PM₁₀ objectives set in regulation (24 hour mean objective of 50µg/m³ - 35 exceedences and the annual mean objective of 40µg/m³ to be achieved by the 31/4/2004 and maintained thereafter). Also, an indication of the new particles (PM 2.5) Exposure Reduction objective (contained within the Air Quality strategy 2007) of 25µg/m³ in 2010 and 2020 should be made.

The scope of the assessment and all modelled receptor locations shall be agreed with the Pollution Control Division prior to submission of the assessment.

If the assessment indicates non-compliance with the air quality objectives, set out within the Air Quality (Wales) Regulations 2000 as amended by the Air Quality (Amendment) (Wales) Regulations 2002, then a scheme shall be submitted specifying potential methods to be utilised within the façade design in order to mitigate the potential exposure.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

Any approved measures shall be carried out prior to the commencement of development and retained thereafter in accordance with the approved details.

Reason: In the interests of residential amenity and to prevent unacceptable levels of pollution.

- 7 No development shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.

- 8 Prior to the commencement of works, details of the fixings of the window frames and cladding at a scale of 1:10 shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: In the interests of visual amenity.

- 9 No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during demolition and construction; and
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: To reduce the likelihood of obstruction of the highway, danger to road users, to conserve public health and local amenity, to ensure satisfactory standard of sustainable development and in order to ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.

- 10 The development shall not be occupied until facilities for the secure storage of cycles have been provided in accordance with details shown on drawing no.P(0)100 and the cycle storage shall be retained as approved at all times.

Reason: In the interests of providing facilities for sustainable transport.

- 11 Notwithstanding the details shown on any plan, the doors opening onto the rear of the site at ground floor level (retail units) should open inwards and not outwards.

Reason: In the interest of public and highway safety.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

- 12 Notwithstanding the details submitted, prior to the first beneficial occupation of any retail unit, details of the allocation of space for the provision of dedicated waste and recycling bins for each retail unit within the curtilage of the site, shall be submitted to and approved in writing by the Local Planning Authority. The waste storage shall be completed in accordance with the approved details prior to the first occupation of any retail unit and thereafter retained in perpetuity.

Reason: In the interests of visual amenity and to ensure that adequate waste storage facilities are retained within the site curtilage for commercial waste.

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: EV1, EV2, EV3, EV4, EV13, EV40, CC1, CC5, EC4, HC6, HC8, AS5, AS6.

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

- 3 Bats may be present. All British bat species are protected under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended) and are listed in Schedule 2 of the Conservation of Habitats and Species Regulations 2010. This legislation implements the EC Habitats & Species Directive in the UK making it an offence to capture, kill or disturb a European Protected Species or to damage or destroy the breeding site or resting place of such an animal. It is also an offence to recklessly / intentionally to disturb such an animal.

If evidence of bats is encountered during site clearance e.g. live or dead animals or droppings, work should cease immediately and the advice of the Natural Resources Wales sought before continuing with any work (01792 634960).

- 4 It is an offence under the Wildlife & Countryside Act 1981 (as amended) to intentionally (intentionally or recklessly for Schedule 1 birds) to:

- Kill, injure or take any wild bird
- Take, damage or destroy the nest of any wild bird while that nest is in use or being built
- Take or destroy an egg of any wild bird

You are advised that any clearance of trees, shrubs, scrub (including gorse and bramble) or empty buildings should not be undertaken during the bird nesting season, 1st March - 31st August and that such action may result in an offence being committed.

- 5 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 2 (CONT'D)

APPLICATION NO:

2016/3619/FUL

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.

6 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.

7 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.

Lighting

During construction work the developer shall operate all best practice to minimise nuisance to locals residences from on site lighting. Due consideration should be taken of the Institute of Lighting [www.ile.org.uk] recommendations

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

UDP - EV2 - Siting

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).

UDP - EV3 - Accessibility

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)

UDP - EV33 - Sewage Disposal

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)

UDP - EV34 - Protection of Controlled Waters

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)

UDP - EV35 - Surface Water Run-Off

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)

UDP - AS1 - New Development Proposals

Accessibility - Criteria for assessing location of new development. (City & County of Swansea Unitary Development Plan 2008).

UDP - AS2 - Design and Layout

Accessibility - Criteria for assessing design and layout of new development. (City & County of Swansea Unitary Development Plan 2008)

UDP - AS6 - Parking/Accessibility

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

UDP - HC3 - Affordable Housing

Provision of affordable housing in areas where a demonstrable lack of affordable housing exists. (City & County of Swansea Unitary Development Plan 2008)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

UDP - HC1 - Housing Sites

Allocation of housing sites for 10 or more dwellings. (City & County of Swansea Unitary Development Plan 2008).

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0795/FUL	Construction of 36 residential units with associated works and car parking	PDE	

This application is reported to Committee as the number of dwellings proposed exceeds the development threshold in the scheme of delegation.

RESPONSE TO CONSULTATIONS

The application was advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) through the display of a site notice and in the local press and TWENTY neighbouring properties were consulted individually. TEN LETTERS of OBJECTION have been received which may be summarised as follows:

- o The site is liable to flooding during wet weather.
- o The developers could be liable for insurance and compensation claims from householders during wet weather. This may also influence the value of properties.
- o Increase in traffic in an already busy area would create more problems with parked cars in the area including emergency vehicles which can't get through.
- o Concern regarding the decreasing volume of greenery around Melin Mynach.
- o This area has been developed enough recently with the extension of the Gwalia homes.
- o What happened to the children's play area that was supposed to be built on this land. How does an out of character swathe of dwellings supersede a much needed community item?
- o Something like this should be accompanied by extensive data packs sent to every house on the estate and not rely on word of mouth of diligent neighbours
- o Impact of 36 houses on an already overcapacity sewerage system.
- o Potential noise pollution and disruption (albeit temporary) with construction of such dwellings.
- o Inevitable risk of increased noise levels on our estate and possible anti-social behaviour simply due to increased number of residents.
- o Disruption and destruction of wildlife habitats.
- o Concern how these buildings will look. The existing Gwalia houses are looking run down with damager solar panels in disrepair.
- o Three storey properties not in keeping with the area.
- o Increase in traffic will be safety risk to both children and elderly residents.
- o Parking provision provided could be exceeded by demand leading to surrounding streets being used for parking.

Council's Pollution Control Division -

Due to the historical land use at the site please, attach the following condition regarding contaminated land: -

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

o Land Contamination

Unless otherwise agreed in writing with the Local Planning Authority the applicant shall be required to undertake and submit for approval the following:

Site Characterisation

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:

- o a list of potential receptors
- o an assessment of the extent of the contamination
- o an assessment of the potential risks
- o an appraisal of remedial options, and proposal for the preferred remedial option(s).

The reports shall be submitted individually.

The provision of Phase 2 and Phase 3 reports will be required only where the contents of the previous report indicate to the Local Planning Authority that the next phase of investigation/remediation is required.

Phase 1 report: Desk Top Study

this shall:

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

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

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

- o 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

- o 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.

Advisory:

http://www.swansea.gov.uk/media/pdfwithtranslation/g/3/WLGAEAW_Guide_for_Developers_re_v_2012.pdf

Development of Land Affected by Contamination: A Guide for Developers

Given the proximity of the service yard to the superstore, I would like to attach the following condition:

Unless otherwise agreed in writing, prior to commencement of the development a report shall be submitted to in writing by the Local Planning Authority for approval; taking into consideration BS 4142:2014. Methods for rating and assessing industrial and commercial sound and BS 8233:2014. Guidance on sound insulation and noise reduction for buildings with regard to the land use to the south of the application site, the Asda Superstore. The report shall set out potential mitigation requirements required to ensure that the guidance documents are adhered to.

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

INFORMATIVES

1 Construction Noise

The following restrictions should be applied to all works of demolition/ construction carried out on the development site

All works and ancillary operations which are audible at the site boundary shall be carried out only between the hours of 08.00 and 18.00 hours on Mondays to Fridays and between the hours of 08.00 and 13.00 hours on Saturdays and at no time on Sundays and Public Holidays and Bank Holidays.

The Local Authority has the power to impose the specified hours by service of an enforcement notice.

Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

3 Dust Control:

During construction work the developer shall operate all best practice to minimise dust arisings or dust nuisance from the site. This includes dust and debris from vehicles leaving the site. The Local Authority has the power to enforce this requirement by service of an abatement notice. Any breaches of the conditions attached to such a notice will lead to formal action against the person[s] named on said notice.

4 Lighting

During construction work the developer shall operate all best practice to minimise nuisance to locals residences from on site lighting. Due consideration should be taken of the Institute of Lighting [www.ile.org.uk] recommendations

Council's Drainage Division -

In regards to the proposed surface water removal scheme shown on dwg SK-05, this scheme is as far as we are aware only applicable to the nearby TA Centre re-development therefore an alternative SW removal scheme with supporting calculations must be submitted.

In regards to the proposed surface water scheme shown on dwg C-002 which is acceptable in principle subject to DCWW agreeing the discharge rates we would recommend the following -

Condition 1:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking or amending that order), Classes A, D, E and F of Schedule 2, part 1 shall not apply.

Reason 1:

To protect the integrity of the chosen surface water management system from additional impermeable areas that the SW system is not designed to accommodate.

Condition 2:

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 2:

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.

Council's Housing Division -

The Housing Service can confirm that the site at the land off Heol Eifion is a 100% affordable, grant funded scheme with Pobl, for the purpose of the Section 106 we will expect to see 30% of the site conditioned to remain affordable in perpetuity.

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

Councils' Education Division -

Primary

English Medium: due to the low numbers of pupils likely to be generated from this development, there is no request for contributions at this time.

Welsh-medium: the Welsh-medium catchment school is projected to be over-capacity and there are a large number of developments that have successfully obtained planning approvals that will further exacerbate the situation, without the impact of the LDP. However, due to the low numbers of pupils likely to be generated from this development, there is no request for contributions at this time.

Secondary

English-medium: whilst there is currently capacity at Penyrheol Comprehensive school, the surplus capacity is operating at below 10%, which is the percentage Welsh Government deem to be sufficient to allow flexibility for the school to operate sufficiently and effectively. This is without taking out the capacity within the demountable on site. The existing commitments, without the combined impact of the LDP, will create significant pressures and a shortfall in accommodation for Penyrheol Comprehensive School. However due to the low numbers of pupils likely to be generated from this development, there is no request for contributions at this time.

Welsh-medium: the Welsh-medium secondary school is projected to be over-capacity and there are a large number of developments that have successfully obtained planning approvals that will further exacerbate the situation, without the impact of the LDP. However, due to the low numbers of pupils likely to be generated from this development, there is no request for contributions at this time.

Conclusion: Providing the above information, there is no request for education contributions for any of the schools in question from this development due to the low number and type of flats/apartments involved. However, as always it is the cumulative impact of a host of such developments over time that could be difficult to manage.

Council's Urban Design Comments -

The application seeks the erection of 36 dwellings comprising of 22 no. flats and 14 no. houses at the above site. A previous pre-application was submitted under application ref: 2016/1800 for which comments were provided. Following these comments amendments were made to the scheme and the majority of the concerns previously raised were addressed.

Comments:

- o As highlighted above the majority of the concerns raised in the pre-application comments were addressed in subsequent amendments to the scheme.
- o The one remaining concern related to the lack of a route east-west through the site to formalise an existing informal route across the site. Justification for the lack of this route was previously based upon concerns relating to community safety and the potential for anti-social behaviour.

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

However these concerns were not supported by any evidence such as crime statistics within the locality etc. and given the relatively short route, the wide nature of the space to accommodate this as well as the direct sightlines from one end of this to the other questions were raised as to this justification on community safety grounds. Given the lack of evidence provided for the omission of the route based on community safety concerns this was not considered to be an acceptable approach as this runs contrary to the guidance set out in the Residential Design Guide SPG which broadly supports a connected highway network over a more fragmented one (i.e. cul-de-sacs) particularly for the negative impacts upon pedestrian and cyclist connectivity/movement that can arise in the latter approach.

- o However in this instance there are additional considerations in the form of the level differences between the internal road within the site and existing highway at Heol Eifion as well as the presence of a utilities easement within this space also which, after exploration of potential design solutions, would result in an overly complex set of ramps to meet accessibility standards. Therefore in this instance the omission of the through route is justified for this reason.

In summary the proposals are considered to be acceptable.

Council's Planning Ecologist -

An ecological survey has been carried out on the site. The area of woodland to the south of the site is to be retained; this area should be protected during the development. The preliminary ecological appraisal recommends a series of mitigation (sections 5.2 and 5.3) these should be followed. The surveyor recommends that further reptile surveys are carried out. A condition should be added to any permission we give requiring a reptile survey to be carried out and if reptiles are found a reptile mitigation scheme to be submitted for our approval prior to work starting on the site. Please include the informative below

BIRDS

Birds may be present. Please note it is an offence under the Wildlife & Countryside Act 1981 (as amended) to intentionally (intentionally or recklessly for Schedule 1 birds) to: -

- o Kill, injure or take any wild bird
- o Take, damage or destroy the nest of any wild bird while that nest is in use or being built
- o Take or destroy an egg of any wild bird

Care should be taken when working on buildings, trees and clearing bushes particularly during the bird nesting season, March to August

Dwr Cymru Welsh Water

Sewerage:

This proposed development is located in an area which has the potential to discharge into national and international designated waters. The Loughor Estuary forms part of the Carmarthen Bay & Estuaries European Marine Site which is the collective name for three European Natura 2000 designated areas, namely Carmarthen Bay & Estuaries Special Area of Conservation, Carmarthen Bay Special Protection Area and Burry Inlet Special Protection Area.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

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

Equally developers too, can also play a significant part in mitigation measures by incorporating sustainable drainage facilities within their proposals. It is essential therefore that as a pre-requisite of any development being considered for approval that such matters are effectively controlled through planning conditions. Therefore we seek your Authority's cooperation in imposing the following condition to any grant of planning permission.

Condition:

No development shall take place until full details of a scheme for the foul and surface water sewerage disposal (incorporating sustainable drainage principles) of the whole site has been submitted to and approved in writing by the local planning authority and thereafter implemented in accordance with the approved details. Surface water shall not be connected to the foul sewerage system.

Reason: To ensure the integrity of the public sewerage system and designated water is protected through the implementation of sustainable practices.

Condition:

The proposed development site is crossed by a public sewer with the approximate position being marked on the attached Statutory Public Sewer Record. The position shall be accurately located and marked out on site before works commence and no operational development shall be carried out within 3 metres either side of the centreline of the public sewer.

Reason: To protect the integrity of the public sewer and avoid damage thereto, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

Advisory Notes:

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

Sewage Treatment:

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

Water Supply:

Dwr Cymru Welsh Water has no objection to the proposed development.

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

Natural Resources Wales -

NRW does not object to the above proposal, however we wish to make the following comments.

Foul Water Disposal and Memorandum of Understanding

As your Authority is aware, since 2007, issues have come to light regarding the foul and surface water drainage networks in this area. This has resulted in additional pollution and nutrient loading spilling into the Loughor WFD water body. As such, a Memorandum of Understanding (MOU) has been prepared to enable development in this area to go forward.

Protection of the water environment is a material planning consideration and your Authority must be satisfied that the proposed method of foul and surface water drainage from the proposal will not cause any detriment to water quality.

We strongly recommend that your Authority consult with Dwr Cymru/Welsh Water (DCWW) to ensure hydraulic capacity exists at the treatment works to accommodate the flows from this development, without causing pollution.

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

For larger scale developments such as this, bespoke solutions will be necessary, depending on the size and location of the particular development. We recommend that applications such as this are discussed with the Technical Advisors Group.

The agreed relevant details must be recorded on your Authority's register of compensatory surface water disposal.

With regard to surface water disposal, it is imperative that no surface water is allowed to enter the sewerage infrastructure. This is in order to avoid hydraulic overloading of the sewerage system.

We also recommend that your Authority's Drainage Engineers are consulted in relation to the surface water proposals. This is in order to ensure there is no connection of surface water to the main sewerage system.

Ecology and Protected Species

We note the submission of the document entitled; 'Land Adjacent to Heol Eifion, Gorseinon: Preliminary Ecological Appraisal', dated December 2016, By Acer Ecology Ltd.

We note from Section 4.1.1 that the area of semi-natural broadleaved woodland at the south of the site is to be retained. We advise that appropriate fencing and root protection zones are established to protect the habitat.

The preliminary ecological appraisal also recommends a number of mitigation and precautionary measures, within Sections 5.2 and 5.3 of the document. NRW are supportive of these proposals and advise that the method of delivering and securing these measures is discussed and agreed with your Authority's Planning Ecologist.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

We also note that Section 5.1.1 of the document recommends that reptile surveys are required in order to assess any potential impacts, which the development might have. We recommend that you discuss and agree the scope of such surveys and any subsequent reptile mitigation/management strategy with your Authority's Planning Ecologist.

Please note, we have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests, including environmental interests of local importance. The applicant should be advised that, in addition to planning permission, it is their responsibility to ensure that they secure all other permits/consents relevant to their development.

Rebecca Evans AM -

My constituent expressed concerns that in their Design and Access Statement the architects underestimated the possibility that flooding will severely affect the site. My constituent questions whether the developers are aware of the extent of flooding during wet weather and has concerns about how that might affect the value of the properties built there.

Glamorgan Gwent Archaeological Trust -

We noted this application when we reviewed your weekly planning list; consequently we have consulted the detailed information contained on your website and identified that the proposal has an archaeological restraint.

The Historic Environment Record shows that the proposed development area lies directly over the remains of the principle buildings of the Grovesend Steel and Tinplate works. The works were constructed in 1886 and opened in 1890. It first appears on the 2nd Edition of the Ordnance Survey Map of 1898, by which time it is a fully developed industrial complex complete with large scale buildings and associated infrastructure. Records show that the Grovesend Company continued until 1946 when the company was merged with RTB.

The area has been cleared and remediated but it is possible that significant buried remains of the industrial buildings exist below ground level. You may recall that when this office was consulted in relation to the Local Development Plan we advised that archaeological work would be required prior to any positive determination of any planning application and parts of the area may need to be left as open space.

Furthermore, from the documentation submitted with this application the developers do not appear to have considered the impact of the development on the potential buried archaeological remains or the significant risk that the discovery of such remains could have on the viability of their proposed development. In such circumstances Planning Policy Wales 2016 (Edition 9) Section 6.5.6 notes that:

"Where archaeological remains are known to exist or there is a potential for them to survive and a study has not already been undertaken by the applicant, the local planning authority should request an applicant to undertake a desk-based archaeological assessment and, where appropriate, an archaeological evaluation. The results of any assessment and/or field evaluation should be provided as part of a planning application and form part of the local planning authority's consideration of that application."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

More detail on this guidance can be found in Welsh Office Circular 60/96 sections 13 and 14. It is our assertion that a field evaluation is appropriate in this particular case.

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.

Amended Consultation Response (received 18th May following receipt of site investigation reports and plans):

The area has been remediated, but on similar industrial sites in the area, substantial and important below-ground remains have survived and been adversely affected by developments. As a result, in our letter dated 11th May 2017 we recommended that an archaeological field evaluation be conducted in order to determine if any such remains are located on the present site.

However, subsequently we have received a recent site investigation report commissioned by CB3, as well as a 1996 site investigation by CCS. A total of eleven trial pits and six windowless sample boreholes were excavated during the recent investigations, with excellent coverage of the proposed development area. They indicated a consistent stratigraphy of sands and gravels across the application area, with no ground obstructions noted within any of the trial pits or boreholes. Such results echoed the 1996 investigation. Therefore it is likely that, in this particular case, the remediation of the site has indeed removed any below-ground structures associated with the Grovesend Steel and Tinsplate works and it is unlikely that any archaeologically significant structures will be encountered during the course of the development.

As a result, there is unlikely to be an archaeological restraint to this proposed development and consequently, as the archaeological advisors to your Members, we have no objections to the positive determination of this application. The record is not definitive, however, and features may be disturbed during the course of the work. In this event, please contact this division of the Trust.

Highway Observations -

No objection raised at pre-application stage subject to appropriate details. Concerns raised over parking layout. Amended plans submitted and no further comments received.

APPRAISAL

The proposal seeks full planning permission for the construction of 36 residential units with associated works and car parking on land adjacent to Heol Eifion, Gorseinon. The proposal is for 100% affordable housing. The site forms part of the remaining UDP housing allocation at Parc Melin Mynach (HC1(101) refers).

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

The proposal was the subject of a formal pre-application submission in September 2016 (ref 2016/1800/PRE) where-in the principle of re-developing the site for residential development was confirmed to be acceptable. The design of the scheme has evolved over time taking into account comments provided by consultees including urban design following pre-application advice.

The 36 residential units will comprise of 8 no. 3 bed.5 person houses, 6 no. 2bed/4person houses, 4 no. 1 bed/2person walk-up flats and 18 no. 1 bed/2person flats. The units are of varying size and scale tailored to the schedule of accommodation and house type.

Site & Surrounding Area

The application site is a relatively flat area of reclaimed land (periodically maintained scrub) elevated above and located due west of Heol Y Mynydd. The site area measures approximately 0.74ha. The site formerly formed part of Grovesend Steel and Tinplate works. The site has subsequently been remediated with housing developed to the west off Heol Eifion and further housing to the north off Ffordd Eira. The site is bound to the south by a belt of woodland, beyond which lies the Asda superstore. Due east of the site, the topography slopes down to Heol Y Mynydd. There is a known DCWW water main (and associated easement) running parallel with Heol Y Mynydd. The site is not at risk of flooding according to data held by NRW.

The site is located in a predominantly residential area which comprises of flats and semi-detached and terraced dwellings. These dwellings are both single storey and two storeys with "towers" of 3 storey equivalent height in places. The surrounding dwellings are finished in a variety of materials including concrete tile, render and brick external finishes with white uPVC windows. Given this mixed street scene, this has afforded an opportunity for the proposed development to create its own contemporary identity whilst still remaining sympathetic to the surrounding area in terms of scale and massing.

A new pedestrian and vehicular access to the site will be provided from Heol Eifion. The new access road will comprise of a 5.5m carriageway and 2m pedestrian footway. Generally the new boundary treatments between the new dwellings will be timber close boarded fencing to meet the requirements of 'Secured by Design'.

Main Issues

The main issues to consider in the determination of this application relate to the principle of the development, the design/visual impact of the proposals, impact on neighbouring amenity, highway safety, ecology, drainage and water quality issues, and the historic land use of the site, having regard to the prevailing provisions of the relevant UDP Policies and National Policy guidance. There are considered to be no additional issues arising from the provisions of the Human Rights Act.

Development Plan Policy and Land Uses

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

National Planning Policy

In line with recent Welsh Assembly Government guidance provided by Planning Policy Wales (PPW) (Jan 2016 8th Edition), the redevelopment of this site for housing, would ensure that previously developed land is used in preference to Greenfield site, and seeks to ensure new housing is well designed, meets national standards for the sustainability of new homes, makes a significant contribution to promoting community regeneration to improve the quality of life, and provides a greater choice and variety of homes in sustainable communities.

Unitary Development Plan (UDP)

In terms of the principle of development, the application site lies within the defined urban area and the proposed development is consistent with the surrounding land use context which is predominantly characterised by residential dwellings. The site forms part of the remaining housing land allocation at Parc Melin Mynach (HC1 (101) refers). The site lies in a central location with easy access to the wider road network and public transport modes. As such the principle of the development is acceptable and is considered to be in compliance with the overriding aims of national planning guidance and the provisions of policies set out in the UDP which are included below.

UDP Policy EV1 requires new developments to display a standard of design and layout sympathetic to the character and amenity of the site, its immediate surroundings and the broader area, which has regard to local amenities in terms of visual impact, loss of light or privacy, shared activity, traffic and parking implications.

Policy EV2 requires the siting of new developments to give preference to the use of previously developed land over Greenfield sites and for them to have regard to the physical character and topography of the site and its surroundings.

Policy EV3 requires proposals for new development to provide access and facilities for all, provide satisfactory parking levels, contribute to a high quality public realm, and are accessible to pedestrians, cyclists and users of public transport.

Policy EV30 seeks to encourage the protection and improved management of woodlands, trees and hedgerows.

Policy EV33, EV34 and EV35 seek to ensure proposals are served by public mains sewer; do not pose a significant risk to the quality and quantity of controlled waters, and with respect to surface water, incorporate sufficient mitigation measures.

Policy AS1, AS2, AS5 and AS6 concern the design, siting and layout of development ensuring that they have regard to sustainable modes of transport in addition to requiring satisfactory parking levels.

Policy HC1 (101) allocates the site for housing development.

Policy HC3 encourages the inclusion of affordable housing in areas where a demonstrable lack of affordable housing exists and seeks the retention of affordable housing for such use through planning conditions, legal obligations and secure tenancy agreements.

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

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, 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 also relevant to the consideration of this application.

The Council has produced Supplementary Planning Guidance (SPG) entitled 'Places to Live: Residential Design Guide', which relates to developments of 10 or more houses. The SPG is therefore also a material consideration in this instance.

Site Layout, Character and Appearance

The proposed development has been the subject of pre-application discussions which has fed into the overall proposed design. The proposed development will comprise a mix of dwellings providing a mix of tenures and types of contemporary dwelling design, incorporating high quality and robust materials (contrasting brickwork and stone window surrounds) that are considered sympathetic to the mixed design context of the street-scene. Building forms are conventional and straightforward with pitched roofs. The pattern of fenestration is simple and straightforward with a conventional solid to void and windows will have a predominantly vertical emphasis. The buildings will be simply detailed and finished with commonly used materials which will be in keeping with the general character of the locality.

The proposed units comprise of a mixture of two storey house type units (types A-C) and 3 storey blocks of flats (types D & E). The proposed two storey semi-detached properties (A-B) are positioned fronting onto Ffordd Eira and Heol Eifion with their respective driveways accessed off these roads. The proposed flats (C-E) occupy the remainder of the site and in particular provide a strong built frontage to Heol Y Mynydd with a central access route provided off Heol Eifion serving communal courtyard style parking areas. The approach of fronting rows of dwellings onto the respective western and northern boundaries of the site with direct driveways is appropriate to integrate the development into the existing area. The blocks of flats provide a dual aspect design onto Heol Y Mynydd.

The proposed house types A and B are well-proportioned 3 and 2 bed semi-detached dwellings. Type C is a walk up flat unit taking the form of a two storey house with 2 front entrance doors. Type D is a three storey block and presents front and rear elevations with a split projection which presents a staggered form to this block. Type E is a well-proportioned three storey block located adjacent to the southern boundary of the site.

During pre-app stage consideration was given to formalising an informal diagonal pedestrian route which crosses the site from west to east. After exploration of potential design solutions, which would result in an overly complex set of ramps to meet accessibility standards, the omission of this route is considered justified for this reason.

Overall it is considered the proposal, whilst representing a high density form of development, achieves its own local distinctiveness with strong built frontages and a contemporary urban fabric. It is considered to be of an appropriate scale and massing and is commensurate to site coverage and the context of existing properties.

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

On balance it is considered the proposed development would have no detrimental impact upon the visual amenities of the surrounding area. The proposal is therefore in accordance with UDP Policies EV1, EV2 and HC2 of the UDP and the guidance set out in Places to Live: Residential Design Guide SPG.

Residential Amenity

The surrounding land use is predominantly characterised by residential dwellings. The proposed units range from two-to three storeys in height. Notwithstanding this, the proposed units are sited at a sufficient distance from directly opposing elevations of neighbouring dwellings, and as such it is considered that the relationship and distance of neighbouring properties to the site is sufficient to ensure there would be no unacceptable impact on neighbouring residential amenity by virtue of any overlooking, overshadowing or overbearing impacts.

Due regard has been taken with respect to separation distances between proposed residential units and these are compliant with the guidelines set out in the Places to Live: Residential Design Guide SPG. Furthermore, the proposed units benefit from modest sized garden plots which will provide for sufficient sized amenity space for future occupiers. Overall it is therefore considered the proposal is compliant with Policies EV1, EV2 and HC2 of the UDP and the guidance set out in Places to Live: Residential Design Guide SPG.

Ecology

The preliminary ecological appraisal recommends a series of mitigation measures (sections 5.2 and 5.3). It is recommended to include a condition requiring the submission of a strategy to implement these mitigation measures. The surveyor also recommends that further reptile surveys are carried out. A condition is proposed to be included requiring the submission of a reptile survey and if reptiles are found a reptile mitigation scheme to be submitted for approval prior to work starting on the site.

Access & Highway Safety Considerations

Turning to access and highway safety, the application was subject to pre-consultation with the Highways Department. The Council's Highways Officer raised no objection in principle to the proposal subject to appropriate detail. Amended plans were submitted in order to address highways comments and no further objections were raised on access and highway safety grounds. Therefore subject to the inclusion of a planning condition in respect of the laying out of parking bays within the site the proposed development is considered acceptable in highway safety terms.

Drainage & Water Quality

It is understood the applicants have held ongoing discussions with Dwr Cymru Welsh Water both prior to submitting this planning application and during its consideration.

The Memorandum of Understanding (MoU) sets out a hierarchy of options to achieve a set amount of betterment of surface water removal for each proposed dwellings. In order to achieve an acceptable drainage solution there is therefore a need to satisfy the requirements of the MoU.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

The planning application is accompanied by a Drainage Strategy plan and surface water removal plan. The Council's Drainage Section have advised that an amended surface water removal scheme and supported calculations will need to be submitted and has suggested the inclusion of appropriately worded comprehensive conditions to be included on the grant of any planning permission. DCWW have confirmed in their consultation response that they recommend the inclusion of a similar appropriately worded condition to ensure that surface water does not connect to the foul sewerage system. Notwithstanding this, it is understood the applicant is working with Dwr Cymru Welsh Water regarding a suitable surface water removal scheme at the site.

It is therefore considered that subject to the inclusion of appropriately worded drainage conditions, an acceptable drainage strategy can be achieved on site, which is compliant with the requirements of Policies EV33, EV34 and EV35 as well as the MoU to ensure no detrimental impacts are caused to the public sewer system and surrounding water environment.

Burry Inlet Habitat Regulations Assessment

Introduction

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

In this instance, the European sites potentially affected are the Carmarthen Bay and Estuaries European Marine Site (CBEEMs), the Carmarthen Bay Special Protection Area (SPA) and the Burry Inlet SPA and Ramsar site. Before deciding to give permission the LPA must therefore first consider whether this development is likely to have a significant effect on the CBEEMs either alone or in combination with other plans or projects in the same catchment area. Following an investigation of likely significant effects on the CBEEMs features water quality was identified as the only factor that might have an effect as discussed below.

Water Quality

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

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

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

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

The overarching Statement of Water Quality identified two areas of concern where development could potentially affect water quality in the estuary. The first point of concern related to the hydraulic load on the existing combined sewerage systems. The discharge of surface water to the combined system is the main cause of the problem and the MoU has addressed this by stipulating that no surface water from new developments shall discharge to the combined sewer. The second concern relates to nutrient loading on the Estuary. Certain nutrients are removed from the sewage by appropriate treatment at the WWTW but it has been determined that WWTW effluent discharges contain the highest percentage of phosphates when compared with other nutrient sources.

The removal of any surface water from the combined system would be greatly beneficial in that its removal would result in fewer CSO spills, reducing bacterial and nutrient impact on the controlled waters. The removal of surface water from combined sewers generally would reduce the volume of flow (even within developments) such that storage facilities at the pumping stations would more efficiently cater for more frequent storm events or greater population equivalence.

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

Other possible effects on CBEEMs features

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

On this basis, there is no requirement to make an appropriate assessment of the implications of the proposed development in accordance with Regulation 61(1). The former Countryside Council for Wales, as statutory advisor to the Council on the requirements of the Habitats Regulations, has confirmed that they are content with the above approach.

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

Conclusion

In conclusion, DCWW have not objected to this scheme, and the Council's HRA which has been adopted for all development in the Gowerton WwTW drainage network area runs up until the end of 2017.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

The HRA has been agreed with NRW and concludes that 'It is the opinion of the Authority that this development can be accommodated within the post Review of Consents (RoC) discharge consent limits, and would not be likely to have a significant effect either alone or in-combination on the Carmarthen Bay and Estuaries SAC, the Carmarthen Bay SPA, or the Burry Inlet Spa and Ramsar. Such effects can be excluded on the basis of the objective information available through the 2010 Environment Agency review.'

In summary, there are no known hydraulic capacity or new water quality issues to address and subject to further control by conditions, it is considered that the drainage arrangements for this scheme, which can be secured by condition, are acceptable and can meet the overarching aims of sustainable development in this area, and satisfy the provisions of Policies EV33, EV34 and EV35.

Ground Conditions & Land Contamination

The Historic Environment Record held by GGAT shows that the proposed development area lies over the remains of the Grovesend Steel and Tinplate works. The works were constructed in 1886 and opened in 1890. The area has been remediated. GGAT originally recommended that an archaeological field evaluation be conducted in order to determine if any remains are located on the present site. However, following the submission of a recent site investigation report as well as a 1996 site investigation by City & County of Swansea, GGAT have subsequently advised that in this particular case the remediation of the site has removed any below-ground structures associated with the Grovesend Steel and Tinplate works and it is unlikely that any archaeologically significant structures will be encountered during the course of the development.

As a result there is unlikely to be an archaeological restraint to this proposed development. GGAT have therefore offered no objection to the positive determination of this application. If however, features are disturbed during the course of the work GGAT should be advised accordingly. An informative will be added advising the applicant of this obligation.

In view of the historic land use of the site the Council's Pollution Control division have requested the inclusion of conditions relating to contaminated land. They have also requested the inclusion of a condition requiring the submission of a noise assessment, due to the proximity of the Asda superstore to the south of the site and to protect the existing commercial and proposed residential uses against noise from building services plant.

S106 Contribution Requests

HC17 allows the Local Planning Authority to enter into negotiations with developers to deliver planning obligations, which can enhance the quality of the development and enable proposals to go ahead which might otherwise be refused. Any proposed obligation must be: necessary, relevant to planning, directly related to the development, fair and reasonable in scale and kind to the proposed development and reasonable in all other respects

The Council's Education Department has advised that due to the low number and type of flats/apartments involved no request is made for a developer contribution on this scheme.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

Whilst the proposal is for 100% affordable housing, in order to ensure the scheme is brought forward as affordable housing, a Section 106 agreement will be necessary to ensure a minimum of 30% affordable housing, in line with Council policy, is retained in the development at all times.

The application site is currently owned by the Council, and the Council cannot covenant with itself in a Section 106 agreement on land within its ownership. Therefore, as a way forward, the Council's Legal Officer recommends that an additional condition and informative be included in the planning consent instead of the requirement for the signing of a Section 106 Planning Obligation prior to the grant of planning permission. This will have the effect of securing the necessary obligations as no development can commence until a planning obligation is completed. The Council currently own the land but does not intend to develop the land itself. Planning permission runs with the land so once the Council cease to have a legal interest in the site then it will be able to covenant with the developer to secure the obligations by way of Section 106 agreement. It is not a practise that would be utilised in respect of land not owned by the Council and is only suggested here to bridge an anomalous gap in the planning legislation which only affects unitary authorities.

Other Issues

The concerns raised by third parties are summarised above and have been addressed within the above appraisal. This includes reference to the impact on character and appearance of the area, the impact on the residential amenities of existing occupiers, drainage, sewerage, parking and highway safety issues.

Concerns have also been raised in letters of objection regarding the potential impact of the development on property values in the area. This is not a planning matter and would carry little weight in the determination of this planning application.

Concerns have been raised regarding impact on local wildlife. The existing woodland to the south of the site will be retained and it is proposed to include a condition requiring the erection of protective fencing to this area during construction works. The site has been the subject of an ecological survey which recommends a number of mitigation measures and the submission of a reptile survey and appropriate mitigation measures if any are subsequently found.

Concerns have been raised regarding lack of play facilities in the area and that this site was promised as a children's play area. The Council's Parks & Recreation Department have offered no objection to the proposal and the site is allocated as a housing site within the Council's UDP. There is no requirement for a play area being provided on this site.

Concerns have been raised in letters of objection regarding the impact of construction activities on neighbouring residents in terms of noise and disturbance. Whilst it is acknowledged that there may be some disturbance in this respect, this will be limited to the duration of the build programme and any potentially significant impacts should be mitigated through good building practices and site management. A construction pollution management plan will be required by condition and any statutory nuisance would be dealt with under separate legislation.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

Concerns have been raised regarding the level of public consultation on the proposal. The planning application was advertised on site and in the local press. The level of consultation carried out was in accordance with the requirements as set out in the Town & Country Planning, (Wales) Development Management Procedure Order 2015.

Conclusion

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In assessing this proposal, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

Having regard to all material considerations, including the Human Rights Act, overall it is considered the proposal makes efficient use of this brownfield site in a sustainable urban location. The development is considered to provide an appropriate contextual response that would have an acceptable impact on the character and appearance of the area. Moreover, the development would not result in any significant residential amenity impacts to neighbouring properties and is considered to be acceptable in parking and highway safety terms. The proposal development would therefore accord with the above referenced UDP policies and SPG. It is not considered the provisions of the Human Rights Act would raise any further material planning considerations, and as such the application is recommended for conditional approval.

RECOMMENDATION

APPROVE subject to the following conditions:

- 1 The development hereby permitted shall begin not later than five years from the date of this decision.
Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.
- 2 The development shall be carried out in accordance with the following approved plans and documents: Site location plan; 1572_1-1-1 PFP 3 BED HOUSE TYPE A; 1572_1-2-1 PFP 2 BED HOUSE TYPE B ; 1572_1-3-1 PFP 1 BED FLAT TYPE C; 1572_1-4-2 PFP 1 BED FLATS TYPE D PLOTS 19-30; 1572_1-5-1 PFP 1 BED FLATS TYPE E PLOTS 31-36; 1572_1-6-1 PFP 1 BED FLATS TYPE D1 PLOTS 19-30; 1572_2-3-2 PROP ELEV 1 BED FLAT TYPE C; 1572_2-4-3 PROP ELEV 1 BED FLAT TYPE D PLOTS 19-30; 1572_2-5-2 PROP ELEV 1 BED FLATS TYPE E PLOTS 31-36; 1572_2-6-2 PROP ELEV 1 BED FLATS TYPE D1 PLOTS 19-30; 1572_2-8 PROP ELEV 3 BED HOUSE TYPE A (STEPPED) Plots 13-14 & 15-16; 1572_2-9 PROP ELEV 2 BED HOUSE TYPE B (STEPPED) Plots 11-12; 1572_3-1 SITE SECTION A-A & B-B; C0746-C-001 CUT-FILL DETAILS; C0746-C-002 DRAINAGE STRATEGY; C0746-C-003 CONSTRUCTION FINISHES; C0746-C-SK02 HIGHWAY CONSTRUCTION DETAIL; SK05 SURFACE WATER REMOVAL received 10th April 2017.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

Preliminary Ecological Appraisal received 13th April 2017; 1572_3-1-1 CROSS SECTION (ADDITIONAL PLAN); 1572_4-5-6 PROPOSED SITE PLAN (AMENDED); 1572_4-6-5 PROPOSED SITE PLAN - BOUNDARIES (AMENDED) received 12th May 2017.

Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

- 3 The development shall not commence until a scheme for the provision of affordable housing to contribute to the provision of local needs affordable housing in accordance with Policies HC3 and HC 17 of the City and County of Swansea Unitary Development Plan 2008 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- (i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
- (ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider (if no RSL involved);
- (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
- (v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced;

Reason: To ensure the development contributes to the provision of affordable housing in accordance with policies HC3 and HC17 of the City and County of Swansea Unitary Development Plan 2008.

- 4 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).

- 5 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 (as amended) 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).

- 6 No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority to ensure that the Daytime 35dB(A)eq,16hr and that the Night-time 30dB(A)eq,8hr are not exceeded within the residential properties. No dwelling shall be occupied until the scheme, as it relates to that property, has been implemented in accordance with the approved details.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

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

7 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:

- o all previous uses
- o potential contaminants associated with those uses
- o a conceptual model of the site indicating sources, pathways and receptors
- o potentially unacceptable risks arising from contamination at the site.

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

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

8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking or amending that order), Classes A, D, E and F of Schedule 2, part 1 shall not apply.

Reason: To protect the integrity of the chosen surface water management system from additional impermeable areas that the surface water system is not designed to accommodate.

9 No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how foul, 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

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 No works of site clearance, demolition or construction shall take place in pursuance of this permission, until a reptile mitigation plan has been submitted to and approved in writing by the local planning authority, and the mitigation has been undertaken in accordance with the approved details.

Reason: In the interests of protecting species under Schedule 5 (sections 9 (1) and 9 (5) of the Wildlife and Countryside Act 1981.

- 11 No development shall take place until details of a strategy to implement the mitigation measures detailed in section 5 of the 'Preliminary Ecological Appraisal' : Land Adjacent to Heol Eifion, Gorseinon, dated December 2016 by Acer Ecology have been submitted to and approved in writing by the Local Planning Authority. These measures shall be implemented in accordance with the approved details.

Reason: In the interests of biodiversity.

- 12 No demolition, site clearance or building operations shall commence until chestnut pale fencing of a height of not less than 1.2 m (4 ft) has been erected around each tree or tree group to be retained on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. Such fencing shall be maintained during the course of the development and no storage of materials or erection of buildings shall take place within the fenced area.

The destruction by burning of materials shall not take place within 6 m (19 ft 8 ins) of the canopy of any tree or tree group to be retained on the site or on land adjoining.

Reason: To prevent damage to the area of semi-natural broadleaved woodland to the south of the site in the interest of the visual amenities of the area

- 13 Notwithstanding the submitted plans, no development or site clearance shall take place until there has been submitted to and approved in writing by the Local Planning Authority a fully detailed scheme of landscaping including species, spacings and height when planted of all new planting. The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first beneficial occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of maintaining a suitable scheme of landscaping to protect the visual amenity of the area, to maintain the special qualities of the landscape and habitats through the protection, creation and enhancement of links between sites and their protection for amenity, landscape and biodiversity value.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

- 14 No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details.
Reason: To ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.
- 15 No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during demolition and construction; and
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: To reduce the likelihood of obstruction of the highway, danger to road users, to conserve public health and local amenity, to ensure satisfactory standard of sustainable development and in order to ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.

- 16 The car parking for each dwelling shall be laid out in accordance with the approved plans before the dwelling to which it relates is occupied, and shall be maintained for parking purposes only in perpetuity.
Reason: To enable vehicles to enter or leave the premises with a minimum of interference to the free flow of through traffic, and to reduce the likelihood of obstruction and danger to road users when vehicles are accessing the site.

INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: [EV1, EV2, EV3, EV33, EV34, EV35, EV40, HC2, AS1, AS2, AS6]. Supplementary Planning Guidance: Places to Live - Residential Design Guide (January 2014; Parking Standards March 2012; Planning Obligations March 2010.
- 2 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

3 The Council's Pollution Control Officer has advised the following:

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] recommendations

4 Birds may be present. Please note it is an offence under the Wildlife & Countryside Act 1981 (as amended) to intentionally (intentionally or recklessly for Schedule 1 birds) to:

- Kill, injure or take any wild bird
- Take, damage or destroy the nest of any wild bird while that nest 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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 3 (CONT'D)

APPLICATION NO:

2017/0795/FUL

- 5 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 Minister Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication Sewers for Adoptions - 7th Edition. Further information can be obtained via the Developer Services pages of dwrcymru.com. The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.
 - 6 The applicant is hereby advised that should archaeological features be disturbed during the course of the work, they should inform the Glamorgan Gwent Archaeological Trust (tel 01792 655208).
 - 7 To protect the integrity of the Public Sewerage System, foul water and surface water discharges shall be drained separately from the site.

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, no foul, surface water or land drainage shall be allowed to connect (either directly or indirectly) to the public sewerage system.
 - 8 The developer is advised that the proposed development site is crossed by a public sewer with the approximate position being marked on the attached Statutory Public Sewer Record. The position shall be accurately located and marked out on site before works commence and no operational development shall be carried out within 3 metres either side of the centreline of the public sewer.
 - 9 The Developer must contact the Highway Management Group, The City & County of Swansea, Guildhall c/o Civic Centre, Swansea SA1 3SN before carrying out any work. Please contact the Senior Engineer (Development), e-mails to mark.jones@swanea.gov.uk, tel no. 01792 636091.
 - 10 With regard to condition 6, the submitted details shall take into consideration BS 4142:2014. Methods for rating and assessing industrial and commercial sound and BS 8233:2014. Guidance on sound insulation and noise reduction for buildings with regard to the land use to the south of the application site, the Asda Superstore.
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PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

UDP - EV3 - Accessibility

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)

UDP - EV30 - Trees, Woodland and Hedgerow Protection

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)

UDP - EV33 - Sewage Disposal

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)

UDP - EV35 - Surface Water Run-Off

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)

UDP - EV38 - Contaminated Land

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)

UDP - EV39 - Land Instability

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)

UDP - HC2 - Urban Infill Housing

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)

UDP - HC3 - Affordable Housing

Provision of affordable housing in areas where a demonstrable lack of affordable housing exists. (City & County of Swansea Unitary Development Plan 2008)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

UDP - HC17 - Planning Obligations

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)

UDP - HC24 - Play Areas/Public Open Space

Provision of public open space within new residential developments. (City & County of Swansea Unitary Development Plan 2008)

SITE HISTORY

App Number	Proposal	Status	Decision Date
2016/1510	Residential development comprising of a mix of 41 dwelling units with associated access, landscaping and infrastructure works	PDE	
2015/1932	PRE APP for 41 dwellings	PREMIX	29.10.2015
2005/1798	Single storey rear extension	APP	17.10.2005

RESPONSE TO CONSULTATIONS

The application was advertised in the press, by site notices and twenty five neighbours were consulted. TWO LETTERS OF OBEJCTION have been received, which may be summarised as follows:

1. Concerns the development will result in increased traffic movements and noise during construction.
2. Concerns there will be insufficient visibility for traffic leaving the site if there is a bus parked at the bus stop and that vehicles straddle the existing speed bumps driving at an unsafe speed.
3. Concerns the existing pedestrian crossing adjacent to 172 is never used and is in a poor condition.
4. Concerns traffic calming on the road is inadequate.
5. Concerns regarding the increase in commercial traffic on Trallwn Road and the speed which vehicles travel on the road.

Highways

Access

The access shows the internal road layout and being laid out over the top of a mine shaft. As advised at pre-app stage this is unacceptable for a road that is going to be adopted. A variety of correspondence has been going back and forth but ultimately the access location has not been changed and as such the road will not be adopted and will have to remain in private ownership.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

The location if the access is in line with the previous access to the Four Seasons Club and as such there should not be any highway safety issues arising from its continued use

Public transport

The site is well served by public transport and as previously requested we are seeking a contribution of £3,000 to enable the refurbishment of the existing bus stop located outside the site on Trallwn Road.

Layout

Following concerns regarding the access and the mine shaft it has been agreed that the internal layout will not be adopted. Notwithstanding this in terms of safety the layout is adequate and swept path analysis has been provide to demonstrate that emergency and refuse vehicles van enter and leave the site in an appropriate manner. In the main the roads are wide enough to allow for two way flow which will reduce the likelihood of any obstruction being caused. The main accesses and shared areas have been laid out with a minimum carriageway of 5.5m with footway provision also being included.

For this level of development a travel plan will also be required to be submitted (can be secured by condition).

Parking

The levels of parking seem to be acceptable at two/one spaces per dwelling and some visitor parking has also been included. The site is well located in terms of local amenities and proximity to regular public transport routes.

An area has been set aside for cycle parking for the flats and this is acceptable, the exact details can be secured by condition.

Conclusion

Given the previous use as a club I do not consider that the proposals will have any impact on highway safety in terms of traffic generation.

Recommendations

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

1. The sum of £3,000 to be secured under a section 106 agreement to be used to refurbish the bus stop outside the site prior to beneficial occupation of any of the units.
2. The parking areas as indicated being laid out in accordance with the approved plans and maintained as such in perpetuity.
3. Cycle parking in accordance with details to be submitted for approval with the LPA to be laid out and maintained as such in perpetuity.
4. No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during demolition and construction; and
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: To reduce the likelihood of obstruction of the highway, danger to road users, to conserve public health and local amenity, to ensure satisfactory standard of sustainable development and in order to ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.

5. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. (The streets shall thereafter be maintained in accordance with the approved management and maintenance details)

Housing

The development is being supported as 100% affordable grant funded scheme with Pobl, for the purposes of the S106 the Housing Service will expect to see 30% of the site to remain affordable in perpetuity.

Parks

Request approx. £20,000 for a new rubber safety surface at the children's play facility in Trallwn Playing Fields.

In terms of the public open space within the development, if Parks are expected to adopt and maintain these a commuted sum contribution would be required.

Education

Primary:

English-medium: Due to the updated projected surplus capacity at Trallwn Primary school, and the limited impact this development will now have because of the reduction in types of dwellings involved, then there will be no request for English medium contribution from this development.

Welsh-medium: There is no request for Welsh Medium contribution from this development.

Secondary:

English-medium: Due to the updated projected surplus capacity at Cefn Hengoed Comprehensive School, and the limited impact this development will now have because of the reduction in types of dwellings involved, then there will now be no request for English medium contribution from this development.

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

Welsh-medium: There is no request for Welsh Medium contribution from this development.

Police Design Out Crime Officer

Recommends various design measure to achieve Secure by Design status.

Planning Ecologist

The ecological survey of the site has shown that there are some habitats of value these include the trees and the bordering hedges. These will provide opportunities for feeding and nesting for birds, and for foraging and commuting bats. These habitats should be retained and should not be lit as this will deter bats from using the site.

There are likely to be nesting birds on the site during the spring and summer please include a bird informative.

The reptile survey found no evidence of reptile use of the site; it is possible there is the odd animal on the site. The surveyor has recommended that if possible the site should be cleared when animals are likely to be still active either in autumn or spring. The detailed recommendations in section 4.2 of the survey should be followed.

Environment Officer

Recommends a condition relating to the treatment of Japanese knotweed at the site.

Dwr Cymru Welsh Water (DCWW)

Recommend a condition relating to surface water management at the site.

No problems are envisaged in terms of sewage treatment or water supply.

Pollution Control Division

Recommend a condition in relation to the presence of unexpected contamination at the site.

Coal Authority

Shallow Coal Mine Workings

The Coal Authority concurs with the recommendations of the Geotechnical & Geoenvironmental Report, dated March 2014 and prepared by Terra Firma (Wales) Ltd; that coal mining legacy poses a risk to the proposed development and that remedial works to treat the areas of shallow coal mine workings or mitigation by means of specialist foundations should be undertaken either prior to commencement of the development or integral to it.

A condition should therefore require prior to the commencement of development:

- * The submission of a scheme of remedial works/mitigation for approval; and
- * Implementation of that remedial work/mitigation.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

Mine Entry 269197-007

The Coal Authority recommends the following pre commencement condition:

'Prior to the commencement of development hereby permitted, the proposed mine shaft remediation scheme relevant to shaft 269197-007 and detailed in the letter dated 19 January 2017 from Terra Firma (Wales) Ltd, which includes foundations of a specialist design for Plot 30 shall be implemented accordingly.'

Mine Entry 269197-016

'Prior to the commencement of development hereby permitted, the proposed mine shaft remediation scheme relevant to shaft 269197-016 and detailed in the letter dated 19 January 2017 from Terra Firma (Wales) Ltd, which includes foundations of a specialist design for Plots 31 and 32 shall be implemented accordingly.'

The Coal Authority therefore withdraws its objection to the proposed development subject to the imposition of a condition or conditions to secure the above.

Tree Officer

Following the submission of a revised landscaping scheme, the tree officer has offered no objection to the development, but has indicated that he would seek to place tree protection orders on the new trees within the development.

Drainage Engineer

The Council's drainage engineer has offered no objection to the development subject to conditions requiring: further more detailed information including a sustainable drainage system; a discharge rate limit of 10l/s to the local watercourse; and the removal of permitted development rights to prevent extensions and new hardsurfaces at the site.

APPRAISAL

The application is reported to Committee for decision as the number of dwellings proposed exceeds the development threshold.

This is a full planning application for the development of the former 'Four Seasons Club' and its surrounding grounds for 41 dwellings with associated access road and landscaping. The site fronts directly onto Trallwn Road, it has a landscaped frontage with an existing access to the south which leads to a hardstanding area that previously accommodated the social club buildings at the rear of the site. There are residential properties to the north, south and east. To the west are playing fields. The character of the built form in the area is mixed with a range of architectural styles. Trallwn local shopping centre is sited some 50m to south of the site entrance.

The development comprises a range of house types from single storey bungalows, two storey dwellings and a two and a half storey blocks of flats. The landscaped frontage is proposed to be retained, in part, and enhanced with a public area of open space.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

The position of the existing access would be maintained and the road extended in an L-shaped development along the southern and western boundaries. The proposal would provide 100 per cent affordable housing as defined within TAN 2 Planning and Affordable Housing.

The plans have been amended to take account of officer concerns regarding the layout, design and landscaping of the development. The application is therefore considered on the basis of the amended scheme.

Main Issues

The main considerations with regard to the proposal are the impacts of the development on the character and appearance of the area, the impacts upon the residential amenities of neighbouring occupiers, the impacts upon parking and highway safety, and whether the development can be safely constructed and occupied, having regard to the risks posed by former mine workings.

The City and County of Swansea Unitary Development Plan 2008 (UDP) is the development plan for the area. The following policies are the main UDP policies that are relevant to the consideration of this development:

AS2 (Design and Layout), AS6 (Parking), EV1 (Design), EV2 (Siting and Location), EV3 (Accessibility), EV33 (Sewage Disposal), EV35 (Surface Water Run-Off), EV30 (Trees, Woodland and Hedgerow Protection), EV38 (Contaminated Land), EV39 (Land Instability), HC2 (Urban Infill Development), HC3 (Affordable Housing), HC17 (Planning Obligations) and HC24 (Play Areas/Public Open Space).

The site is not allocated for residential development in the UDP, it is 'white land' in the UDP Proposals Map and can be considered as a windfall site under Policy HC2. This policy allows infill development in the urban area provided the development does 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 urban greenspace;
- (vi) Significant harm to highway safety;
- (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.

The criteria for assessing whether the design and layout is acceptable in the context of the surrounding area is important. UDP Policies EV1 and EV2 seek to ensure that new development is appropriate, inter alia, to its local context in terms of scale, height, massing, elevational treatment, materials and detailing, etc. and integrates into the existing settlement with no detrimental impact on local amenity or the general environment.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

EV2 also states that the siting of new development should give preference to the use of previously developed land over greenfield sites and requires developments to have regard to the physical character of the site, by retaining site features including trees which are also afforded protection under EV30. AS2, AS6 and EV3 require developments to provide satisfactory access and parking arrangements. The above design policies are further expanded upon in the supplementary planning guidance (SPG) 'Places to Live - Residential Design Guide'.

Policy EV33 generally requires developments to be served by mains drainage and Policy EV35 refers to the potential impacts of surface water run off on the environment and encourages the use of sustainable drainage systems (SUDS).

With regard to land contamination and land instability, Policies EV38 and EV39 respectively require development proposals to be accompanied with sufficient information to demonstrate the proposed development can be delivered, whilst fully addressing these technical matters.

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, and these provisions should be fairly and reasonably related in scale and kind to the individual development. In this respect the Council has adopted SPG entitled 'Planning Obligations', which is relevant to the consideration of this development. Similarly Policy HC24 is also relevant and specifically relates to outdoor play provision.

In the deposit Local Development Plan (LDP) the site is identified as a non-strategic housing site (H1.19), however, as the LDP is yet to go through its Examination in Public, this can be afforded no weight in the consideration of this planning application.

The Principle of Development

The application site is not allocated for housing in the UDP, it is a brown field site identified as white land within the urban area. The site is located within a sustainable location close to local facilities and services including public transport routes, shops and schools. In land use terms therefore, the use of the land for residential development is considered to be acceptable, in principle.

Visual Amenity

Access to the site would be derived from the existing access point on Trallwn Road, where a new access road would extend along the southern portion of the site before turning at right angles to create two L-shaped streets. Two pairs of bungalows would front onto the access road and back onto the side boundary of the neighbouring property at No. 165 Trallwn Road.

The application site currently has an open character owing to the tree lined street frontage and perimeter trees. The proposals seek to retain a reduced area of public open space along the frontage which would be overlooked by the development.

The development comprises the following housing mix:

- 2 x 2.5 storey apartment blocks (6x2 bed & 8x1 bed)
- 33 x two storey dwellings (11x2 bed & 12x3 bed)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

4 x bungalows (2 bed)

The main impact on the street scene would be the development of a 2.5 storey apartment block on the same building line as the adjacent property at 179 Trallwn Road. The remainder of the site frontage would be a landscaped area of open space which would be overlooked by a two storey terrace of three dwellings on plots 31-33 and the bungalow of the left hand side of the site entrance (plot 1).

The levels on the site drop from front to back and drop across the site from south to north. The existing site levels have broadly dictated the proposed finished topography at the site with the frontage part of the development set at a higher level and separated from the lower rear portion of the site by a 1-1.5m retaining wall.

At the rear of the site, sited at a lower land level, a further 2.5 storey apartment block and a run of two storey dwellings would back onto the tree lined boundary with the adjacent playing fields.

The design and access statement explains that the traditional 'heritage' 1930's design has been chosen for the development with the design including the use of brickwork corbels, rough cast style render, plain concrete roof tiles, Georgian style window units, mock facing brick chimneys, mock tile creasing cills and band course. The local vernacular (immediately opposite the site) comprises predominantly 1950's style housing and traditional two storey cottages dating from the 19th century. Despite this mixed context the proposed development would be clearly distinguishable owing to both the scale of the frontage apartment block and the design features highlighted above, however, the proposed material would ensure a degree of consistency and continuity with the existing street scene. The design approach is therefore considered to be appropriate to mixed built form in the local context.

The scheme generally follows good urban design principles with corner units having active frontages on both elevations thus providing natural surveillance and visual interest. Parking areas have been designed to be well overlooked and prominent boundaries are indicated to be constructed in robust materials.

The mixed scales of the proposed street scene is generally reflected in the surrounding streets where the larger terraced buildings of the local centre are flanked by single storey bungalows and two storey dwellings. It is acknowledged that there are no 2.5 storey residential blocks in the surrounding area, however, the site is located in a sustainable location, close to shops and services, which would justify building at a higher density than the surrounding built form. Moreover, a street scene elevation has been submitted with the application which demonstrates that the scale of the frontage building and its design would not appear incongruous within the street scene.

A number of the mature trees within the site will be lost to facilitate the proposed development, however, the majority of the boundary trees are proposed to be retained. To mitigate the loss of those trees which cannot be retained, a landscaping scheme has been submitted which, when mature, would give the frontage a pleasant tree lined appearance. The Council's tree officer confirmed that the proposed landscaping scheme is satisfactory.

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

In view of the above the proposed development is considered to be satisfactory in terms of its impacts on the character and appearance of the area. The development would therefore accord with UDP Policies EV1, EV2, EV30, HC2 and the SPG 'Places to Live - Residential Design Guide'.

Residential Amenity

In terms of the impacts of the development on the living conditions of the existing residents on Trallwn Road, there would be a separation distance of some 26m between the front elevations of the 2.5 storey frontage block and the existing bungalows on the opposite side of Trallwn Road, which are sited at a higher land level than the site. This distance is considered to be sufficient to ensure there would be no significant detrimental impacts on the living conditions of those existing occupiers in terms of overbearing, overshadowing or overlooking impacts.

The scheme has been designed with bungalows along the southern boundary of the site, which would ensure that there would be no significant detrimental overbearing, overshadowing or overlooking impacts to the occupiers of No. 165 Trallwn Road, which immediately adjoins the application site.

In the south western portion of the site a 2.5 storey block is proposed. The eastern gable of this block, at its closest, would be sited 1m from the rear boundary with No. 165, however, in view of the 50m+ depth of the rear gardens of both 165 and 163, it is not considered the proposed 2.5 storey block would result in any significant overbearing or overshadowing impacts to the occupiers of these dwellings. The block has been designed without any windows in the eastern gable, however, there would be windows within the main body of the block on its eastern side which would overlook these gardens at a distance of some 8.5m. As the rooms served by these windows are dual aspect and therefore are also served by other windows, in order to prevent any significant overlooking of the rear garden of No. 165 it is recommended that the kitchen/dining room windows facing the rear garden of No. 165 are fitted with obscure glazing. This would mitigate any significant overlooking and associated loss of privacy to No. 165 and could be secured through a planning condition. Whilst the living room windows in the north elevation of the block would be sited close to the rear boundary, the overlooking from the 1st and 2nd floors would, it is considered, not be significant given the acute angle of overlooking and the significant depth of the rear garden.

On its southern side the 2.5 storey block would be sited some 9m from the rear boundaries of properties at 85-95 Glan Y Wern Road. This separation distance and the higher land levels of the existing dwellings is considered to be satisfactory to ensure there would be no significant overbearing impacts to the occupiers of these dwellings. As the block is sited to the north of these properties there would be no overshadowing impacts. In terms of overlooking impacts, the southern elevation of the block includes habitable windows that would face the rear boundary of the existing properties. Any significant overlooking of the rear garden of these dwellings could be mitigated through a condition to ensure that all windows (other than those at ground floor level) in this elevation are fitted with obscure glazing. The proposed flats are dual aspect, therefore, even with obscure glazing to the kitchen area, the occupiers would still benefit from satisfactory light and outlook.

Subject to conditions, therefore, it is considered the proposed development would not result in any significant residential amenity impacts upon neighbouring residential occupiers.

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

In terms of the living conditions of the future occupiers, the separation distances within the proposed development would broadly accord with those specified within the SPG 'Places to Live - Residential Design Guide'. The accommodation is provided with sufficient outlook and natural light to habitable rooms. Some of the rear garden areas for the dwellings fall below the size requirements of the SPG, which indicates that private garden areas should, as a minimum, be no smaller than the footprint of the dwelling they serve. On balance, the private gardens within the development would provide sufficient space for sitting out, limited outdoor play and clothes drying etc. Moreover, the site is located within close proximity of playing fields and a play park, therefore, on balance the garden sizes within the development are considered to be acceptable and would not be detrimental to the living conditions of the future occupiers.

Concerns have been raised regarding the potential for increased noise and disturbance from traffic noise during the construction phase. It is acknowledged there may be some additional noise and traffic impacts to local residents during the construction of a development of this scale, however, this would be for a temporary period only and can be mitigated through good site management practices. Any statutory nuisance would be dealt with under separate legislation. Therefore it is not considered that the construction phase or the operation phase when the dwellings are occupied, would result in any significant noise or disturbance to existing local residents that would warrant refusal of the application.

Access and Highway Safety

The access road would be sited is sited over a former mine shaft. Due to this constraint, Highways have confirmed that they would not be prepared to adopted the roads within this development. It will therefore be necessary for the roads to be managed and maintained privately. This matter can be secured by a planning condition.

Concerns have been raised in a letter of objection regarding the visibility from the access and the proximity to the bus stop. The access to the development is on the same alignment as the existing access and in light of the relatively low traffic generation arising from a development of this scale, the highways officer is satisfied that the proposed development would not result in any significant highway safety concerns.

The parking provision is being provided at one or two spaces per dwelling with some visitor parking provided. In view of the sustainable location of the development in close proximity to regular bus services and local facilities, the highways officer is satisfied that the parking provision proposed is acceptable.

In terms of safety the highways officer has confirmed the new road layout is adequate and swept path analysis has been provide to demonstrate that emergency and refuse vehicles can enter and leave the site in an appropriate manner. In the main the roads are wide enough to allow for two way flow which will reduce the likelihood of any obstruction being caused. The main accesses and shared areas have been laid out with a minimum carriageway of 5.5m with footway provision also being included.

The highways officer has requested a financial contribution of £3000 to upgrade the bus stop adjacent to the site, which is in need of maintenance. The applicant has agreed to provide the requested contribution in full and details of the bus stop upgrade can be agreed by a condition (see further discussion below).

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

Concerns have been raised in a letter of objection regarding the poor condition of the pedestrian crossing on adjacent to 172 Trallwn Road; that traffic calming is inadequate on the road and that there is an increase in commercial traffic on the road. In response to these concerns, the highways officer is satisfied, having regard to existing highway safety conditions including traffic volumes, traffic speeds and existing pedestrian provision within the highway, that the proposed development would not result in any significant highway safety impacts.

The highways officer has requested conditions requiring parking provision to be retained in perpetuity and cycle parking to be provided. These conditions are considered to be necessary in the interests of highway safety and to encourage alternative modes of transportation respectively. The request for a construction management plan can be secured through an informative note.

In light of the above the proposed development is considered to be acceptable in terms of, access, parking and highway safety and would accord with UDP Policies EV1, EV3 and HC2.

Ecology

The planning application has been accompanied by an ecological survey and a separate reptile survey.

The ecological survey found some habitats of value at the site these including trees and bordering hedges which provide opportunities for feeding and nesting for birds, and for foraging and commuting bats. The planning ecologist has requested that these habitats should be retained and should not be lit as this will deter bats from using the site. Reference to the proposed site plan and tree report indicate that the majority of trees around the perimeter of the site are proposed to be retained and the landscaping scheme for the site, which includes the planting of 38 new trees will, in time, provide adequate mitigation for the loss of the trees within the site.

The reptile survey found no evidence of reptile use at the site, however, following a precautionary approach the planning ecologist has stated that the precautionary mitigation measures within the reptile report should be adopted when clearing the site. It is recommended these measures are included as an informative note, should planning permission be granted.

The environment officer has noted the presence of Japanese knotweed at the site and has recommended a condition requiring a scheme for its eradication. This is considered to be necessary in the interests of the ecology and amenity of the area.

Land Instability

There are three recorded mine entries within the site. The site is also in an area of recorded and likely unrecorded underground coal mine workings at shallow depth. Following an initial objection from the Coal Authority, the applicant has undertaken further intrusive investigations to establish the accurate positions of the mine entries and put forward measures to mitigate the risks posed to the development from these features. In summary the mitigation measures include stabilising the mine entries by a process of grouting, the piling of foundations for the buildings within the zone of influence of the mine entries and the use of a structural geo-grid reinforcement within the access road.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

Following the submission of the proposed mitigation measures, the Coal Authority have offered no objection to the application subject to conditions requiring the submission of further details in respect of the mitigation proposed in areas where there may be shallow coal mine workings and specific conditions relating to the mitigation works proposed at the mine entries within the site. Subject to these conditions, it is considered that the site is capable of being made safe and stable for the development. The development would therefore accord with UDP Policy EV39.

Drainage

The application has been accompanied by a drainage strategy which indicates that surface water from the development would be discharged at an attenuated rate to the existing system which connects into two culverts that cross the adjacent football pitches. Foul water would be connected to the mains system to the north of the site.

The Council's drainage engineer is satisfied that the proposed surface water drainage strategy is acceptable, subject to conditions requiring the submission of further more detailed information, a discharge rate limit of 10l/s and the removal of permitted development rights relating to extensions and hardsurfaces. These conditions are considered to be necessary to ensure the development would not result in any detrimental environmental impacts and to prevent the overloading of the mains drainage system.

Dwr Cymru Welsh Water has offered no objection to the development in terms of sewerage capacity or water supply. Dwr Cymru Welsh Water's surface water recommendations would be covered a condition.

In light of the above, and subject to the conditions recommended by the Council's drainage engineer, it is considered that the proposed development would be in accordance with UDP Policies EV33 (Sewage Disposal) and EV35 (Surface Water Run-Off).

Land Contamination

The application has been supported by a geotechnical and geoenvironmental report. Historically the site has been occupied by a colliery, tramline, refuse tips and more recently a social club. The site investigation found the soils at the site contain asbestos fibres and elevated levels of arsenic and lead. Capping will therefore be required on the site. According to the report capping is to consist of the proposed buildings and hard standings. Garden and landscaped areas will be capped with 600mm of suitable clean imported subsoil/topsoil material. The Council's Pollution Control division are satisfied with the proposed remediation and this can be secured by a conditions. Subject to conditions therefore it is considered that the development has given full regard to land contamination at the site and would therefore accord with UDP Policy EV38.

Section 106 Contribution Requests

HC17 allows the Local Planning Authority to enter into negotiations with developers to deliver planning obligations, which can enhance the quality of the development and enable proposals to go ahead which might otherwise be refused. Any proposed obligation must be: necessary, relevant to planning, directly related to the development, fair and reasonable in scale and kind to the proposed development and reasonable in all other respects.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

Notwithstanding this, as the Council is the landowner of the site, the City and County of Swansea cannot enter into a S106 planning obligation with itself. Therefore any justified contribution requests may be secured through conditions requiring details of affordable housing provision or other justified works to be submitted for the approval of the local planning authority. Subsequent to the site being sold on, the Council's can then, where necessary, enter into a S106 planning obligation as part of the details required to discharge the relevant planning condition(s).

The Parks department have requested a contribution of £20,000 to upgrade the play facilities at Trallwn playing fields to provide a new rubber safety surface. The condition of the facility is listed as 'Amber' on the Council's 'RAG' list for parks facilities and 'ok' within the Council's Open Space Assessment Report. The facility would therefore benefit from an upgrade, particularly given the proximity of the proposed development to this facility and the likely increase in its usage following the occupation of the development. Following discussions, the applicant has agreed to fully fund a new rubber surface for the park at Trallwn playing fields. This requirement can be secured by a planning condition as described above.

The scheme will provide 41 new dwellings comprising 100% affordable housing on the site and will therefore exceed the provision required under UDP Policy H3. Notwithstanding this it will still be necessary to secure a Policy compliant 30% on site provision in perpetuity and this can be secured through a planning condition.

As indicated above, highways have requested £3000 for upgrade works to the existing bus stop on Trallwn Road. In view of the proximity of the site to this bus stop and the likely increase in its usage should this development be approved, the upgrade request is considered to be justified in this instance. Following discussions the applicant has agreed to fully fund the upgrade works and this can be secured by a condition.

Following the submission of an amended consultation response from the Education department, there will be no requirement for a contribution towards education improvements.

Conclusion

The proposal is for the re-development of this vacant brownfield site to provide a 100% affordable housing scheme with 41 new dwellings in a sustainable location close to existing local shops, services and schools. The development is considered to provide an appropriate design response in an area of mixed character that would have an acceptable impact on the character and appearance of the area. Moreover, the development, on balance, would not result in any significant residential amenity impacts to neighbouring properties and is considered to be acceptable in parking and highway safety terms. Matters relating to ecology, land stability, land contamination and drainage have been given full consideration and, subject to conditions, the development is considered to be acceptable in all respects. Consideration has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WCFG Act"). In reaching this recommendation due regard has been given to the ways of working set out at section 5 of the WCFG Act and it is considered that this recommendation is consistent with the sustainable development principle as required by section 8 of the WCFG Act. For the above reasons, the proposal is considered to be in accordance with UDP policies and SPG and is accordingly recommended for approval.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

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: LT610.00.01A - Site location plan, LT610.04.05BA - Boundary Treatments, received 16th December 2016. LT1610.04.102 D - Plans and Elevations Plots 5-10, LT1610.04.103 C - Houses Plans and Elevations, LT1610.04.104 C - Houses Plans and Elevations, LT1610.04.105 B - Houses Plans and Elevations, LT1610.04.106 C - Houses Plans and Elevations, received 25th April 2017. LT1610.04.107 D - Plots 34-41 Plans, LT1610.04.108 D - Plots 34-41 Elevations, received 11th May 2017. LT1610.04.01 F - Site Layout, LT1610.04.02 F - Site Sections, LT1610.04.03 F - Landscaping Layout, LT1610.04.101 B - Plans and Elevations Plots 1-4, received 15th May 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Prior to the commencement of development hereby approved a scheme for the remediation of shallow mine workings or mitigation measures to deal with the risks posed to the development from such workings shall be submitted to and approved in writing by the local planning authority together with a scheme for the phasing and implementation of the works. The development shall be completed in accordance with the approved details and timescales.
Reasons: To ensure the land is safe and stable to accommodate the proposed development.
- 4 Prior to the commencement of development hereby permitted, the proposed mine shaft remediation schemes for shafts 269197-007 and 269197-016, shall be undertaken in accordance with the details submitted by letter dated 19 January 2017 from Terra Firma (Wales) Ltd.
Reasons: To ensure the land is safe and stable to accommodate the proposed development.
- 5 The specialist foundation designs for Plots 31 & 32 shall be in accordance with the details submitted by letter dated 19 January 2017 from Terra Firma (Wales) Ltd.
Reasons: To ensure the land is safe and stable to accommodate the proposed development.
- 6 No development shall take place until a detailed scheme for the eradication of Japanese Knotweed, including timescales, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.
Reason: In the interests of the ecology and amenity of the area.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

- 7 The landscaping of the site shall be provided in accordance with the details indicated on plan no. LT1610.04.03 'Landscaping layout'. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
Reason: In the interests of providing a suitable scheme of landscaping to protect the visual amenity of the area, to maintain the qualities of the landscape and habitats through the protection, creation and enhancement of links between sites and their protection for amenity, landscape and biodiversity value.
- 8 A landscape management plan, including management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any of the dwellings on the site. The landscape management plan shall be carried out as approved for the lifetime of the development.
Reason: In the interest of protecting visual amenity and the qualities of the area.
- 9 Prior to the construction of the dwellings hereby approved details of the materials to be used in the construction of the external surfaces of the dwellings shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
Reason: To ensure a proper standard of development and appearance in the interests of conserving the amenities and architectural character of the area.
- 10 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.
- 11 The development shall not discharge to the local watercourse network at any rate greater than 10 litres per second as stated within the Drainage Strategy dated July 2016 by Blackburn Griffiths Ltd.
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.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking or amending that order), Classes A, D, E and F of Schedule 2, part 1 shall not apply.
Reason: To protect the integrity of the surface water management system from additional impermeable areas that the surface water system is not designed to accommodate.

13 The development shall not commence until schemes to provide the following have been submitted to and approved in writing by the Local Planning Authority:

- affordable housing to contribute to the provision of local needs affordable housing
- a replacement play surface at Trallwn Park
- upgrade of the bus stop/shelter on Trallwn Road

in accordance with Policies HC3 and HC 17 of the City and County of Swansea Unitary Development Plan 2008 . The schemes shall include:

- (i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
- (ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider (if no RSL involved);
- (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
- (v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced; and
- (vi) the arrangements for upgrading the existing bus stop/shelter on Trallwn Road.
- (vii) the arrangements for replacing the existing safety surface with a "wet-pour rubber safety surface" at the children's play facility in Trallwn Park.

Reason: To ensure the development contributes to the provision of affordable housing and essential community facilities in accordance with policies HC3 and HC17 of the City and County of Swansea Unitary Development Plan 2008.

14 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).

15 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 (as amended) or any order revoking or re-enacting that order. The site notice shall be displayed at all times when development is being carried out.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

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

- 16 Prior to the occupation of the dwellings hereby approved, the boundary treatments for that dwelling shall be constructed in accordance with the details indicated on plan nos. LT610.04.05BA 'Boundary Treatments' & LT1610.04.01F 'Site Layout' and shall thereafter be retained as approved for the duration of the development.
Reason: In the interest of maintaining a satisfactory scheme of landscaping and to protect the visual amenity of the area.
- 17 The land contamination remediation measures detailed in Section 7.3 'Mitigation and Remedial Measures' of the Geotechnical & Geoenvironmental Report dated March 2014 prepared by Terra Firma shall be fully implemented as set out within the report prior to the occupation of any of the dwelling units hereby approved.
Reason: In the interest of conserving public health and local amenity.
- 18 If, during the course of development, contamination not previously identified is found to be present at the site no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a detailed strategy for dealing with said contamination. The approved strategy shall be implemented in accordance with the approved details.
Reason: In the interest of conserving public health and local amenity.
- 19 No development shall take place, nor any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority details of a scheme for the protection of trees shown to be retained within the approved drawings. The approved scheme shall be implemented in accordance with the approved details and retained throughout the construction phase of the development.
Reason: To prevent detrimental impact to trees, hedges and other landscape features which contribute to the amenity, landscape & biodiversity of the site and surrounding area.
- 20 All kitchen/dining and hall windows in the east elevation and all kitchen/dining, hall and lobby windows in the south elevation within the block on plots 5-10, hereby approved shall be fitted with obscure glazing and shall be non-opening unless any part of the window which can be opened is, when measured at any point along the lowest edge of that part, at least 1.7 metres above the internal floor or stair of the flat directly below that point and shall be permanently maintained as such for the lifetime of the development.
Reason: To prevent overlooking and loss of privacy to existing properties on Trallwn Road and Glan Y Wern Road.
- 21 Prior to the occupation of any of the dwellings hereby approved details of a lighting scheme for the roads, landscaped areas and residential properties shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken and thereafter retained in accordance with the approved details for the lifetime of the development.
Reason: In the interests of ecology and highway safety.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

- 22 Prior to the beneficial occupation of any of the flats hereby approved, the cycle storage areas shall be provided in accordance with the details indicated on plan nos. LT1610.04.01F 'Site Layout' and 31477 - 'Mayfair Cycle Shelter' and shall thereafter be retained as approved for the lifetime of the development.
Reason: In the interests of promoting sustainable modes of transportation.
- 23 All parking areas hereby approved as indicated on plan no. LT1610.04.01F 'Site Layout' shall be provided before the dwellings to which they relate are occupied and shall be retained for the parking of vehicles only in association with the dwellings hereby approved for the lifetime of the development.
Reason: In order to provide satisfactory off street parking for the development in the interests of highway safety.
- 24 Prior to the commencement of development, full details of the proposed arrangements for the 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.
- 25 No development shall take place until full engineering details of the highways and footpaths within the site have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include details of the phasing of the highways and footpath construction. The highways and footpaths shall be provided in accordance with the approved details and timescales.
Reason: In the interest of highway safety.

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: AS2 (Design and Layout), AS6 (Parking), EV1 (Design), EV2 (Siting and Location), EV3 (Accessibility), EV30 (Trees, Woodland and Hedgerow Protection), EV33 (Sewage Disposal), EV35 (Surface Water Run-Off), EV38 (Contaminated Land), EV39 (Land Instability), HC2 (Urban Infill Development), HC3 (Affordable Housing), HC17 (Planning Obligations), HC24 (Play Areas/Public Open Space) and the supplementary design guide 'Places to Live - Residential Design Guide' and 'Planning Obligations'.
- 2 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:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 4 (CONT'D)

APPLICATION NO:

2016/1510

- 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.

- 3 The precautionary mitigation measures within Section 4.2 of the 'Reptile Survey & Report' dated 25th October 2016 shall be adopted when clearing the site.
 - 4 The developer is advised to consult the Highway Authority regarding the provision of a Construction Management Plan.
-

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 5

APPLICATION NO:

2017/0262/FUL

WARD:

Castle - Bay Area

Location:

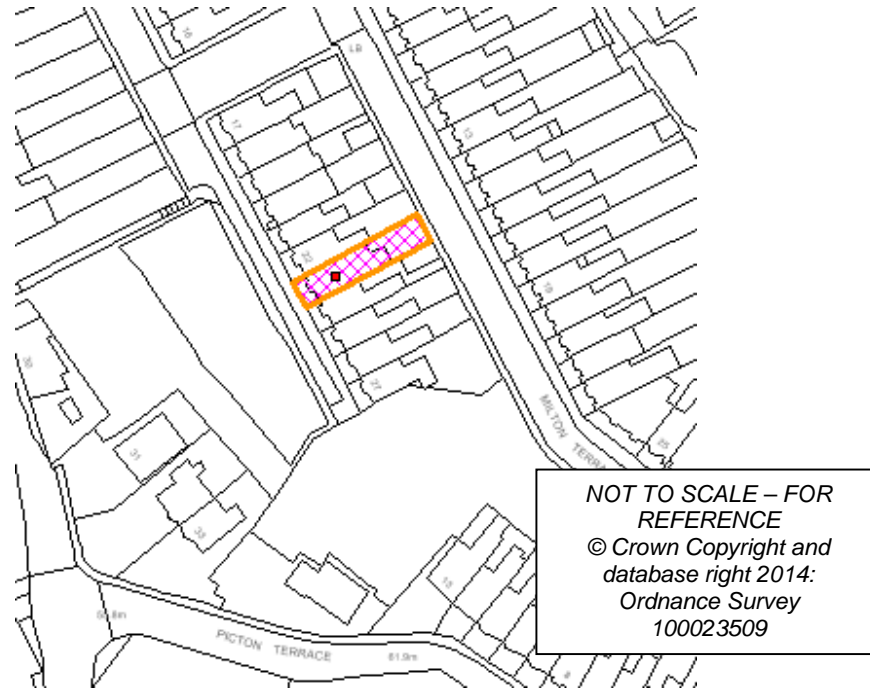
23 Portia Terrace, Mount Pleasant, Swansea, SA1 6XW

Proposal:

Replacement front bay window to ground floor with fenestration alterations and Juliette balconies to first floor front

Applicant:

Mrs. Kirchner



BACKGROUND INFORMATION

POLICIES

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

UDP - HC7 - Residential Extensions and Alterations

Proposals for extensions and alterations to existing residential dwellings will be assessed in terms of; relationship to the existing dwelling, impact on the character and appearance of the streetscene, effect on neighbouring properties, and impact on car parking. (City & County of Swansea Unitary Development Plan 2008)

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0262/FUL	Replacement front bay window to ground floor with fenestration alterations and Juliette balconies to first floor front	PDE	

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 5 (CONT'D)

APPLICATION NO:

2017/0262/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
ENQ2006/0315	Extensions, Outbldgs	REC	

RESPONSE TO CONSULTATIONS

Public Response - The application was advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) by neighbour notification letters sent to 22 and 24 Portia Terrace, Mount Pleasant on 13th March 2017. To date no letters of response have been received.

APPRAISAL

The application is submitted on behalf of Mrs Ericka Kirchner, who is a local ward member for the Castle Ward. In line with the Council Constitution the application is, therefore, brought before this Committee for determination.

Description

Full planning permission was originally sought on the front elevation of the dwellinghouse for a replacement bay window on the ground floor with balcony above, along with alterations to the first floor front windows to doors. An existing angled bay window, measuring 0.75m deep by 1.9m wide and 3m high, was to be replaced by a square bay measuring 1m deep by 1.7m wide and 3m high, with the roof being carried over the existing front door. This would create a balcony measuring 1.2m deep by 4.3m wide which is to be surrounded by 1.1m high balustrade. The upper floor front windows, currently top opening windows, were to be replaced with doors.

Following discussions the application has been revised to omit the first floor balcony from the scheme and instead to include the addition of two glazed Juliette balconies to be fitted in front of the proposed upper floor inward opening full length doors. The amended plans received on 4th May 2017 now form the basis of the application and the application description was amended to reflect the amended proposal.

ISSUES

The main issues to consider in this application relate to the impact of the development upon visual amenity in terms of the character of the property and the street scene and any impact upon the residential amenity of neighbouring occupiers. Regard can principally be given to Policy EV1 of the Adopted Swansea Unitary Development Plan in addition to advice contained within the Supplementary Planning Guidance for Householder Developments.

Visual Amenity

The size of the proposed ground floor bay window is considered to relate satisfactorily to the main front elevation of the mid-terrace property with a small increase in scale from the existing bay (0.7m to 1m). A porch feature is proposed to be positioned above the bay window and front door and this is of a similar form to existing features within the street scene. In this respect the design would not harm the character of the property or street scene.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 5 (CONT'D)

APPLICATION NO:

2017/0262/FUL

The upper floor windows are proposed to be altered and fitted with a juliette balcony. Whilst there are no examples of juliette balconies in the street scene currently, this feature would not harm the overall character of the property.

The development is therefore considered to be of an appropriate form and scale which will relate satisfactorily to the character and appearance of the dwelling and streetscene and complies with policies EV1 and HC7.

Residential Amenity

The design and siting of the proposal in relation to neighbouring properties, along with its relatively limited proportions, are not considered to result in any unacceptable overshadowing, overbearing physical impact or overlooking of windows or outdoor amenity spaces.

CONCLUSION

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

Having regard to all material planning considerations, including the Human Rights Act, the proposal is considered to represent an acceptable form of development, complying with the criteria of Policies EV1 and HC7 of the adopted City & County of Swansea Unitary Development Plan (2008) and the guidance contained in the Supplementary Planning Guidance document 'A Design Guide for Householder Development' (2008).

RECOMMENDATION

APPROVE subject to the following conditions:

- 1 The development hereby permitted shall begin no 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: Site Location Plan, Block Plan received 1st February 2017; Amended Plan: Existing and Proposed Elevations and Floor Plan received on 4th May 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

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 and HC7.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 5 (CONT'D)

APPLICATION NO:

2017/0262/FUL

- 2 Bats may be present. All British bat species are protected under Schedule 5 of the Wildlife & Countryside Act 1981 (as amended) and are listed in Schedule 2 of the Conservation of Habitats and Species Regulations 2010. This legislation implements the EC Habitats & Species Directive in the UK making it an offence to capture, kill or disturb a European Protected Species or to damage or destroy the breeding site or resting place of such an animal. It is also an offence to recklessly / intentionally to disturb such an animal.

If evidence of bats is encountered during site clearance e.g. live or dead animals or droppings, work should cease immediately and the advice of the Natural Resources Wales sought before continuing with any work (01792 634960).

- 3 Birds may be present in this building and grounds please note it is an offence under the Wildlife & Countryside Act 1981 (as amended) to intentionally (intentionally or recklessly for Schedule 1 birds) to:

- Kill, injure or take any wild bird
- Take, damage or destroy the nest of any wild bird while that nest in use or being built
- Take or destroy an egg of any wild bird

Care should be taken when working on buildings particularly during the bird nesting season March-August.

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

5 PARTY WALL ETC ACT 1996

The developer is advised that the provisions of the Party Wall etc. Act 1996 may be applicable to the proposal and is advised to seek appropriate advice prior to any work commencing on site.

- 6 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.

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

www.gov.uk/government/organisations/the-coal-authority

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0196/FUL	Change of use from residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	PDE	

RESPONSE TO CONSULTATION

Neighbours: The application was advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) by neighbour notification letters sent to No. 2 and 4 Bay View and through display of a site notice dated 15th March 2017.

ELEVEN LETTERS OF OBJECTION have been received which are summarised as followed:

1. Bay View is a small cul-de-sac of 16 houses;
2. Bay View is probably one of a handful of streets left in the area that are solely owner occupied. This has the benefit of each household "investing" in the surrounding area and taking pride in the upkeep of their properties;
3. A HMO would be totally out of character for this street;
4. Too many HMOs in the area causing issues with parking and anti-social behaviour and noise complaints;
5. There are considerable parking issues in the vicinity of Kinley Street already and further increasing resident populous via HMO property will further compound this;
6. Anti-social behaviour that goes in tandem with this type of property use is also a concern particularly with the proximity of local schools. Ultimately, the East side ward is a family area with a strong community spirit and this should be preserved with the focus on retaining housing stock as residential for future generations.
7. The current consultation (on HMO properties SPG) has not progressed far enough and until that is completed there should be a blanket ban on approving HMO'S;
8. We need to encourage families to remain and return to this area if we are going to preserve community spirit. There is plenty of accommodation available already for single people. We are being swamped out by the needs of SA1 businesses and now two Universities.

TWO PETITIONS OF OBJECTION have been received (11 and 22 signatures) which raised concerns relating to highway safety and local highway conditions.

Highways: No highway objection subject to conditions

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

APPRAISAL

This application is reported to committee at the request of Councillor Joe Hale. A petition of objection has been received containing more than 30 signatures, thereby satisfying the Council's Constitution requirements.

Description

Full planning permission is sought for the change of use of a residential dwelling (Class C3) to a HMO for 3 bedrooms (Class C4) at No. 3 Bay View, St. Thomas, Swansea.

The application property is a two storey mid terraced property currently occupied as a three bedroom dwelling house located on Bay View, a no-through residential street with terraced properties set up on the northern side of the street. No external alterations are proposed and as such the proposal will have no impact on visual amenity.

The applicant has provided drawings setting out that refuse and cycle storage shall be provided in the rear amenity space of the property including wall mounted cycle racks.

Change in Use Classes Order

On 25th February 2016 the Welsh Government introduced the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 which amended the Town and Country Planning (Use Classes) Order 1987 to:

- amend use class C3 (dwellinghouses) to:
- include a definition of "single household" which applies to use class C3(a) only;
- remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

The new C4 use introduced covered use of a dwelling house as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. The use occurs where tenanted living accommodation is occupied by 3 to 6 people who are not related and who share one or more basic amenities, as their only or main residence.

ISSUES

The main issues for consideration during the determination of this application relates to the principle of this form of use at this location and the resultant impact of the use upon the residential amenities of the area and highway safety having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

The Supplementary Planning Guidance 'Houses in Multiple Occupation (HMOs) and Purpose Built Student Accommodation' (PBSA) has recently gone to public consultation. The consultation period ran from 23rd January until 5th March 2017. The draft SPG has yet to be adopted and can therefore be afforded no weight in the process

Principle of Use

Up until March 2016 planning permission was not required for the use of a property as a HMO for up to 6 people and as such there has been historically a large concentration of HMO properties in some parts of Swansea which has happened predominately without planning permission being required.

Following concerns raised by Local Authorities throughout Wales in respect of areas with a high concentration of HMOs an amendment to the Use Class Order was made introducing a separate C4 use for HMO properties with more than 2 people living in them. The amendment was made in order to safeguard the confidence of residents in areas with large numbers of HMOs, while at the same time protecting the rights of those people living in them.

It is acknowledged that large concentrations of HMOs can bring their own problems to local areas, however whilst Swansea Local Authority has now produced a SPG related to HMOs this is currently at consultation stage and until formally adopted does not carry any weight.

Policy HC5 of the Swansea UDP supports the conversion of dwellings to HMOs subject to compliance with the set criteria:

- (i) There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance
- (ii) The development would not contribute to harmful concentration or intensification of HMOs in a particular area
- (iii) There would be no adverse effect upon the external appearance of the property and the character of the locality,
- (iv) There would be no significant adverse effect on local car parking and highway safety, and
- (v) Appropriate refuse storage arrangements can be provided

The criteria of the above is addressed below:

Would the proposal result in a significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance?

On the basis of the information provided it is noted that the scheme relates to the creation of a 3 bedroom HMO. The application drawings show there are 3 existing bedrooms and as such there would be no net gain in bedrooms provided.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

Regard needs to be given to the fact that a large family could occupy the property under the extant lawful use of the premises and as such it is not considered that the use of the premises for up to 3 people as a HMO would result in an unacceptable intensification of the use of the building over and above what could be experienced as a dwelling house. There is no evidence to suggest that this proposal would result in any harm to neighbouring occupiers by virtue of noise, nuisance or other disturbance.

As such the proposed use will not result in unacceptable noise and disturbance which could reasonably warrant the refusal of this application. The proposal is considered to respect residential amenity in compliance with the provisions of Policies EV1, EV40 and HC5 of the Swansea UDP.

Would the development contribute to a harmful concentration or intensification of HMOs in a particular area?

In 2015 the Welsh Government commissioned a study into the impact of houses in multiple accommodation (HMOs) concentrations on local communities in certain areas across Wales. The Welsh Government identified that HMOs make an important contribution to the provision of housing for those unable to buy or rent smaller accommodation but the study revealed common problems associated with high concentrations of HMOs including damage to social cohesion, difficult access to the area for owner occupiers and first time buyers, increases in anti-social behaviour, noise, burglary and other crime, reduction in the quality of the local environment, a change in the character of the area, increased pressure on parking and a reduction in provision of community facilities for families and children, in particular pressure on schools through falling rolls. The research recommended that the definition of a HMO be changed and that the Town and Country Planning (Use Classes) Order 1987 be amended to give Local Authorities the power to manage the development of HMOs with fewer than seven residents, which previously would not have required planning permission.

Following on from the change in legislation the Welsh Government published a document entitled 'Houses in Multiple Occupation Practice Guidance (February 2016) HMOs. Within this it is identified that HMOs provide a source of accommodation for certain groups which include students temporarily resident and individuals and/or small households unable to afford self-contained accommodation. It further identifies the concerns, as set above, that were raised in the study into HMOs as well as setting out good practice measures in relation to the management of HMOs.

From viewing the Councils own HMO register there are no registered HMO properties on Bay View (as of the 22nd May 2017), however, it is acknowledged that there may be HMO's on the street which have been used pre March 2016. It should also be noted, however, that outside of the Castle and Uplands Wards only larger properties are captured by Mandatory Licencing. As a result there may be instances where HMOs exist in the area albeit that they would have been implemented prior to the use class change in February 2016 and not required planning permission and are not subject to licensing requirements. No consultation responses provided from objectors have raised information on existing HMOs in the area. It is noted that there is 1 property showing on Rent Smart Wales as a rental property on Bay View. However this information does not demonstrate use of the property itself as a HMO only demonstrate that it is a rental property.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

On the basis of the current information there are 16 properties on Bay View and so approval of the application would result in 6.25% of the street being in HMO use.

In the absence of a percentage or other similar calculation based approach, it is difficult to determine what number of HMOs in an area would constitute a 'harmful concentration'. Given there are limited numbers of HMOs in this area, without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.

There would be no adverse effect upon the external appearance of the property and the character of the locality

There are no external alterations proposed at the property and as such the proposal will have no adverse impact on visual amenity.

There would be no significant adverse effect on local car parking and highway safety

Whilst the objections received from local residents are noted, regard needs to be given to the Adopted SPG Parking Standards. For a HMO for up to 6 persons there is no requirement for additional parking over and above that of a dwelling house. Details have been submitted of the location of cycle storage to the rear of the property which can be secured by planning condition.

In view of the above, subject to an appropriately worded condition in respect of cycle parking, the proposal is not considered to have any greater impact on highway safety or parking over and above the existing extant use of the property in compliance with the provisions of Policies EV1, HC5 and AS6.

Appropriate refuse storage arrangements can be provided

The refuse storage is to be provided within the rear yard.

Response to Consultations

Notwithstanding the above, letters of objection have been received and petitions of objection which raised concerns relating to the impact of the proposal upon the number of HMO's in the area, local car parking and highway safety, impact on the character of the area. The issues pertaining to which have been addressed above. Issues in respect of antisocial behaviour including noise are covered under separate legislation via Environmental Health or the Police and as such cannot be taken into consideration which is taken into account during the determination of an application.

Regard can be given to recent appeal decisions by the Planning Inspectorate (105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603, 96 King Edwards Avenue - APP/B6855/A/16/31650557, 57 St Helens Avenue - APP/B6855/A/16/3165327 and 124 St Helens Avenue - APP/B6855/A/17/3167108) in connection with similar applications for HMOs.

105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603 - 2016/1316 - 10 February 2017

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

In allowing this appeal the inspector noted that the Council identified 36% of dwellings in the street being HMO whilst a local resident estimated that 43% of all dwellings within 50 metres are HMO. In response to concerns about damage to the area's character of amenity the inspector stated "Whilst I do not dispute that there are a number of HMOs nearby, there is limited evidence before me to indicate that the appeal development, specifically, has a significant or detrimental effect on the sustainability of the local community. Further, although many dwellings nearby appear to be in good or very good physical condition, some of the environmental issues cited are not exclusive to their use as HMOs." He went on to say; "The appeal development has resulted in a modest increase in the number of bedrooms within the property. Even were the previous house not to have been fully occupied, all bedrooms could have been used without planning permission. There is little evidence before me to demonstrate that the use of the property as an HMO, rather than a C3 dwelling, would in itself result in levels of noise, disturbance or antisocial behaviour that would harm the living conditions of those living nearby. Whilst I note that the bedrooms appear large enough to accommodate double beds, any substantial increase in occupation would require separate planning permission."

96 King Edwards Avenue - APP/B6855/A/16/3165057 - 2016/1380 - 19 April 2017

In this case the inspector noted that 52% of dwellings in the area were HMOs and in allowing the appeal stated "whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it."

57 St Helens Avenue - APP/B6855/A/16/3165327 - 2016/1688 - 25 April 2017

In allowing this appeal the inspector stated "The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances. In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

124 St Helens Avenue - APP/B6855/A/17/3167108 - 2016/1038 - 4 May 2017

In this case the inspector made similar conclusions as to the case at No. 57 St Helen's Avenue noting that there was no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity of the area. In relation to concerns about the transient population the inspector stated "Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

Planning Conditions

Conditions requiring the commencement of the development within 5 years and to be carried out in accordance with the approved plans are necessary. A condition requiring cycle and refuse storage is recommended and this is reasonable in the interests of sustainable travel and visual amenity. The Highway Authority requested that the property be restricted for no more than 3 people, however, it is considered unreasonable to restrict the HMO to 3 persons in light of the SPG requirements being met for this proposal for upto 6 people. Therefore the restrictive condition is not recommended.

Conclusion

It is considered that the Local Planning Authority has no evidence to suggest that the use of this property as HMO would result in a harmful concentration of HMOs within this area. Furthermore the proposal would have an acceptable impact upon the visual amenities of the area, the residential amenities of neighbouring properties and highway safety having regard for the provisions of Policies EV1, AS6 and HC5 of the Swansea UDP and approval is recommended.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 6 (CONT'D)

APPLICATION NO:

2017/0196/FUL

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: Site location plan, received 26th January 2017 and floor plans received 13th March 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Prior to the beneficial use of the development, the cycle and refuse storage shall be implemented in accordance with the floor plans and applicants email received on 13th March 2017 and shall thereafter be retained and not used for any other purpose. The cycle and refuse storage shall be made available for use and retained thereafter for the approved purposes.
Reason: In the interest of visual amenity, residential amenity and providing facilities for sustainable transport.

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, AS6 and HC5
 - 2 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
-

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 7

APPLICATION NO:

2017/0257/FUL

WARD:

Uplands - Bay Area

Location:

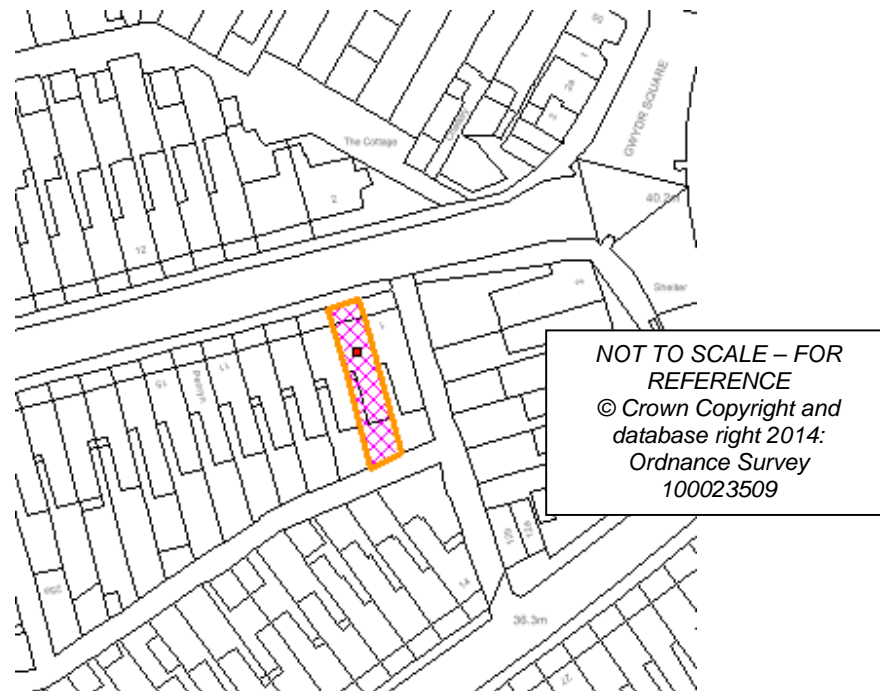
3 Beechwood Road, Uplands, Swansea, SA2 0HL

Proposal:

Change of use from residential (Class C3) to 5 bedroom HMO (Class C4)

Applicant:

Mr & Mrs Frank Ciccotti



BACKGROUND INFORMATION

POLICIES

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

UDP - EV3 - Accessibility

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)

UDP - AS6 - Parking/Accessibility

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

UDP - HC5 - Houses in Multiple Occupation

Proposals for the conversion of dwelling or non-residential properties to HMO's will be permitted subject to a set of defined criteria including the effect upon residential amenity; harmful concentration or intensification of HMO's in an area, effect upon the external appearance of the property and the locality; effect on local car parking and highway safety; and adequate refuse storage arrangements. (City & County of Swansea Unitary Development Plan 2008)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 7 (CONT'D)

APPLICATION NO:

2017/0257/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0257/FUL	Change of use from residential (Class C3) to 5 bedroom HMO (Class C4)	PDE	

RESPONSE TO CONSULTATIONS

TWO neighbouring properties were consulted and the proposal was advertised on site. NO RESPONSE has been received.

A petition of objection has been received which outlines concerns regarding the number of HMOs in the area and their impact on parking, refuse and quality of life.

The petition states:

"We the undersigned wish to object to the proposal to convert 3 Beechwood Road, Uplands, Swansea SA2 0HL into a 5 bedroom House in Multiple Occupation (Application 2017/0257/FUL). If approved, it will add to the existing over-density of HMOs in Uplands and Brynmill. We are concerned that the number of vehicles parking at or near the premises and the increased amount of refuse being put out will disrupt the residential amenity of the area and harm the quality of life of existing residents."

A letter of support has been submitted by the applicant in response to the petition of objection received. It states that of the 39 legible addresses on the petition, many do not live in Uplands and none live within 100m of the application site. The applicant argues the claim that the development would 'harm the quality of life of existing residents' is not supported by signatures of anyone directly affected. The applicant also states that residents' parking areas are underutilised with pressure only seen in unregulated areas. The most likely tenants are students many of whom do not have cars and as the property is substantial, an ordinary family could have several cars. Bicycle storage will be provided.

Welsh Water - No objection

Pollution Control - No objection

Highways - No objection subject to conditions relating to bike storage and occupancy number restriction.

APPRAISAL

This application is reported to committee at the request of Councillor Nick Davies. A petition of objection has been received containing 39 Signatures, thereby satisfying the Council's Constitution threshold of 30 signatures from 30 separate addresses.

Description

Full planning permission is sought for the change of use of 3 Beechwood Road, Brynmill from residential (C3) to a 5 Bedroom HMO (C4).

ITEM 7 (CONT'D)

APPLICATION NO:

2017/0257/FUL

Change in Use Classes Order

On 25th February 2016 the Welsh Government introduced the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 which amended the Town and Country Planning (Use Classes) Order 1987 to:

- amend use class C3 (dwellinghouses) to:
- include a definition of "single household" which applies to use class C3(a) only;
- remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

The new C4 use introduced covered use of a dwelling house as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. The use occurs where tenanted living accommodation is occupied by 3 to 6 people who are not related and who share one or more basic amenities, as their only or main residence.

ISSUES

The main issues for consideration during the determination of this application relate to the principle of this form of use at this location and the resultant impact of the use upon the residential amenities of the area and highway safety having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

The Supplementary Planning Guidance 'Houses in Multiple Occupation (HMOs) and Purpose Built Student Accommodation' (PBSA) has recently gone to public consultation. The consultation period ran from 23rd January until 5th March 2017. The draft SPG has yet to be adopted and can therefore be afforded no weight in the process.

Principle of Use

Up until March 2016 planning permission was not required for the use of a property as a HMO for up to 6 people and as such there has been historically a large concentration of HMO properties in some parts of Swansea which has happened predominately without planning permission being required.

Following concerns raised by Local Authorities throughout Wales in respect of areas with a high concentration of HMOs an amendment to the Use Class Order was made introducing a separate C4 use for HMO properties with more than 2 people living in them. The amendment was made in order to safeguard the confidence of residents in areas with large numbers of HMOs, while at the same time protecting the rights of those people living in them.

It is acknowledged that large concentrations of HMOs can bring their own problems to local areas, however whilst Swansea Local Authority has now produced a SPG related to HMOs until formally adopted does not carry any weight.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 7 (CONT'D)

APPLICATION NO:

2017/0257/FUL

Policy HC5 of the Swansea UDP supports the conversion of dwellings to HMOs subject to compliance with the set criteria:

- (i) There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance
- (ii) The development would not contribute to harmful concentration or intensification of HMOs in a particular area
- (iii) There would be no adverse effect upon the external appearance of the property and the character of the locality,
- (iv) There would be no significant adverse effect on local car parking and highway safety, and
- (v) Appropriate refuse storage arrangements can be provided

The criteria of the above is addressed below:

Would the proposal result in a significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance?

On the basis of the information provided, in that the downstairs bedrooms 1 and 2 were originally reception rooms (although bedroom 2 had been used by the applicant's father for some time) the proposal results in an increase of 2 bedrooms to provide a 5 bedroom property. A large family could occupy the property under the extant lawful use of the premises and as such it is not considered that the use of the premises for up to 5 people as a HMO would result in an unacceptable intensification of the use of the building over and above what could be experienced as a dwelling house.

As such, the use of the property as a 5 bedroom HMO is not considered to result in an increase in noise and disturbance which could reasonably warrant the refusal of this application. The proposal is considered to respect residential amenity in compliance with the provisions of Policies EV1, EV40 and HC5 of the Swansea UDP.

Would the development contribute to a harmful concentration or intensification of HMOs in a particular area?

There are 64 properties along Beechwood Road and based on the current HMO Register (22nd May 2017) 23 of these are HMOs resulting in 35.9% of existing properties being in HMO use. Approval of the application would result in a percentage of 37.5% HMOs on the street. It is considered that this would not result in an increase in concentration or intensification of HMOs in the street that would justify a refusal in this instance as in the absence of a percentage or other similar calculation based approach, it is difficult to determine what number of HMOs in an area would constitute a 'harmful concentration'. Without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.

There would be no adverse effect upon the external appearance of the property and the character of the locality

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 7 (CONT'D)

APPLICATION NO:

2017/0257/FUL

There are no external alterations proposed at the property and as such the proposal will have no adverse impact on visual amenity.

There would be no significant adverse effect on local car parking and highway safety

The application site on Beechwood road is restricted to resident permit holders only. The Adopted Parking Standards SPG sets out that for proposals for up to 6 people sharing facilities that it will be treated as a large single household with each additional bedroom requiring 1 space each. On the basis that the existing dwellinghouse has no available off street parking and the proposal remains below the 6 person threshold there is no requirement for off street parking in accordance with the SPG. The Highway Authority raises no objection on this basis and refers to the fact that parking is restricted on the street currently and the house would remain eligible for 2 parking permits as is currently the case.

In order to ensure that the HMO provides opportunities for sustainable transport the applicant was requested to submit details of cycle storage. The applicant has specified that an existing shed to the rear of the property provides space to house several bicycles and it will be renovated and made secure. Subject to this being provided for the application is considered to result in no adverse impact upon highway safety in the area.

Appropriate refuse storage arrangements can be provided

The applicant provided sketch information that bin storage can be provided in the rear garden opposite the existing shed. This gives the option of removal via the rear garden gate or through the house to the kerb-side collection point. This is considered suitable to serve the HMO.

Response to consultation

The petition received raises concern about the application, stating that if approved, it will add to the existing over-density of HMOs in Uplands and Brynmill. It raises this issue in the general sense of the area and not specifically in relation to Beechwood Road or its immediate context within the Uplands area. In terms of the density itself as recognised in the report this will increase marginally, however, it cannot be said that this would result in a harmful density of HMOs. Concerns are raised about vehicle parking and in relation to increased amount of refuse being put out. Vehicle parking is addressed in the above paragraphs relating to highway safety. As mentioned sufficient space is provided within the rear area to provide for refuse storage.

In respect of the concerns raised it is not considered that these would amount to reasons for refusal in this application. In support of this position regard can be given to recent appeal decisions by the Planning Inspectorate (105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603, 96 King Edwards Avenue - APP/B6855/A/16/31650557, 57 St Helens Avenue - APP/B6855/A/16/3165327 and 124 St Helens Avenue - APP/B6855/A/17/3167108) in connection with similar applications for HMOs.

105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603 - 2016/1316 - 10 February 2017

In allowing this appeal the inspector noted that the Council identified 36% of dwellings in the street being HMO whilst a local resident estimated that 43% of all dwellings within 50 metres are HMO.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 7 (CONT'D)

APPLICATION NO:

2017/0257/FUL

In response to concerns about damage to the area's character of amenity the inspector stated "Whilst I do not dispute that there are a number of HMOs nearby, there is limited evidence before me to indicate that the appeal development, specifically, has a significant or detrimental effect on the sustainability of the local community. Further, although many dwellings nearby appear to be in good or very good physical condition, some of the environmental issues cited are not exclusive to their use as HMOs." He went on to say; "The appeal development has resulted in a modest increase in the number of bedrooms within the property. Even were the previous house not to have been fully occupied, all bedrooms could have been used without planning permission. There is little evidence before me to demonstrate that the use of the property as an HMO, rather than a C3 dwelling, would in itself result in levels of noise, disturbance or antisocial behaviour that would harm the living conditions of those living nearby. Whilst I note that the bedrooms appear large enough to accommodate double beds, any substantial increase in occupation would require separate planning permission."

96 King Edwards Avenue - APP/B6855/A/16/3165057 - 2016/1380 - 19 April 2017

In this case the inspector noted that 52% of dwellings in the area were HMOs and in allowing the appeal stated "whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it."

57 St Helens Avenue - APP/B6855/A/16/3165327 - 2016/1688 - 25 April 2017

In allowing this appeal the inspector stated "The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances. In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 7 (CONT'D)

APPLICATION NO:

2017/0257/FUL

The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

124 St Helens Avenue - APP/B6855/A/17/3167108 - 2016/1038 - 4 May 2017

In this case the inspector made similar conclusions as to the case at No. 57 St Helen's Avenue noting that there was no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity of the area. In relation to concerns about the transient population the inspector stated "Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

Planning Conditions

Conditions requiring the commencement of the development within 5 years and to be carried out in accordance with the approved plans are necessary. In the consultation response from the Highway Authority, a condition requiring cycle storage is recommended and this is reasonable in the interests of sustainable travel. It is, however, considered unreasonable to restrict the HMO to 5 persons in light of the SPG requirements being met for this proposal for up to 6 people. Therefore the restrictive condition is not recommended.

Conclusion

It is considered that the Local Planning Authority has no evidence to suggest that the change of use of this property to a 5 bedroom HMO would result in a harmful concentration of HMOs within this area. Furthermore the proposal would have an acceptable impact upon the visual amenities of the area, the residential amenities of neighbouring properties and highway safety having regard for the provisions of Policies EV1, AS6 and HC5 of the Swansea UDP and approval is recommended.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 7 (CONT'D)

APPLICATION NO:

2017/0257/FUL

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: Site location plan, block plan received 6th February 2017; floor plans received on 19th February 2017 and details in relation to waste and cycle storage received via email on 19th February 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Prior to first beneficial use of the HMO hereby approved the cycle storage facilities, as set out on the details received via email on 19 February 2017, shall be made available and retained in perpetuity to serve the HMO.
Reason: In the interest of providing for alternative modes of transport and sustainability.

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: Policies EV1, EV3, AS6 and HC5 of the City and County of Swansea Unitary Development Plan 2008.
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PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8

APPLICATION NO:

2017/0391/FUL

WARD:

Uplands - Bay Area

Location:

25 Mirador Crescent, Uplands, Swansea, SA2 0QX

Proposal:

Change of use from residential (Class C3) to 4 bedroom HMO (Class C4)

Applicant:

Mr David Jolleys



BACKGROUND INFORMATION

POLICIES

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

UDP - EV3 - Accessibility

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)

UDP - AS6 - Parking/Accessibility

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

UDP - HC5 - Houses in Multiple Occupation

Proposals for the conversion of dwelling or non-residential properties to HMO's will be permitted subject to a set of defined criteria including the effect upon residential amenity; harmful concentration or intensification of HMO's in an area, effect upon the external appearance of the property and the locality; effect on local car parking and highway safety; and adequate refuse storage arrangements. (City & County of Swansea Unitary Development Plan 2008)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0391/FUL	Change of use from residential (Class C3) to 4 bedroom HMO (Class C4)	PDE	

RESPONSE TO CONSULTATION

TWO adjacent neighbouring properties were consulted and the proposal was advertised on site. THREE LETTERS OF OBJECTION have been received which are summarised as follows:

- 1) There are too many HMOs on the street to the detriment of the area
- 2) Bins are left in the street
- 3) Parking concerns
- 4) Noise concerns

Additionally a petition of objection has been received containing 40 signatures citing the number of HMOs in the area as being too many; parking concerns; and refuse issues. The petition states:

"We the undersigned wish to object to the proposal to convert 25 Mirador Crescent, Uplands, Swansea, SA2 0QX into a 4 bedroom House in Multiple Occupation (Application 2017/0391/FUL). If approved, it will add to the existing over-density of HMOs in Uplands and Brynmill. We are concerned that the number of vehicles parking at or near the premises and the increased amount of refuse being put out will disrupt the residential amenity of the area and harm the quality of life of existing residents."

Welsh Water - No objection

Pollution Control - No objection

Highways - No objection subject to conditions relating to parking provision, bike storage and occupancy numbers.

APPRAISAL

This application is reported to Committee for decision at the request of Councillor Nick Davies. The Constitutional threshold has been met as a petition of objection containing 40 signatures from a minimum of 30 separate addresses has been received.

Description

Full planning permission is sought for the change of use from residential (Class C3) to a 4 bedroom HMO (Class C4) at 25 Mirador Crescent.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

The existing dwelling is three storey 5-bedroom terraced property which is situated within the residential area of Uplands. The area comprises traditionally designed dwellings and commercial properties. No external alterations are proposed to the host dwelling.

Change in Use Classes Order

On 25th February 2016 the Welsh Government introduced the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 which amended the Town and Country Planning (Use Classes) Order 1987 to:

- amend use class C3 (dwellinghouses) to:
- include a definition of "single household" which applies to use class C3(a) only;
- remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

The new C4 use introduced covered use of a dwelling house as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. The use occurs where tenanted living accommodation is occupied by 3 to 6 people who are not related and who share one or more basic amenities, as their only or main residence.

ISSUES

The main issues for consideration during the determination of this application relates to the principle of this form of use at this location and the resultant impact of the use upon the residential amenities of the area and highway safety having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

The Supplementary Planning Guidance 'Houses in Multiple Occupation (HMOs) and Purpose Built Student Accommodation' (PBSA) has recently gone to public consultation. The consultation period ran from 23rd January until 5th March 2017. The draft SPG has yet to be adopted and can therefore be afforded no weight in the process.

Principle of Use

Up until March 2016 planning permission was not required for the use of a property as a HMO for up to 6 people and as such there has been historically a large concentration of HMO properties in some parts of Swansea which has happened predominately without planning permission being required.

Following concerns raised by Local Authorities throughout Wales in respect of areas with a high concentration of HMOs an amendment to the Use Class Order was made introducing a separate C4 use for HMO properties with more than 2 people living in them. The amendment was made in order to safeguard the confidence of residents in areas with large numbers of HMOs, while at the same time protecting the rights of those people living in them.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

It is acknowledged that large concentrations of HMOs can bring their own problems to local areas, however the Local Planning Authority has not produced any evidence or Supplementary Planning Guidance as of yet to quantify the harm caused by the concentration of these types of uses.

Policy HC5 of the Swansea UDP supports the conversion of dwellings to HMOs subject to compliance with the set criteria:

- (i) There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance
- (ii) The development would not contribute to harmful concentration or intensification of HMOs in a particular area
- (iii) There would be no adverse effect upon the external appearance of the property and the character of the locality,
- (iv) There would be no significant adverse effect on local car parking and highway safety, and
- (v) Appropriate refuse storage arrangements can be provided

The criteria of the above is addressed below:

Would the proposal result in a significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance?

On the basis of the information provided, there would be no increase in the number of bedrooms. In fact the number of bedrooms would decrease by one. A large family could occupy the property under the extant lawful use of the premises and as such it is not considered that the use of the premises for up to 4 people within 4 bedrooms as a HMO would result in an unacceptable intensification of the use of the building over and above what could be experienced as a dwellinghouse.

As such the proposed use will not result in unacceptable noise and disturbance which could reasonably warrant the refusal of this application. The proposal is considered to respect residential amenity in compliance with the provisions of Policies EV1, EV40 and HC5 of the Swansea UDP.

Would the development contribute to a harmful concentration or intensification of HMOs in a particular area?

In 2015 the Welsh Government commissioned a study into the impact of houses in multiple accommodation (HMOs) concentrations on local communities in certain areas across Wales.

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

The Welsh Government identified that HMOs make an important contribution to the provision of housing for those unable to buy or rent smaller accommodation but the study revealed common problems associated with high concentrations of HMOs including damage to social cohesion, difficult access to the area for owner occupiers and first time buyers, increases in anti-social behaviour, noise, burglary and other crime, reduction in the quality of the local environment, a change in the character of the area, increased pressure on parking and a reduction in provision of community facilities for families and children, in particular pressure on schools through falling rolls. The research recommended that the definition of a HMO be changed and that the Town and Country Planning (Use Classes) Order 1987 be amended to give Local Authorities the power to manage the development of HMOs with fewer than seven residents, which previously would not have required planning permission.

Following on from the change in legislation the Welsh Government published a document entitled 'Houses in Multiple Occupation Practice Guidance (February 2016) HMOs. Within this it is identified that HMOs provide a source of accommodation for certain groups which include students temporarily resident and individuals and/or small households unable to afford self-contained accommodation. It further identifies the concerns, as set above, that were raised in the study into HMOs as well as setting out good practice measures in relation to the management of HMOs.

From viewing the Councils own HMO register, there are currently 12 HMOs registered on Mirador Crescent out of a total of 38 properties (22nd May 2017). This results in 31.5% of properties along Mirador Crescent being in HMO use. Approval of the application would take this figure to 34.2%. It is considered that this would not result in an increase in concentration or intensification of HMOs in the street that would justify a refusal in this instance as in the absence of a percentage or other similar calculation based approach, it is difficult to determine what number of HMOs in an area would constitute a 'harmful concentration'. Without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.

There would be no adverse effect upon the external appearance of the property and the character of the locality

There are no external alterations proposed at the property and as such the proposal will have no adverse impact on visual amenity.

There would be no significant adverse effect on local car parking and highway safety

The existing property at Mirador Crescent is within walking distance of the local Uplands centre and parking provision on street is, in the majority, restricted by residents permit only. The property has an existing double garage which is to be retained by the HMO for parking of up to 2 vehicles and cycle storage is to be provided by an existing shed both to the rear of the property.

The Highway Authority has been consulted and raises no objection on the basis of retention of the existing parking provision and notes compliance with the current Parking Standards which allow for up to six people in a property without the need for any additional parking. Prior to the introduction of the C4 Classification (for between 3 and 6 persons) in March 2016 up to six people could share without the need for planning permission.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

Whilst it is accepted that parking within the street is already at a premium and parking within the Uplands area in general can be difficult, it cannot be regarded that the approval of this application would result in harm to highway safety. The property complies with the provision of the SPG, suitable parking can be made available within the existing garage and cycle storage can be provided to serve future occupiers as a HMO thus promoting sustainable travel.

Appropriate refuse storage arrangements can be provided

The submitted information set out photographs to identify suitable provision for refuse storage within the rear amenity space and existing shed. This is considered suitable to serve the HMO.

Response to consultation

The petition received raises concern about the application, stating that if approved, it will add to the existing over-density of HMOs in Uplands and Brynmill. It raises this issue in the general sense of the area and not specifically in relation to Mirador Crescent or its immediate context within the Uplands area. In terms of the density itself as recognised in the report this will increase marginally, however, it cannot be said that this would result in a harmful density of HMOs. Concerns are raised about vehicle parking and in relation to increased amount of refuse being put out. Vehicle parking is addressed in the above paragraphs relating to highway safety. As mentioned sufficient space is provided within the rear area to provide for refuse storage.

In respect of the concerns raised it is not considered that these would amount to reasons for refusal in this application. In support of this position regard can be given to recent appeal decisions by the Planning Inspectorate (105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603, 96 King Edwards Avenue - APP/B6855/A/16/31650557, 57 St Helens Avenue - APP/B6855/A/16/3165327 and 124 St Helens Avenue - APP/B6855/A/17/3167108) in connection with similar applications for HMOs.

105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603 - 2016/1316 - 10 February 2017

In allowing this appeal the inspector noted that the Council identified 36% of dwellings in the street being HMO whilst a local resident estimated that 43% of all dwellings within 50 metres are HMO. In response to concerns about damage to the area's character of amenity the inspector stated "Whilst I do not dispute that there are a number of HMOs nearby, there is limited evidence before me to indicate that the appeal development, specifically, has a significant or detrimental effect on the sustainability of the local community. Further, although many dwellings nearby appear to be in good or very good physical condition, some of the environmental issues cited are not exclusive to their use as HMOs." He went on to say; "The appeal development has resulted in a modest increase in the number of bedrooms within the property. Even were the previous house not to have been fully occupied, all bedrooms could have been used without planning permission. There is little evidence before me to demonstrate that the use of the property as an HMO, rather than a C3 dwelling, would in itself result in levels of noise, disturbance or antisocial behaviour that would harm the living conditions of those living nearby. Whilst I note that the bedrooms appear large enough to accommodate double beds, any substantial increase in occupation would require separate planning permission."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

96 King Edwards Avenue - APP/B6855/A/16/3165057 - 2016/1380 - 19 April 2017

In this case the inspector noted that 52% of dwellings in the area were HMOs and in allowing the appeal stated "whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it."

57 St Helens Avenue - APP/B6855/A/16/3165327 - 2016/1688 - 25 April 2017

In allowing this appeal the inspector stated "The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances. In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

124 St Helens Avenue - APP/B6855/A/17/3167108 - 2016/1038 - 4 May 2017

In this case the inspector made similar conclusions as to the case at No. 57 St Helen's Avenue noting that there was no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity of the area. In relation to concerns about the transient population the inspector stated "Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

Planning Conditions

Conditions requiring the commencement of the development within 5 years and to be carried out in accordance with the approved plans are necessary. In the consultation response from the Highway Authority, a condition requiring cycle storage is recommended and this is reasonable in the interests of sustainable travel along with retention of the double garage for parking purposes. It is, however, considered unreasonable to restrict the HMO to 4 persons in light of the SPG requirements being met for this proposal for upto 6 people and parking and cycle storage being provided on site. Therefore the restrictive condition is not recommended.

Conclusion

It is considered that the Local Planning Authority has no evidence to suggest that the use of this property as an HMO would result in a harmful concentration of HMOs within this area. Furthermore the proposal would have an acceptable impact upon the visual amenities of the area, the residential amenities of neighbouring properties and highway safety having regard for the provisions of Policies EV1, AS6 and HC5 of the Swansea UDP and approval is recommended.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WCFG Act"). In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WCFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WCFG Act.

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: site location plan, proposed site plan, proposed ground floor plan, proposed first floor plan, proposed second floor plan received on 8th March 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 8 (CONT'D)

APPLICATION NO:

2017/0391/FUL

- 3 Notwithstanding the submitted photographs and sketch plans full details of cycle storage, bin storage and vehicle parking to serve the HMO shall be submitted to and approved in writing by the Local Planning Authority. The cycle storage, bin storage and vehicle parking shall be made available for use prior to first beneficial use of the HMO and retained thereafter for the approved purposes.
Reason: In the interest of providing for suitable cycle storage, parking and refuse storage to serve the HMO.

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: Policies EV1, EV3, AS6 and HC5 of the City and County of Swansea Unitary Development Plan 2008.
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PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9

APPLICATION NO:

2017/0840/FUL

WARD:

St. Thomas - Bay Area

Location:

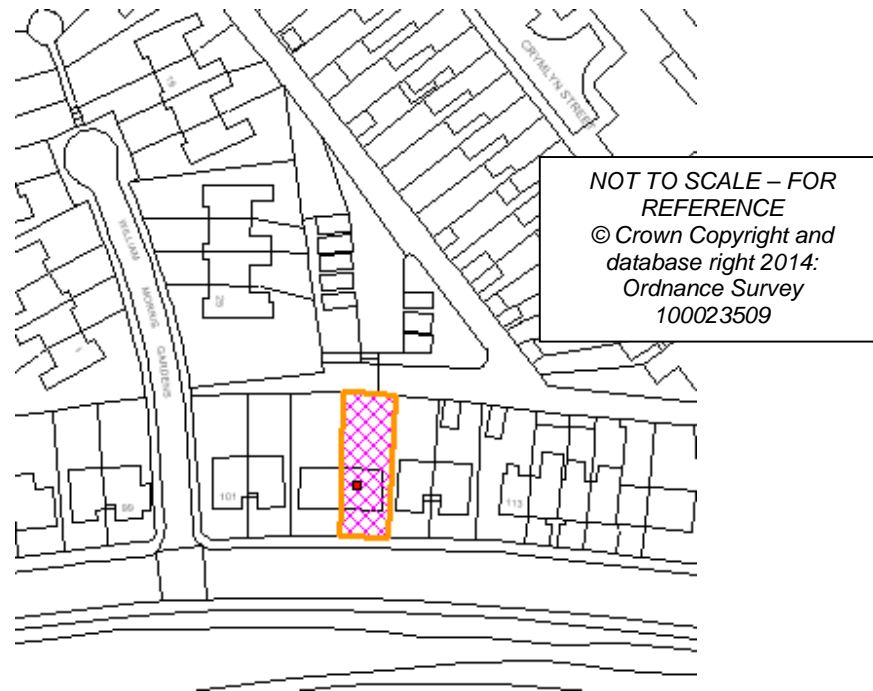
107 Wern Fawr Road, Port Tennant, Swansea, SA1 8LN

Proposal:

Change of use from 3 bedroom residential dwelling (Class C3) to 4 bedroom HMO (Class C4).

Applicant:

Mr J.D. Waygood



BACKGROUND INFORMATION

POLICIES

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

UDP - EV3 - Accessibility

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)

UDP - AS6 - Parking/Accessibility

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

UDP - HC5 - Houses in Multiple Occupation

Proposals for the conversion of dwelling or non-residential properties to HMO's will be permitted subject to a set of defined criteria including the effect upon residential amenity; harmful concentration or intensification of HMO's in an area, effect upon the external appearance of the property and the locality; effect on local car parking and highway safety; and adequate refuse storage arrangements. (City & County of Swansea Unitary Development Plan 2008)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0840/FUL	Change of use from 3 bedroom residential dwelling (Class C3) to 4 bedroom HMO (Class C4).	PDE	
2008/0113	Conversion of dwelling into two flats	REF	02.09.2008

RESPONSE TO CONSULTATION

TWO neighbouring adjoining properties were consulted and the proposal was advertised on site. THREE LETTERS OF OBJECTION have been received which are summarised as follows:

- 1) Highway safety concerns
- 2) Long term impact on schools
- 3) House value impact
- 4) Refuse issues
- 5) Impact on community
- 6) Building works will affect my health

Additionally, a petition of objection containing 32 signatures has been received although no reasons for objection were given.

Pollution Control - No objection

Highways - No highway objection subject to conditions

APPRAISAL

This application is reported to committee at the request of Councillor Joe Hale. A petition of objection has been received containing more than 30 signatures, thereby satisfying the Council's Constitution requirements.

Description

Full planning permission is sought for the change of use from a 3 bedroom residential dwelling (Class C3) to 4 bedroom HMO (Class C4) at 107 Wern Fawr Road. The existing dwelling is two storey semi-detached property which is situated within the residential area of St. Thomas. The area comprises traditionally designed dwellings.

No external alterations are proposed to the host dwelling.

Change in Use Classes Order

On 25th February 2016 the Welsh Government introduced the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 which amended the Town and Country Planning (Use Classes) Order 1987 to:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

- amend use class C3 (dwellinghouses) to:
- include a definition of "single household" which applies to use class C3(a) only;
- remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

The new C4 use introduced covered use of a dwelling house as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. The use occurs where tenanted living accommodation is occupied by 3 to 6 people who are not related and who share one or more basic amenities, as their only or main residence.

ISSUES

The main issues for consideration during the determination of this application relate to the principle of this form of use at this location and the resultant impact of the use upon the residential amenities of the area and highway safety having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

The Supplementary Planning Guidance 'Houses in Multiple Occupation (HMOs) and Purpose Built Student Accommodation' (PBSA) has recently gone to public consultation. The consultation period ran from 23rd January until 5th March 2017. The draft SPG has yet to be adopted and can therefore be afforded no weight in the process

Principle of Use

Up until March 2016 planning permission was not required for the use of a property as a HMO for up to 6 people and as such there has been historically a large concentration of HMO properties in some parts of Swansea which has happened predominately without planning permission being required.

Following concerns raised by Local Authorities throughout Wales in respect of areas with a high concentration of HMOs an amendment to the Use Class Order was made introducing a separate C4 use for HMO properties with more than 2 people living in them. The amendment was made in order to safeguard the confidence of residents in areas with large numbers of HMOs, while at the same time protecting the rights of those people living in them.

It is acknowledged that large concentrations of HMOs can bring their own problems to local areas, however the Local Planning Authority has not produced any evidence or Supplementary Planning Guidance as of yet to quantify the harm caused by the concentration of these types of uses.

Policy HC5 of the Swansea UDP supports the conversion of dwellings to HMOs subject to compliance with the set criteria:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

- (i) There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance
- (ii) The development would not contribute to harmful concentration or intensification of HMOs in a particular area
- (iii) There would be no adverse effect upon the external appearance of the property and the character of the locality,
- (iv) There would be no significant adverse effect on local car parking and highway safety, and
- (v) Appropriate refuse storage arrangements can be provided

The criteria of the above is addressed below:

Would the proposal result in a significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance?

On the basis of the information provided, it is acknowledged that the proposal would result in the use of the property as a 4 bedroom/ 4 person HMO. A large family could occupy the property under the extant lawful use of the premises and as such it is not considered that the use of the premises for up to 4 people as a HMO would result in an unacceptable intensification of the use of the building over and above what could be experienced as a dwelling house.

As such the proposed use will not result in unacceptable noise and disturbance which could reasonably warrant the refusal of this application. The proposal is considered to respect residential amenity in compliance with the provisions of Policies EV1, EV40 and HC5 of the Swansea UDP.

Would the development contribute to a harmful concentration or intensification of HMOs in a particular area?

In 2015 the Welsh Government commissioned a study into the impact of houses in multiple accommodation (HMOs) concentrations on local communities in certain areas across Wales. The Welsh Government identified that HMOs make an important contribution to the provision of housing for those unable to buy or rent smaller accommodation but the study revealed common problems associated with high concentrations of HMOs including damage to social cohesion, difficult access to the area for owner occupiers and first time buyers, increases in anti-social behaviour, noise, burglary and other crime, reduction in the quality of the local environment, a change in the character of the area, increased pressure on parking and a reduction in provision of community facilities for families and children, in particular pressure on schools through falling rolls. The research recommended that the definition of a HMO be changed and that the Town and Country Planning (Use Classes) Order 1987 be amended to give Local Authorities the power to manage the development of HMOs with fewer than seven residents, which previously would not have required planning permission.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

Following on from the change in legislation the Welsh Government published a document entitled 'Houses in Multiple Occupation Practice Guidance (February 2016) HMOs. Within this it is identified that HMOs provide a source of accommodation for certain groups which include students temporarily resident and individuals and/or small households unable to afford self-contained accommodation. It further identifies the concerns, as set above, that were raised in the study into HMOs as well as setting out good practice measures in relation to the management of HMOs.

From viewing the Councils own HMO register there are no registered HMO properties on Wern Fawr Road (as of the 22nd May 2017). There are 76 properties in total along Wern Fawr Road. It is acknowledged, however, that there may be HMO's on the street which have been used pre March 2016. It should also be noted, however, that outside of the Castle and Uplands Wards only larger properties are captured by Mandatory Licencing. As a result there may be instances where HMOs exist in the area albeit that they would have been implemented prior to the use class change in February 2016 and not required planning permission and are not subject to licensing requirements. No consultation responses provided from objectors have raised information on existing HMOs in the area.

There are some properties showing as being listed on Rent Smart Wales as rental properties along Wern Fawr Road which include the nearest at Nos. 111 and 117 in proximity to the application property. However this information does not demonstrate use of the properties as HMOs only demonstrate that they are rental properties.

In the absence of a percentage or other similar calculation based approach, it is difficult to determine what number of HMOs in an area would constitute a 'harmful concentration'. Without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.

There would be no adverse effect upon the external appearance of the property and the character of the locality

There are no external alterations proposed at the property and as such the proposal will have no adverse impact on visual amenity.

There would be no significant adverse effect on local car parking and highway safety

There are no dedicated parking spaces available at the application property and parking on the street is unrestricted. The Adopted SPG sets out that for a HMO for upto 6 persons there is no requirement for additional parking over and above that of a dwellinghouse. As such with no existing provision for the dwellinghouse there is no requirement for additional parking. The application form submitted makes reference to cycle parking being included and this would provide an alternative means of travel for future occupiers. Consultation with the Highway Authority has been undertaken and no objections have been raised. As such the scheme will not raise a significant effect on local car parking and highway safety in the area.

Appropriate refuse storage arrangements can be provided

An area for bin storage is proposed to the rear of the property.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

Response to consultation

The petition doesn't provide any reason or reasons for objection other than being titled 'Petition to Oppose Planning Application 2017/0840 107 Wern Fawr Road, Port Tennant, Swansea, Convert Existing Family Home to HMO'.

In respect of the concerns raised by the 3 letters of objection it is not considered that these would amount to reasons for refusal in this application. One objection letter refers to concerns about building works and dust. The application proposes to change use of the property only and there are no external building works proposed only internal works to subdivide a lounge into a bedroom and lounge on the ground floor. The concern raised about erosion of the residential area and long term impact on schools in the area is not supported by evidence to suggest that this HMO will bring harm to the area. As supported in recent appeal decisions by planning inspectors HMO uses do add to the mix of affordable housing in areas of the City.

In support of this position regard can be given to recent appeal decisions by the Planning Inspectorate (105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603, 96 King Edwards Avenue - APP/B6855/A/16/31650557, 57 St Helens Avenue - APP/B6855/A/16/3165327 and 124 St Helens Avenue - APP/B6855/A/17/3167108) in connection with similar applications for HMOs.

105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603 - 2016/1316 - 10 February 2017

In allowing this appeal the inspector noted that the Council identified 36% of dwellings in the street being HMO whilst a local resident estimated that 43% of all dwellings within 50 metres are HMO. In response to concerns about damage to the area's character of amenity the inspector stated "Whilst I do not dispute that there are a number of HMOs nearby, there is limited evidence before me to indicate that the appeal development, specifically, has a significant or detrimental effect on the sustainability of the local community. Further, although many dwellings nearby appear to be in good or very good physical condition, some of the environmental issues cited are not exclusive to their use as HMOs." He went on to say; "The appeal development has resulted in a modest increase in the number of bedrooms within the property. Even were the previous house not to have been fully occupied, all bedrooms could have been used without planning permission. There is little evidence before me to demonstrate that the use of the property as an HMO, rather than a C3 dwelling, would in itself result in levels of noise, disturbance or antisocial behaviour that would harm the living conditions of those living nearby. Whilst I note that the bedrooms appear large enough to accommodate double beds, any substantial increase in occupation would require separate planning permission."

96 King Edwards Avenue - APP/B6855/A/16/3165057 - 2016/1380 - 19 April 2017

In this case the inspector noted that 52% of dwellings in the area were HMOs and in allowing the appeal stated "whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it."

57 St Helens Avenue - APP/B6855/A/16/3165327 - 2016/1688 - 25 April 2017

In allowing this appeal the inspector stated "The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances. In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

124 St Helens Avenue - APP/B6855/A/17/3167108 - 2016/1038 - 4 May 2017

In this case the inspector made similar conclusions as to the case at No. 57 St Helen's Avenue noting that there was no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity of the area. In relation to concerns about the transient population the inspector stated "Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

Planning Conditions

Conditions requiring the commencement of the development within 5 years and to be carried out in accordance with the approved plans are necessary.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

A condition requiring cycle and refuse storage is recommended and this is reasonable in the interests of sustainable travel and visual amenity. The Highway Authority requested that the property be restricted for no more than 4 people, however, it is considered unreasonable to restrict the HMO to 4 persons in light of the SPG requirements being met for this proposal for upto 6 people. Therefore the restrictive condition is not recommended.

Conclusion

It is considered that the Local Planning Authority has no evidence to suggest that the use of this property as a HMO would result in a harmful concentration of HMOs within this area. Furthermore the proposal would have an acceptable impact upon the visual amenities of the area, the residential amenities of neighbouring properties and highway safety having regard for the provisions of Policies EV1, AS6 and HC5 of the Swansea UDP and approval is recommended.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

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: block plan, site location plan, proposed floor plans (04.17.107W.D1) received on 13th April 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Details of the facilities to be provided for secure storage of 4 cycles and refuse storage shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed detail before the development is occupied. The cycle and refuse storage shall be made available for use and retained thereafter for the approved purposes.
Reason: In the interest of providing for alternative modes of transport, sustainability and visual amenity.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 9 (CONT'D)

APPLICATION NO:

2017/0840/FUL

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: Policies EV1, EV3, AS6 and HC5 of the City and County of Swansea Unitary Development Plan 2008.
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PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0843/FUL	Change of use from 2 bedroom residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	PDE	

RESPONSE TO CONSULTATION

Neighbours: The application was advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) by neighbour notification letters sent to No. 37, 38 & 40 Sebastopol Street and 32F Leger Crescent and through display of a site notice dated 26th April 2017.

TEN INDIVIDUAL LETTERS OF OBJECTION have been received which are summarised as followed:

1. Impact on highway safety and local highway conditions;
2. Antisocial behaviour;
3. Noise;
4. Refuse management;
5. Safety / security;
6. Impact on the character of the area / loss of community cohesion;
7. Established precedent for similar development;
8. Nos 49 & 67 Sebastopol Street are already HMO's;
9. The size of the application property is not suitable for conversion;
10. Loss of family housing;
11. Strain on local resources;
12. Loss of value of properties; and
13. I object to my community being treated in the same way Brynmill, Uplands and Sandfields area of Swansea by the Local Planning Authority.

ONE PETITION OF OBJECTION has been received with 52 signatures. The petition does not raise any specific concerns to the proposal just states its opposition to the development.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

Highways - No highway objection subject to conditions to require cycle storage and the property being used by no more than 3 persons in the interest of highway safety.

APPRAISAL

This application is reported to Committee for decision at the request of Councillor Joe Hale and due to the fact there has been a petition submitted containing 52 signatures in total of objection which meets the identified threshold set out in the Council Constitution.

Description

Full planning permission is sought for the change of use of a residential dwelling (Class C3) to a HMO for 3 people (Class C4) at No. 39 Sebastopol Street.

The application property is a two storey mid terraced property currently occupied as a two bedroom dwelling house located on Sebastopol Street within the residential area of St. Thomas. No external alterations are proposed and as such the proposal will have no impact on visual amenity.

Change in Use Classes Order

On 25th February 2016 the Welsh Government introduced the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 which amended the Town and Country Planning (Use Classes) Order 1987 to:

- amend use class C3 (dwellinghouses) to:
- include a definition of "single household" which applies to use class C3(a) only;
- remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

The new C4 use introduced covered use of a dwelling house as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. The use occurs where tenanted living accommodation is occupied by 3 to 6 people who are not related and who share one or more basic amenities, as their only or main residence.

ISSUES

The main issues for consideration during the determination of this application relates to the principle of this form of use at this location and the resultant impact of the use upon the residential amenities of the area and highway safety having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

The Supplementary Planning Guidance 'Houses in Multiple Occupation (HMOs) and Purpose Built Student Accommodation' (PBSA) has recently gone to public consultation. The consultation period ran from 23rd January until 5th March 2017. The draft SPG has yet to be adopted and can therefore be afforded no weight in the process

Principle of Use

Up until March 2016 planning permission was not required for the use of a property as a HMO for up to 6 people and as such there has been historically a large concentration of HMO properties in some parts of Swansea which has happened predominately without planning permission being required.

Following concerns raised by Local Authorities throughout Wales in respect of areas with a high concentration of HMOs an amendment to the Use Class Order was made introducing a separate C4 use for HMO properties with more than 2 people living in them. The amendment was made in order to safeguard the confidence of residents in areas with large numbers of HMOs, while at the same time protecting the rights of those people living in them.

It is acknowledged that large concentrations of HMOs can bring their own problems to local areas, however whilst Swansea Local Authority has now produced a SPG related to HMOs this is currently at consultation stage and until formally adopted does not carry any weight.

Policy HC5 of the Swansea UDP supports the conversion of dwellings to HMOs subject to compliance with the set criteria:

- (i) There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance
- (ii) The development would not contribute to harmful concentration or intensification of HMOs in a particular area
- (iii) There would be no adverse effect upon the external appearance of the property and the character of the locality,
- (iv) There would be no significant adverse effect on local car parking and highway safety, and
- (v) Appropriate refuse storage arrangements can be provided

The criteria of the above is addressed below:

Would the proposal result in a significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance?

On the basis of the information provided, it is acknowledged that the proposal would result in the increase of one bedroom to provide a three bedroom property.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

Regard needs to be given to the fact that a large family could occupy the property under the extant lawful use of the premises and as such it is not considered that the use of the premises for up to 3 people as a HMO would result in an unacceptable intensification of the use of the building over and above what could be experienced as a dwelling house. There is no evidence to suggest that this proposal would result in any harm to neighbouring occupiers by virtue of noise, nuisance or other disturbance.

As such the proposed use will not result in unacceptable noise and disturbance which could reasonably warrant the refusal of this application. The proposal is considered to respect residential amenity in compliance with the provisions of Policies EV1, EV40 and HC5 of the Swansea UDP.

Would the development contribute to a harmful concentration or intensification of HMOs in a particular area?

In 2015 the Welsh Government commissioned a study into the impact of houses in multiple accommodation (HMOs) concentrations on local communities in certain areas across Wales. The Welsh Government identified that HMOs make an important contribution to the provision of housing for those unable to buy or rent smaller accommodation but the study revealed common problems associated with high concentrations of HMOs including damage to social cohesion, difficult access to the area for owner occupiers and first time buyers, increases in anti-social behaviour, noise, burglary and other crime, reduction in the quality of the local environment, a change in the character of the area, increased pressure on parking and a reduction in provision of community facilities for families and children, in particular pressure on schools through falling rolls. The research recommended that the definition of a HMO be changed and that the Town and Country Planning (Use Classes) Order 1987 be amended to give Local Authorities the power to manage the development of HMOs with fewer than seven residents, which previously would not have required planning permission.

Following on from the change in legislation the Welsh Government published a document entitled 'Houses in Multiple Occupation Practice Guidance (February 2016) HMOs. Within this it is identified that HMOs provide a source of accommodation for certain groups which include students temporarily resident and individuals and/or small households unable to afford self-contained accommodation. It further identifies the concerns, as set above, that were raised in the study into HMOs as well as setting out good practice measures in relation to the management of HMOs.

From viewing the Councils own HMO register, there are no registered HMO properties on Sebastopol Street (as of the 24th May 2017). There are 67 properties in total along Sebastopol Street. Whilst two properties (Nos. 49 & 67) have been highlighted in letters of objection received as being used as HMO's on Sebastopol Street, it may be the case that the properties have been used as HMO's pre March 2016. It should also be noted that outside of the Castle and Uplands Wards only larger properties are captured by Mandatory Licencing. As a result there may be instances where HMOs exist in the area albeit that they would have been implemented prior to the use class change in February 2016 and not required planning permission and are not subject to licensing requirements.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

There are some properties showing as being listed on Rent Smart Wales as rental properties along Sebastopol Street, however this information does not demonstrate use of the properties as HMOs only demonstrate that they are rental properties.

In the absence of a percentage or other similar calculation based approach, it is difficult to determine what number of HMOs in an area would constitute a 'harmful concentration'. Given there are limited numbers of HMOs in this area, without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.

There would be no adverse effect upon the external appearance of the property and the character of the locality

There are no external alterations proposed at the property and as such the proposal will have no adverse impact on visual amenity.

There would be no significant adverse effect on local car parking and highway safety

Whilst the objections received from local residents are noted, regard needs to be given to the Adopted SPG Parking Standards. For a HMO for up to 6 persons there is no requirement for additional parking over and above that of a dwelling house. Whilst no details have been provided for cycle storage, there is adequate space at the rear of the property to provide such provision which can be secured by planning condition. The Highway Authority has raised no objection in that respect.

In view of the above, subject to an appropriately worded condition in respect of cycle parking, the proposal is not considered to have any greater impact on highway safety or parking over and above the existing extant use of the property in compliance with the provisions of Policies EV1, HC5 and AS6.

Appropriate refuse storage arrangements can be provided

The refuse storage can be provided within the rear yard secured by planning condition.

Response to Consultations

Notwithstanding the above, letters of objection have been received and a petition of objection which raised concerns relating to the principle of the development, increasingly numbers of HMO's in the area, local car parking and highway safety and impact on the character of the area/cohesion of the local community. The issues pertaining to which have been addressed above. Issues in respect of antisocial behaviour including noise, management of refuse/increased litter and personal safety are covered under separate legislation via Environmental Health or the Police and as such cannot be taken into consideration which is taken into account during the determination of an application. Similarly the loss of value of properties is not a material planning consideration.

Regard can be given to recent appeal decisions by the Planning Inspectorate (105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603, 96 King Edwards Avenue - APP/B6855/A/16/31650557, 57 St Helens Avenue - APP/B6855/A/16/3165327 and 124 St Helens Avenue - APP/B6855/A/17/3167108) in connection with similar applications for HMOs.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603 - 2016/1316 - 10 February 2017

In allowing this appeal the inspector noted that the Council identified 36% of dwellings in the street being HMO whilst a local resident estimated that 43% of all dwellings within 50 metres are HMO. In response to concerns about damage to the area's character of amenity the inspector stated "Whilst I do not dispute that there are a number of HMOs nearby, there is limited evidence before me to indicate that the appeal development, specifically, has a significant or detrimental effect on the sustainability of the local community. Further, although many dwellings nearby appear to be in good or very good physical condition, some of the environmental issues cited are not exclusive to their use as HMOs." He went on to say; "The appeal development has resulted in a modest increase in the number of bedrooms within the property. Even were the previous house not to have been fully occupied, all bedrooms could have been used without planning permission. There is little evidence before me to demonstrate that the use of the property as an HMO, rather than a C3 dwelling, would in itself result in levels of noise, disturbance or antisocial behaviour that would harm the living conditions of those living nearby. Whilst I note that the bedrooms appear large enough to accommodate double beds, any substantial increase in occupation would require separate planning permission."

96 King Edwards Avenue - APP/B6855/A/16/3165057 - 2016/1380 - 19 April 2017

In this case the inspector noted that 52% of dwellings in the area were HMOs and in allowing the appeal stated "whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it."

57 St Helens Avenue - APP/B6855/A/16/3165327 - 2016/1688 - 25 April 2017

In allowing this appeal the inspector stated "The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances. In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

124 St Helens Avenue - APP/B6855/A/17/3167108 - 2016/1038 - 4 May 2017

In this case the inspector made similar conclusions as to the case at No. 57 St Helen's Avenue noting that there was no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity of the area. In relation to concerns about the transient population the inspector stated "Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

Planning Conditions

Conditions requiring the commencement of the development within 5 years and to be carried out in accordance with the approved plans are necessary. In the consultation response from the Highway Authority, a condition requiring cycle storage is recommended and this is reasonable in the interests of sustainable travel. Details of refuse storage can also be secured via condition. The Highway Authority requested that the HMO be restricted for no more than 3 people, however, it is considered unreasonable to restrict the HMO to 3 persons in light of the SPG requirements being met for this proposal for upto 6 people. Therefore the restrictive condition is not recommended..

Conclusion

It is considered that the Local Planning Authority has no evidence to suggest that the use of this property as HMO would result in a harmful concentration of HMOs within this area. Furthermore the proposal would have an acceptable impact upon the visual amenities of the area, the residential amenities of neighbouring properties and highway safety having regard for the provisions of Policies EV1, AS6 and HC5 of the Swansea UDP and approval is recommended.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WCFG Act").

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 10 (CONT'D)

APPLICATION NO:

2017/0843/FUL

In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WCFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WCFG Act.

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: site location plan, block plan, existing and proposed floor plans and elevations, received on 13th April 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 The development shall not be occupied until facilities for the secure storage of 3 bicycles and refuse storage have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority and they shall be retained as approved at all times.
Reason: In the interests of providing facilities for sustainable transport and general amenity.

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, HC5 and AS6.
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PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11

APPLICATION NO:

2017/0844/FUL

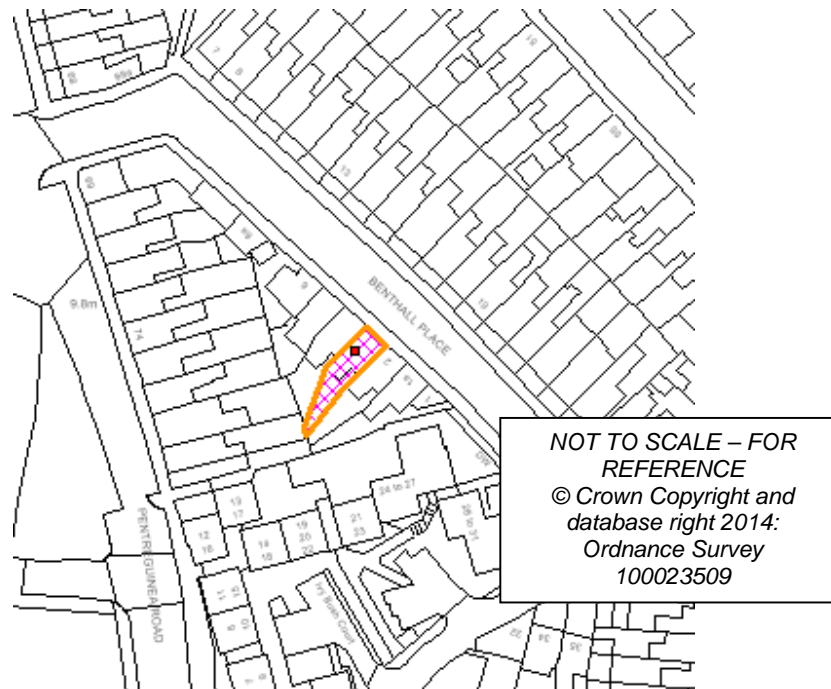
WARD:

St. Thomas - Bay Area

Location: 3 Benthall Place, St Thomas, Swansea, SA1 8AY

Proposal: Change of use from 3 bedroom residential dwelling (Class C3) to 3 bedroom HMO (Class C4)

Applicant: Mr J.D. Waygood



BACKGROUND INFORMATION

POLICIES

UDP - EV1 - Design

New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).

UDP - EV3 - Accessibility

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)

UDP - AS6 - Parking/Accessibility

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

UDP - HC5 - Houses in Multiple Occupation

Proposals for the conversion of dwelling or non-residential properties to HMO's will be permitted subject to a set of defined criteria including the effect upon residential amenity; harmful concentration or intensification of HMO's in an area, effect upon the external appearance of the property and the locality; effect on local car parking and highway safety; and adequate refuse storage arrangements. (City & County of Swansea Unitary Development Plan 2008)

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0844/FUL	Change of use from 3 bedroom residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	PDE	

RESPONSE TO CONSULTATION

THREE neighbouring adjoining properties were consulted and the proposal was advertised on site. 15 LETTERS OF OBJECTION have been received which are summarised as follows:

- 1) Highway safety concerns
- 2) The property is a 2 bedroom house not 3
- 3) The proposal will destroy my community
- 4) There are no family houses available in the area
- 5) Noise and disturbance
- 6) House value concerns
- 7) Refuge concerns

Additionally, a petition of objection containing 56 signatures has been received although no reasons for objection were given.

Pollution Control - No objection

Highways - No highway objection subject to conditions

APPRAISAL

This application is reported to committee at the request of Councillor Joe Hale. A petition of objection has been received containing more than 30 signatures, thereby satisfying the Council's Constitution requirements.

Description

Full planning permission is sought for the change of use from residential (Class C3) to a 3 bedroom HMO (3 person) (Class C4) at 3 Benthall Place, St. Thomas. The existing dwelling is two storey terraced property which is situated within the residential area of St. Thomas. The area comprises traditionally designed dwellings and a limited number of commercial properties.

No external alterations are proposed to the host dwelling.

Change in Use Classes Order

On 25th February 2016 the Welsh Government introduced the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 which amended the Town and Country Planning (Use Classes) Order 1987 to:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

- amend use class C3 (dwellinghouses) to:
- include a definition of "single household" which applies to use class C3(a) only;
- remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

The new C4 use introduced covered use of a dwelling house as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. The use occurs where tenanted living accommodation is occupied by 3 to 6 people who are not related and who share one or more basic amenities, as their only or main residence.

ISSUES

The main issues for consideration during the determination of this application relate to the principle of this form of use at this location and the resultant impact of the use upon the residential amenities of the area and highway safety having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

The Supplementary Planning Guidance 'Houses in Multiple Occupation (HMOs) and Purpose Built Student Accommodation' (PBSA) has recently gone to public consultation. The consultation period ran from 23rd January until 5th March 2017. The draft SPG has yet to be adopted and can therefore be afforded no weight in the process

Principle of Use

Up until March 2016 planning permission was not required for the use of a property as a HMO for up to 6 people and as such there has been historically a large concentration of HMO properties in some parts of Swansea which has happened predominately without planning permission being required.

Following concerns raised by Local Authorities throughout Wales in respect of areas with a high concentration of HMOs an amendment to the Use Class Order was made introducing a separate C4 use for HMO properties with more than 2 people living in them. The amendment was made in order to safeguard the confidence of residents in areas with large numbers of HMOs, while at the same time protecting the rights of those people living in them.

It is acknowledged that large concentrations of HMOs can bring their own problems to local areas, however the Local Planning Authority has not produced any evidence or Supplementary Planning Guidance as of yet to quantify the harm caused by the concentration of these types of uses.

Policy HC5 of the Swansea UDP supports the conversion of dwellings to HMOs subject to compliance with the set criteria:

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

- (i) There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance
- (ii) The development would not contribute to harmful concentration or intensification of HMOs in a particular area
- (iii) There would be no adverse effect upon the external appearance of the property and the character of the locality,
- (iv) There would be no significant adverse effect on local car parking and highway safety, and
- (v) Appropriate refuse storage arrangements can be provided

The criteria of the above is addressed below:

Would the proposal result in a significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance?

On the basis of the information provided, it is acknowledged that the proposal would result in the use of the property as a 3 bedroom HMO. A large family could occupy the property under the extant lawful use of the premises and as such it is not considered that the use of the premises for up to 3 people/3 bedrooms as a HMO would result in an unacceptable intensification of the use of the building over and above what could be experienced as a dwelling house.

As such the proposed use will not result in unacceptable noise and disturbance which could reasonably warrant the refusal of this application. The proposal is considered to respect residential amenity in compliance with the provisions of Policies EV1, EV40 and HC5 of the Swansea UDP.

Would the development contribute to a harmful concentration or intensification of HMOs in a particular area?

In 2015 the Welsh Government commissioned a study into the impact of houses in multiple accommodation (HMOs) concentrations on local communities in certain areas across Wales. The Welsh Government identified that HMOs make an important contribution to the provision of housing for those unable to buy or rent smaller accommodation but the study revealed common problems associated with high concentrations of HMOs including damage to social cohesion, difficult access to the area for owner occupiers and first time buyers, increases in anti-social behaviour, noise, burglary and other crime, reduction in the quality of the local environment, a change in the character of the area, increased pressure on parking and a reduction in provision of community facilities for families and children, in particular pressure on schools through falling rolls. The research recommended that the definition of a HMO be changed and that the Town and Country Planning (Use Classes) Order 1987 be amended to give Local Authorities the power to manage the development of HMOs with fewer than seven residents, which previously would not have required planning permission.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

Following on from the change in legislation the Welsh Government published a document entitled 'Houses in Multiple Occupation Practice Guidance (February 2016) HMOs. Within this it is identified that HMOs provide a source of accommodation for certain groups which include students temporarily resident and individuals and/or small households unable to afford self-contained accommodation. It further identifies the concerns, as set above, that were raised in the study into HMOs as well as setting out good practice measures in relation to the management of HMOs.

From viewing the Council's own HMO register there are no registered HMO properties on Benthall Place (as of the 22nd May 2017). There are 30 properties in total along Benthall Place. Responses received via public consultation indicate that there is an existing HMO property along Benthall Place although do not indicate which property. Taking this local knowledge into account the street could be regarded as having 3.3% HMOs within the street and if approved there would be 6.6% HMOs. It needs to be acknowledged that there may be HMOs on the street which have been used pre March 2016. It should also be noted, however, that outside of the Castle and Uplands Wards only larger properties are captured by Mandatory Licensing. As a result there may be instances where HMOs exist in the area albeit that they would have been implemented prior to the use class change in February 2016 and not required planning permission and are not subject to licensing requirements.

There are 11 properties showing as being listed on Rent Smart Wales as rental properties along Benthall Place. However this information does not demonstrate use of the properties as HMOs and only demonstrate that they are rental properties.

In the absence of a percentage or other similar calculation based approach, it is difficult to determine what number of HMOs in an area would constitute a 'harmful concentration'. Without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.

There would be no adverse effect upon the external appearance of the property and the character of the locality

There are no external alterations proposed at the property and as such the proposal will have no adverse impact on visual amenity.

There would be no significant adverse effect on local car parking and highway safety

There are no dedicated parking spaces available within the application site boundary. Existing parking on street is controlled via the use of residents' permits and the dwelling will remain eligible for two permits as is currently the case. The application form makes reference to cycle parking being included although no details have been provided.

The Adopted SPG sets out that for a HMO for up to 6 persons there is no requirement for additional parking over and above that of a dwellinghouse. As such with no existing provision for the dwellinghouse there is no requirement for additional parking. Parking on street can continue to be controlled through parking permits outside of the planning process. The provision of cycle storage would provide an alternative means of travel for future occupiers. Consultation with the Highway Authority has been undertaken and no objections have been raised. As such the scheme will not raise a significant effect on local car parking and highway safety in the area

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

Appropriate refuse storage arrangements can be provided

There is suitable space for an for refuse storage to the rear of the property and details can be secured by condition.

Response to Consultations

With regard to the issues raised in the letters of objection, material issues have been addressed above. Issues in respect of antisocial behaviour including noise are covered under separate legislation via Environmental Health or the Police and as such cannot be taken into consideration during the determination of this application. House values are also not material planning considerations and therefore cannot be taken into consideration. It is noted that the consultation responses have stated the property was 2 bedrooms not 3. However planning permission is not required to alter an existing dwellinghouse to provide for an additional dwellinghouse. For the purposes of determining this application therefore it is immaterial whether the property is described as a 2 or a 3 bedroom house. The submitted application forms indicate 3 bedrooms and the application is assessed on this basis on the proposal to change the use to a HMO.

Responses indicate concerns with student properties and it should be noted that whilst students may occupy a HMO the use as a HMO is not exclusive to students and relates to use by any person sharing facilities.

Regard can be given to recent appeal decisions by the Planning Inspectorate (105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603, 96 King Edwards Avenue - APP/B6855/A/16/31650557, 57 St Helens Avenue - APP/B6855/A/16/3165327 and 124 St Helens Avenue - APP/B6855/A/17/3167108) in connection with similar applications for HMOs.

105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603 - 2016/1316 - 10 February 2017

In allowing this appeal the inspector noted that the Council identified 36% of dwellings in the street being HMO whilst a local resident estimated that 43% of all dwellings within 50 metres are HMO. In response to concerns about damage to the area's character of amenity the inspector stated "Whilst I do not dispute that there are a number of HMOs nearby, there is limited evidence before me to indicate that the appeal development, specifically, has a significant or detrimental effect on the sustainability of the local community. Further, although many dwellings nearby appear to be in good or very good physical condition, some of the environmental issues cited are not exclusive to their use as HMOs." He went on to say; "The appeal development has resulted in a modest increase in the number of bedrooms within the property. Even were the previous house not to have been fully occupied, all bedrooms could have been used without planning permission. There is little evidence before me to demonstrate that the use of the property as an HMO, rather than a C3 dwelling, would in itself result in levels of noise, disturbance or antisocial behaviour that would harm the living conditions of those living nearby. Whilst I note that the bedrooms appear large enough to accommodate double beds, any substantial increase in occupation would require separate planning permission."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

96 King Edwards Avenue - APP/B6855/A/16/3165057 - 2016/1380 - 19 April 2017

In this case the inspector noted that 52% of dwellings in the area were HMOs and in allowing the appeal stated "whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it."

57 St Helens Avenue - APP/B6855/A/16/3165327 - 2016/1688 - 25 April 2017

In allowing this appeal the inspector stated "The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances. In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

124 St Helens Avenue - APP/B6855/A/17/3167108 - 2016/1038 - 4 May 2017

In this case the inspector made similar conclusions as to the case at No. 57 St Helen's Avenue noting that there was no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity of the area. In relation to concerns about the transient population the inspector stated "Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

Planning Conditions

Conditions requiring the commencement of the development within 5 years and to be carried out in accordance with the approved plans are necessary. In the consultation response from the Highway Authority, a condition requiring cycle storage is recommended and this is reasonable in the interests of sustainable travel. In addition details of refuse storage can be approved via condition. The Highway Authority requested that the property be restricted for no more than 3 people, however, it is considered unreasonable to restrict the HMO to 3 persons in light of the SPG requirements being met for this proposal for upto 6 people. Therefore the restrictive condition is not recommended.

Conclusion

It is considered that the Local Planning Authority has no evidence to suggest that the use of this property as an HMO would result in a harmful concentration of HMOs within this area. Furthermore the proposal would have an acceptable impact upon the visual amenities of the area, the residential amenities of neighbouring properties and highway safety having regard for the provisions of Policies EV1, AS6 and HC5 of the Swansea UDP and approval is recommended.

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WBFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WBFG Act.

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: Site Location plan, proposed floor plans 04.17.3BP.D1), block plan received on 13th April 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 11 (CONT'D)

APPLICATION NO:

2017/0844/FUL

- 3 Details of the facilities to be provided for secure storage of 3 cycles and refuse storage shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed detail before the development is occupied. The cycle and refuse storage shall be made available for use and retained thereafter for the approved purposes.
Reason: In the interest of providing for alternative modes of transport, sustainability and visual amenity.

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: Policies EV1, EV3, HC5 and AS6 of the City and County of Swansea Unitary Development Plan 2008.
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PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0845/FUL	Change of use from 2 bedroom residential dwelling (Class C3) to 3 bedroom HMO (Class C4)	PDE	

RESPONSE TO CONSULTATION

Neighbours: The application was advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) by neighbour notification letters sent to No. 38 and 42 Danygraig Road and through display of a site notice dated 26th April 2017.

ELEVEN INDIVIDUAL LETTERS OF OBJECTION have been received which are summarised as followed:

1. This development further erodes affordable family housing stock in the locality, parking for additional 4 cars in an area with an already existing parking problem;
2. Highway safety issues;
3. Antisocial behaviour;
4. Noise;
5. Litter;
6. Change the character and quality of life in the community / loss of community cohesion;
7. Safety of children and elderly;
8. Management of refuse; and
9. The proposed HMO is adjacent to another HMO recently approved at No. 42

THREE PETITIONS OF OBJECTION have been received. Petitions with 25 and 44 signatures have been received which are summarised as followed:

1. Highway safety and local highway conditions;
2. Loss of community cohesion;
3. Continuing approval of HMOs in the area contravenes the Social Services and Well Being Act (2014); and
4. Management of refuse.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

A petition with 40 signatures has been received which is summarised as followed:

1. Impact of the residential amenities of surrounding neighbouring properties;
2. The proposal represents an over intensive use of the site harming residential amenity;
3. Change in the character of the area; and
4. Impact on car parking and highway safety.

A letter of objection has been received from MIKE HEDGES AM objecting on the following grounds:

1. Not in keeping with the area;
2. Effect on parking; and
3. Over intensification.

Highways: No highway objection subject to conditions

APPRAISAL

This application is reported to Committee for decision at the request of Councillor Joe Hale and due to the fact there has been three petitions submitted containing 109 signatures in total of objection which meets the identified threshold set out in the Council Constitution.

Description

Full planning permission is sought for the change of use of a residential dwelling (Class C3) to a 3 bedroom HMO (Class C4) at No. 40 Danygraig Road. The application property is a two storey mid terraced property currently occupied as a two bedroom dwelling house located on Danygraig Road within the residential area of St. Thomas. No external alterations are proposed and as such the proposal will have no impact on visual amenity.

Change in Use Classes Order

On 25th February 2016 the Welsh Government introduced the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 which amended the Town and Country Planning (Use Classes) Order 1987 to:

- amend use class C3 (dwellinghouses) to:
- include a definition of "single household" which applies to use class C3(a) only;
- remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

The new C4 use introduced covered use of a dwelling house as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. The use occurs where tenanted living accommodation is occupied by 3 to 6 people who are not related and who share one or more basic amenities, as their only or main residence.

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

ISSUES

The main issues for consideration during the determination of this application relates to the principle of this form of use at this location and the resultant impact of the use upon the residential amenities of the area and highway safety having regard for the provisions of the Swansea UDP and the Supplementary Planning Guidance document entitled 'Swansea Parking Standards'.

The Supplementary Planning Guidance 'Houses in Multiple Occupation (HMOs) and Purpose Built Student Accommodation' (PBSA) has recently gone to public consultation. The consultation period ran from 23rd January until 5th March 2017. The draft SPG has yet to be adopted and can therefore be afforded no weight in the process

Principle of Use

Up until March 2016 planning permission was not required for the use of a property as a HMO for up to 6 people and as such there has been historically a large concentration of HMO properties in some parts of Swansea which has happened predominately without planning permission being required.

Following concerns raised by Local Authorities throughout Wales in respect of areas with a high concentration of HMOs an amendment to the Use Class Order was made introducing a separate C4 use for HMO properties with more than 2 people living in them. The amendment was made in order to safeguard the confidence of residents in areas with large numbers of HMOs, while at the same time protecting the rights of those people living in them.

It is acknowledged that large concentrations of HMOs can bring their own problems to local areas, however whilst Swansea Local Authority has now produced a SPG related to HMOs this is currently at consultation stage and until formally adopted does not carry any weight.

Policy HC5 of the Swansea UDP supports the conversion of dwellings to HMOs subject to compliance with the set criteria:

- (i) There would be no significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance
- (ii) The development would not contribute to harmful concentration or intensification of HMOs in a particular area
- (iii) There would be no adverse effect upon the external appearance of the property and the character of the locality,
- (iv) There would be no significant adverse effect on local car parking and highway safety, and
- (v) Appropriate refuse storage arrangements can be provided

The criteria of the above is addressed below:

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

Would the proposal result in a significant adverse effect upon residential amenity by virtue of noise, nuisance and/or other disturbance?

On the basis of the information provided, it is acknowledged that the proposal would result in the increase of one bedroom to provide a three bedroom property.

Regard needs to be given to the fact that a large family could occupy the property under the extant lawful use of the premises and as such it is not considered that the use of the premises for up to 3 people as a HMO would result in an unacceptable intensification of the use of the building over and above what could be experienced as a dwelling house. There is no evidence to suggest that this proposal would result in any harm to neighbouring occupiers by virtue of noise, nuisance or other disturbance.

As such the proposed use will not result in unacceptable noise and disturbance which could reasonably warrant the refusal of this application. The proposal is considered to respect residential amenity in compliance with the provisions of Policies EV1, EV40 and HC5 of the Swansea UDP.

Would the development contribute to a harmful concentration or intensification of HMOs in a particular area?

In 2015 the Welsh Government commissioned a study into the impact of houses in multiple accommodation (HMOs) concentrations on local communities in certain areas across Wales. The Welsh Government identified that HMOs make an important contribution to the provision of housing for those unable to buy or rent smaller accommodation but the study revealed common problems associated with high concentrations of HMOs including damage to social cohesion, difficult access to the area for owner occupiers and first time buyers, increases in anti-social behaviour, noise, burglary and other crime, reduction in the quality of the local environment, a change in the character of the area, increased pressure on parking and a reduction in provision of community facilities for families and children, in particular pressure on schools through falling rolls. The research recommended that the definition of a HMO be changed and that the Town and Country Planning (Use Classes) Order 1987 be amended to give Local Authorities the power to manage the development of HMOs with fewer than seven residents, which previously would not have required planning permission.

Following on from the change in legislation the Welsh Government published a document entitled 'Houses in Multiple Occupation Practice Guidance (February 2016) HMOs. Within this it is identified that HMOs provide a source of accommodation for certain groups which include students temporarily resident and individuals and/or small households unable to afford self-contained accommodation. It further identifies the concerns, as set above, that were raised in the study into HMOs as well as setting out good practice measures in relation to the management of HMOs.

From viewing the Councils own HMO register, Nos. 1, 4 and 101 Danygraig Road (out of 327 properties) are registered HMO properties (as of the 11th May 2017) however it is acknowledged that there may be HMO's on the street which have been used pre March 2016. In addition No. 42 was recently approved planning permission for the change of use from residential (Class C3) to HMO for 3 people (Class C4), planning application reference 2017/0007/FUL.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

It should also be noted, however, that outside of the Castle and Uplands Wards only larger properties are captured by Mandatory Licencing. As a result there may be instances where HMOs exist in the area albeit that they would have been implemented prior to the use class change in February 2016 and not required planning permission and are not subject to licensing requirements. There are some properties showing as being listed on Rent Smart Wales as rental properties along Danygraig Road, however, this information does not demonstrate use of the properties as HMOs only demonstrate that they are rental properties.

In the absence of a percentage or other similar calculation based approach, it is difficult to determine what number of HMOs in an area would constitute a 'harmful concentration'. Given there are limited numbers of HMOs in this area, without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.

There would be no adverse effect upon the external appearance of the property and the character of the locality

There are no external alterations proposed at the property.

There would be no significant adverse effect on local car parking and highway safety

Whilst the objections received from local residents are noted, regard needs to be given to the Adopted SPG Parking Standards. For a HMO for up to 6 persons there is no requirement for additional parking over and above that of a dwelling house. Whilst no details have been provided for cycle storage, there is adequate space at the rear of the property to provide such provision which can be secured by planning condition. No objection is raised by the Highway Authority on this basis.

In view of the above, subject to an appropriately worded condition in respect of cycle parking, the proposal is not considered to have any greater impact on highway safety or parking over and above the existing extant use of the property in compliance with the provisions of Policies EV1, HC5 and AS6.

Appropriate refuse storage arrangements can be provided

The refuse storage can be provided within the rear yard secured by planning condition.

Response to Consultations

Notwithstanding the above, letters of objection have been received and petitions of objection which raised concerns relating to the impact of the proposal upon the number of HMO's in the area, local car parking and highway safety, impact on the character of the area/cohesion of the local community. The issues pertaining to which have been addressed above.

Issues in respect of antisocial behaviour including noise and litter and safety of children and older persons are covered under separate legislation via Environmental Health or the Police and as such cannot be taken into consideration which is taken into account during the determination of an application. Similarly it has been raised that the proposal contravenes the Social Services and Well Being Act (2014), this legislation does not however form primary or subordinate legislation which is material when determining planning applications.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

Regard can be given to recent appeal decisions by the Planning Inspectorate (105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603, 96 King Edwards Avenue - APP/B6855/A/16/31650557, 57 St Helens Avenue - APP/B6855/A/16/3165327 and 124 St Helens Avenue - APP/B6855/A/17/3167108) in connection with similar applications for HMOs.

105, Rhyddings Terrace, Brynmill - APP/B6855/A/16/3161603 - 2016/1316 - 10 February 2017

In allowing this appeal the inspector noted that the Council identified 36% of dwellings in the street being HMO whilst a local resident estimated that 43% of all dwellings within 50 metres are HMO. In response to concerns about damage to the area's character of amenity the inspector stated "Whilst I do not dispute that there are a number of HMOs nearby, there is limited evidence before me to indicate that the appeal development, specifically, has a significant or detrimental effect on the sustainability of the local community. Further, although many dwellings nearby appear to be in good or very good physical condition, some of the environmental issues cited are not exclusive to their use as HMOs." He went on to say; "The appeal development has resulted in a modest increase in the number of bedrooms within the property. Even were the previous house not to have been fully occupied, all bedrooms could have been used without planning permission. There is little evidence before me to demonstrate that the use of the property as an HMO, rather than a C3 dwelling, would in itself result in levels of noise, disturbance or antisocial behaviour that would harm the living conditions of those living nearby. Whilst I note that the bedrooms appear large enough to accommodate double beds, any substantial increase in occupation would require separate planning permission."

96 King Edwards Avenue - APP/B6855/A/16/3165057 - 2016/1380 - 19 April 2017

In this case the inspector noted that 52% of dwellings in the area were HMOs and in allowing the appeal stated "whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it."

57 St Helens Avenue - APP/B6855/A/16/3165327 - 2016/1688 - 25 April 2017

In allowing this appeal the inspector stated "The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances."

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

124 St Helens Avenue - APP/B6855/A/17/3167108 - 2016/1038 - 4 May 2017

In this case the inspector made similar conclusions as to the case at No. 57 St Helen's Avenue noting that there was no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity of the area. In relation to concerns about the transient population the inspector stated "Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it."

Planning Conditions

Conditions requiring the commencement of the development within 5 years and to be carried out in accordance with the approved plans are necessary. A condition requiring cycle and refuse storage is recommended and this is reasonable in the interests of sustainable travel and visual amenity. The Highway Authority requested that the property be restricted for no more than 3 people, however, it is considered unreasonable to restrict the HMO to 3 persons in light of the SPG requirements being met for this proposal for up to 6 people. Therefore the restrictive condition is not recommended.

Conclusion

It is considered that the Local Planning Authority has no evidence to suggest that the use of this property as HMO would result in a harmful concentration of HMOs within this area. Furthermore the proposal would have an acceptable impact upon the visual amenities of the area, the residential amenities of neighbouring properties and highway safety having regard for the provisions of Policies EV1, AS6 and HC5 of the Swansea UDP and approval is recommended.

PLANNING COMMITTEE – 6TH JUNE 2017

ITEM 12 (CONT'D)

APPLICATION NO:

2017/0845/FUL

Regard has been given to the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under Part 2, Section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WCFG Act"). In reaching this recommendation, the Local Planning Authority has taken account of the ways of working set out at Part 2, Section 5 of the WCFG Act and consider that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the public bodies' well-being objectives set out as required by Part 2, Section 9 of the WCFG Act.

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: site location plan, block plan, existing and proposed floor plans and elevations, received on 13th April 2017.
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Details of the facilities to be provided for secure storage of 3 cycles and refuse storage shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed detail before the development is occupied. The cycle and refuse storage shall be made available for use and retained thereafter for the approved purposes.
Reason: In the interest of providing for alternative modes of transport, sustainability and visual amenity.

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, HC5 and AS6
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Agenda Item 9

Report of the Head of Planning and City Regeneration

Planning Committee – 6 June 2017

PLANNING COMMITTEE APPEAL DECISIONS

1.0 Background

- 1.1 The purpose of this report is to review those planning applications which have been refused by the Council at Planning Committee stage, following officer recommendations for approval, but subsequently considered at appeal by the Planning Inspectorate.
- 1.2 Since April 2017 there have been 4 such applications all of which have been allowed by the Planning Inspectorate on the respective dates listed below.:

2016/1380	96 King Edwards Road	Allowed 19 April 2017
2016/1688	57 St Helens Avenue	Allowed 25 April 2017
2016/3085/S73	Land South Of Fabian Way	Allowed 25 April 2017
2016/1038	124 St Helens Avenue	Allowed 4 May 2017

Appeal Decisions

- 1.3 Below is a summary of the key issues raised by the appointed Planning Inspectors in the appeals considered. An appraisal is provided and full copies of the appeal decisions are appended to this report as Appendices 1-4.
- 1.4 **Appeal Reference APP/B6855/A/16/3165057, Application Reference 2016/1380, 96 King Edwards Avenue, Swansea - Change of use from residential dwelling (Class C3) to an 7 bed HMO, single storey rear extension and installation of 1st floor French doors with balcony on rear elevation**

The inspector noted the high level of HMOs in the area with King Edwards Road reporting 53% of dwellings being HMOs. She referred to the local concerns but considered that HMOs in this area are already established alongside family housing in fairly balanced numbers. She considered that an additional HMO in this location would not result in a material change to existing circumstances.

The cumulative effects were considered that whilst recognising these potential effects the inspector pointed to there being no identified threshold supported by evidence to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. It was noted that the Uplands ward area has a high student population and a large proportion of private rented accommodation but that there was little evidence that this directly relates to an unbalanced or unsustainable community. Concerns about the transient nature of the population were not verified by tangible evidence. Comment was made by the inspector about students and whilst noting that they are generally away from the area during holiday periods they are also likely to support local facilities such as sport centres, libraries and shops.

The inspector noted concerns about potential issues of rubbish management and litter as well as anti-social behaviour but considered these matters are capable of being addressed by police enforcement, HMO licensing and street cleansing/community engagement strategies.

The appeal was allowed subject to conditions including that the development takes place in accordance with the approved plans, that details of cycle storage for four cycles, refuse storage details and a flush fitting balustrade in connection with the rear extension be agreed in writing.

1.5 Appeal Reference APP/B6855/A/16/3165327, Application Reference 2016/1688, 57 St Helens Avenue , Swansea - dormer window and replacement with velux type window.

In this appeal the inspector identified that 40% of dwellings within the street were in HMO use and that evidence suggested 49% of the Uplands Ward population are students. Whilst understanding local concerns the inspector considered that HMOs are already established alongside family housing in fairly balanced numbers. She also noted that the census data shows a good mix of tenure types with over 46% in private ownership, either owner or outright with a mortgage.

The inspector referred to the concerns about the transient nature of populations associated with HMOs and the effects upon community facilities but, in the same fashion as the appeal at King Edwards Avenue noted that there were no details of which community facilities are being affected in the area or to what extent, or how such effects correlate with HMO accommodation. Reference was made to students supporting local facilities.

Again the inspector considered that concerns about the potential issues of rubbish management and litter, as well as anti-social behaviour, are matters capable of being addressed by police enforcement, HMO licensing and street cleansing/community engagement strategies.

The appeal was allowed subject to conditions including that the development takes place in accordance with the approved plans and details of cycle storage for six cycles and refuse storage be agreed in writing.

1.6 Appeal Reference APP/B6855/A/17/3166411, Application Reference 2016/3085/S73, Land South of Fabian Way, Swansea - Variation of condition 3 of planning permission 2015/2223 granted 27/09/2016 (Erection of a detached tyre and auto-care centre and two detached units (Class A3)) to allow for the use of the tyre centre from 08.30 to 18.00 hours Monday to Saturday

The inspector identified that the main issue in this case was the effect that varying the disputed condition would have on the living condition of nearby residents.

In deciding the appeal the inspector noted that although the tyre and auto-care centre would be close to Bevans Row, the planning permission includes conditions relating to the provision of an acoustic fence on the eastern boundary and furthermore a condition relating to sound proofing. She further noted the presence of a buffer of trees which would assist in enhancing the measures. She noted the presence of Fabian Way, the industrial character of the area and the ability of the A3 units to be open on Saturday afternoons and considered that any impact upon living conditions would be negligible. The appeal was allowed and the relevant condition varied to remove the requirements of the original condition and allow the tyre centre to open on a Saturday afternoon.

1.7 Appeal Reference APP/B6855/A/17/3167108, Application Reference 2016/1038, 124 St Helens Avenue, Swansea - Change of use from residential (Class C3) to 5 bedroom HMO (Class C4)

The inspector noted the level of HMOs in the area being around 40% and similarly to other HMO appeals referenced above found there was no evidence to suggest that this would result in unbalance of the community or any harm in terms of social cohesion. Again issues relating to concerns about refuse storage could be dealt with by others.

In relation to concerns about lack of parking and despite the applicant offering that a space for parking be provided to the rear the inspector considered that given the accessible location of the appeal property, and that a change from a family dwelling to a HMO would not result in any material increase in parking demand a condition relating to the provision and retention of a rear parking space would not be necessary.

The appeal was allowed subject to conditions including that the development takes place in accordance with the approved plans and details of cycle storage for five cycles and refuse storage be agreed in writing.

2.0 Consideration of the issues

- 2.1 Each planning application must be considered on its own merits having regard to the development plan and members are provided with an officer report and recommendation which sets out the relevant issues before making a decision on individual applications. Clearly members can, when sound planning reasons are given, vote contrary to the advice and recommendation of officers, however, the applicant has the opportunity to appeal the decision to the Planning Inspectorate.
- 2.2 In the cases identified above, in relation to proposed HMOs, the inspectors have found little evidence to support assertions that the addition of a further HMO would harm the character or amenity of the areas concerned. They have noted the high percentage prevalent in those streets and areas in general but have made it clear that without evidence of harm the Local Planning Authority is not able to sustain a refusal of such applications.
- 2.3 Further to this they have noted the concerns about high student populations in the areas along with private rented accommodation but state that there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, as the decisions refer to, the census data points to a good mix of tenure types. Additionally concerns about the transient nature of HMOs could not be linked directly to effects on community facilities and reference has been made in relation to students providing support for local facilities such as sport centres, libraries and shops.
- 2.4 In dealing with the appeals the inspectors have taken note of the sustainable location of sites and in connection with the appeal at 124 St Helens Avenue had determined that the provision of a single parking space, offered by the applicant, was unnecessary given that a family dwelling changing to a HMO would not amount to a material increase in parking. Members should note that this gives the Local Planning Authority less control had that application been approved subject to the conditions suggested by officers.

- 2.5 The above appeals were considered by written representations and as a result, could not be the subject of an application for costs by interested parties. However, following the introduction of new legislation by the Welsh Government, appeals on planning applications received from 5th May 2017 can now be the subject of an award of costs if the appeal is considered by way of written representations. Furthermore, an Inspector can award costs against an interested party if it is considered that party has behaved unreasonable in the determination process/appeal process even if an application for an award of costs has not been made by another interested party. Members therefore need to ensure that when making decisions contrary to officer advice, sound planning reasons which can be evidenced and sustained at appeal, are given.

3.0 Recommendation

- 3.1 The appeal decisions be noted.

Contact Officer: Liam Jones

Extension No: 5735



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/03/17

gan **P J Davies BSc (Hons) MA MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 19.04.2017

Appeal Decision

Site visit made on 14/03/17

by **P J Davies BSc (Hons) MA MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 19.04.2017

Appeal Ref: APP/B6855/A/16/3165057

Site address: 96 King Edwards Road, Swansea SA1 4LU

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Chai & Chai against the decision of City and County of Swansea Council.
 - The application Ref 2016/1380, dated 7 July 2016, was refused by notice dated 13 December 2016.
 - The development proposed is conversion of existing single residential dwelling into house in multiple occupation and single storey rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of existing single residential dwelling into house in multiple occupation and single storey rear extension at 96 King Edwards Road, Swansea SA1 4LU in accordance with the terms of the application, Ref 2016/1380, dated 7 July 2016, subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal relates to a large residential property that appeared to be in shared accommodation at the time of my visit. Notwithstanding this, the existing plans suggest that the house was a 5 bedroom dwelling and whilst the proposed plans indicate 8 'rooms' in addition to a kitchen and shower / toilet facilities, the evidence submitted by the appellant clarifies that the appeal seeks permission for a 7 bedroom House in Multiple Occupation (HMO). My decision is made on that basis.

Main Issue

3. This is the effect of the proposal on the character and amenity of the surrounding area.

Reasons

4. Amongst other things, Policy HC5 of the City and County of Swansea Unitary Development Plan (UDP) seeks to ensure that housing conversion proposals do not contribute to harmful concentration or intensification of HMO's in a particular area. This is consistent with the objectives of Planning Policy Wales Edition 9 (PPW) to

ensure that housing development, or the cumulative effects of development, does not damage an area's character and amenity.

5. It is evident from the Council's records of existing HMO licences that there is a high concentration of HMOs in the area. In the King Edwards Road locality, records suggest that some 52% of dwellings are HMOs. A report published in 2015 by Welsh Government (WG), '*Houses in Multiple occupation: Review and Evidence Gathering*', identifies problems commonly associated with high concentrations of HMOs which include damage to social cohesion, a reduction in family homes, anti-social behaviour and increased pressure for parking. Having regard to local representations, I do not doubt that these issues are having some impact in the area around the appeal site.
6. The evidence indicates that compared to Swansea as a whole, Uplands has a high population density and a large proportion of residents aged between 16 and 24. However, whilst I understand local concerns, it is nevertheless the case that HMO's in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not therefore result in any material change to existing circumstances.
7. In addition, whilst I recognise the cumulative effects that development can have, there is no identified threshold supported by evidence to demonstrate the point at which any further HMO's would have an adverse effect on the amenity or character of the area. The ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, but there is little evidence that directly relates this to an unbalanced or unsustainable community. In fact, the census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to support local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMO's but given its draft status I am unable to attach any significant weight to it.
8. I accept that houses that are occupied by non-family households are likely to have issues of rubbish management and litter, as well as some noise and /or anti-social behaviour but these are matters capable of being addressed by police enforcement, HMO licensing and street cleansing and community engagement strategies. Moreover, external storage space for refuse and cycle parking is available at the appeal property, and this could be enforced by a condition to ensure that such facilities are provided.
9. On the available evidence I conclude that the proposal would not cause any material harm to the character and amenity of the area. It would therefore comply with UDP Policy HC5 and PPW.
10. I have had regard to the Council's suggested conditions, and in addition to the commencement and plans compliance conditions, I have attached conditions relating to the provision of refuse and cycle storage in the interests of general amenity. A condition relating to the replacement of the proposed balcony with flush fitting balustrade is also necessary to safeguard the privacy of adjoining residents. I note the condition requiring provision of a car parking area, however relative to a five bedroom house, a 7 bedroom HMO in this accessible location close to shops and public

transport would not result in any material increase in parking demand to warrant a condition in this regard.

11. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ('WBFG Act'). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.
12. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed.

P J Davies

INSPECTOR

Schedule of Conditions

- 1) The development shall begin not later than five years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans and documents: location plan/block plan, proposed first floor plan, proposed ground floor plan and proposed second floor plan, existing and proposed elevations.
- 3) Details of the facilities to be provided for secure and undercover storage of four cycles and refuse shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed detail before the development is occupied.
- 4) Notwithstanding the submitted plans, details of a flush fitting balustrade in place of the proposed balcony shall be submitted to and agreed by the local planning authority. The development shall be carried out as agreed before the development is occupied and thereafter retained in its approved form.



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/03/17

gan **P J Davies BSc (Hons) MA MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 25.04.2017

Appeal Decision

Site visit made on 14/03/17

by **P J Davies BSc (Hons) MA MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 25.04.2017

Appeal Ref: APP/B6855/A/16/3165327

Site address: 57 St. Helens Avenue, Swansea SA1 4NF

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Marc Beresford against the decision of City and County of Swansea Council.
 - The application Ref 2016/1688, dated 16 August 2016, was refused by notice dated 4 November 2016.
 - The development proposed is: Change of use from residential dwelling to HMO for 6 people, and demolition of existing rear extension and construction of new rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from residential dwelling to HMO for 6 people, and demolition of existing rear extension and construction of new rear extension at 57 St Helens Avenue, Swansea SA1 4NF in accordance with the terms of the application, Ref 2016/1688, dated 16 August 2016, subject to the conditions in the attached schedule.

Main Issue

2. The Council does not object to the proposed rear extension or front roof light, and I do not disagree. The main issue relates to the proposed change of use and its effect on the character and amenity of the surrounding area.

Reasons

3. Amongst other things, Policy HC5 of the City and County of Swansea Unitary Development Plan (UDP) seeks to ensure that housing conversion proposals do not contribute to harmful concentration or intensification of HMOs in a particular area. This is consistent with the objectives of Planning Policy Wales Edition 9 (PPW) to ensure that housing development, or the cumulative effects of development, does not damage an area's character and amenity.
 4. It is evident from the Council's records of existing HMO licences that there is a high concentration of HMOs in the area. In the vicinity of St Helens Avenue, records suggest that around 40% of dwellings are HMOs. A report published in 2015 by Welsh Government (WG), '*Houses in Multiple occupation: Review and Evidence Gathering*', identifies problems commonly associated with high concentrations of HMOs which
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include damage to social cohesion, a reduction in family homes, anti-social behaviour and increased pressure for parking. Having regard to local petitions and individual representations, I do not doubt that these issues are having some impact in the area around the appeal site.

5. The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not result in any material change to existing circumstances. In addition, whilst I recognise the cumulative effects that development can have, there is no supported threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Whilst the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. The appeal property is in an accessible and sustainable location and although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries, and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it.
6. I accept that houses that are occupied by non-family households are likely to have issues of rubbish management and litter, as well as some noise and/or anti-social behaviour but these are matters capable of being addressed by police enforcement, HMO licensing and street cleansing and community engagement strategies. Moreover, external storage space for refuse and cycle parking is available at the appeal property, and this could be enforced by a condition to ensure that such facilities are provided.
7. On the available evidence I conclude that the proposal would not result in a harmful concentration of HMOs in the area, and it would not cause any material harm to the character and amenity of the area. It would therefore comply with UDP Policy HC5 and PPW.
8. I have had regard to the Council's suggested conditions, and in addition to the commencement and plans compliance conditions, I have attached a condition relating to the provision of refuse and cycle storage in the interests of general amenity.
9. In reaching my decision, I have taken account of the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.
10. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed.

P J Davies
INSPECTOR

Schedule of Conditions

- 1) The development shall begin not later than five years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans and documents: 02 site location and block plan, 1st and 2nd floor plans; 04 proposed ground and lower ground floor plans; 05 proposed 1st and 2nd floor plans; 06 proposed elevations.
- 3) Details of the facilities to be provided for secure storage of six cycles and refuse storage shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed detail before the development is occupied.

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 24/03/17

gan **P J Davies BSc (Hons) MA MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 25.04.2017

Appeal Decision

Site visit made on 24/03/17

by **P J Davies BSc (Hons) MA MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 25.04.2017

Appeal Ref: APP/B6855/A/17/3166411

Site address: Land South of Fabian Way, Swansea SA1 8LD

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Commercial Development Projects Ltd against the decision of City and County of Swansea Council.
 - The application Ref 2016/3085/S73, dated 3 October 2016, was refused by notice dated 12 December 2016.
 - The application sought planning permission for erection of detached tyre and auto-care centre and two detached units (Class A3) without complying with a condition attached to planning permission Ref 2015/2223, dated 27 September 2016.
 - The condition in dispute is No 3 which states that: *'The A3 units shall not be used before 06.30 nor after 23.00hrs Monday to Saturday and Sunday 09.00 and 22.00hrs. The approved tyre centre shall not be used before 08.30 nor after 18.00hrs Monday to Friday, 08.30 to 13.00 on Saturdays and shall not be open on Sundays or Bank Holidays'*.
 - The reason given for the condition is: *'To safeguard the amenities of the occupiers of neighbouring properties'*.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of detached tyre and auto-care centre and two detached units (Class A3) at Land South of Fabian Way, Swansea SA1 8LD in accordance with application Ref 2016/3085/S73, dated 3 October 2016 without compliance with condition number 3 previously imposed on planning permission Ref 2015/2223, dated 27 September 2016 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to a new condition 3 as set out in the attached schedule.

Main Issue

2. This is the effect that varying the disputed condition would have on the living conditions of nearby residents.

Reasons

3. The appeal site is vacant land situated within a mixed and predominantly commercial / industrial area alongside Fabian Way, a principal route into Swansea. To the east of
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the site is a row of terraced properties, Bevans Row, which are set back and facing Fabian Way. Access to these dwellings is derived from the industrial estate road that would also serve the appeal site.

4. Although the tyre and auto-care centre would be close to Bevans Row, the planning permission includes conditions relating to the provision of an acoustic fence on the eastern boundary. There is also a condition to require a scheme of sound proofing for the building itself. Both of these conditions are re-imposed in this case. In addition, the measures required by these conditions would be further enhanced by an existing buffer of trees situated on a wide verge adjacent to the end house closest to the site. In the context of the busy traffic movements on Fabian Way and the industrial character of the area, ambient noise levels are high. The approved A3 units on the appeal site would also be open and generating traffic and associated noise during Saturday afternoons. In these circumstances, the additional impact that extending the opening hours for the tyre centre on Saturday afternoon would have on the living conditions of nearby residents would be negligible.
5. I acknowledge concerns relating to air quality, but I have no tangible evidence to demonstrate that the minor increase in opening hours would materially affect the health or wellbeing of nearby residents. I have taken account of the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.
6. I conclude that varying the disputed condition would not result in any material increase in noise or disturbance to residents, or cause harm to their living conditions. The proposal therefore complies with the objectives of Policies EV1 and EV40 of the City and County of Swansea Unitary Development Plan, which amongst other things, seek to safeguard local amenity.
7. I have deleted condition 3, and substituted for it, a new condition that permits opening until 1800 hours on Saturday. I have also imposed all the other conditions insofar as I consider them to be necessary and relevant for the reason previously given by the Council. In the event that some have been discharged, this is a matter which can be addressed by the parties.
8. For the above reasons and having regard to all other matters raised, I conclude that the appeal is allowed.

P J Davies

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than five years from the date of this decision.
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.
3. The use of the A3 units shall not be carried out outside the hours of 06:30 to 23:00hrs Monday to Saturday, and 09:00 and 22:00hrs on Sundays. The use of the auto tyre centre shall not be carried out outside the hours of 08:30 to 18:00hrs Monday to Friday, 08:30 to 18:00hrs on Saturdays, and not at all on Sundays or Bank Holidays.
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.
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.
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.
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.
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.
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.

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.
11. The applicant shall submit a phased scheme, comprising three progressively more detailed reports, detailing measures to be undertaken in order to investigate the presence of land contamination, including relevant gas, vapour and, where appropriate, radiation related risks, at the proposed site.

Where the initial investigations indicate the presence of such contamination, including the presence of relevant gas/vapour and/or radioactivity, subsequent reports shall include:

- * a list of potential receptors
- * an assessment of the extent of the contamination
- * an assessment of the potential risks
- * an appraisal of remedial options, and proposal for the preferred remedial option(s).

The reports shall be submitted individually.

The provision of Phase 2 and Phase 3 reports will be required only where the contents of the previous report indicate to the Local Planning Authority that the next phase of investigation/ remediation is required.

Phase 1 report: Desk Top Study

this shall:

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

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

12. 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.

13. 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.
14. 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.
15. 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.
16. 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 Local Planning Authority. 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; 16 h) Details of on site noise mitigation measures having regard to BPM;
 - h) Details of waste management arrangements (including any proposed crushing/screening operations); and
 - i) Notification of whether a Control of Pollution Act 1974 (Section 61) Notice is to be served by Principle Contractor on Local Authority.
17. Notwithstanding the submitted details a scheme of sound proofing for the proposed auto tyre centre building shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter take place in accordance with the approved details and the sound proofing measures shall be provided prior to first beneficial use of the auto tyre centre and retained thereafter to serve the development.



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 14/03/17

gan **P J Davies BSc (Hons) MA MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: **04.05.2017**

Appeal Decision

Site visit made on 14/03/17

by **P J Davies BSc (Hons) MA MRTPI**

an Inspector appointed by the Welsh Ministers

Date: **04.05.2017**

Appeal Ref: APP/B6855/A/17/3167108

Site address: 124 St Helens Avenue, Swansea SA1 4NW

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Jonathan Johnston against the decision of City and County of Swansea Council.
 - The application Ref 2016/1038, dated 24 May 2016, was refused by notice dated 8 September 2016.
 - The development proposed is: Change of use from residential (Class C3) to 5 bedroom HMO (Class C4).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from residential (Class C3) dwelling to 5 bedroom HMO (Class C4) at 124 St Helens Avenue, Swansea SA1 4NW in accordance with the terms of the application, Ref 2016/1038, dated 24 May 2016, subject to the conditions in the attached schedule.

Procedural Matter

2. I have used the Council's description of the development as it is more precise.

Main Issue

3. This is the effect of the proposal on the character and amenity of the surrounding area.

Reasons

4. Amongst other things, Policy HC5 of the City and County of Swansea Unitary Development Plan (UDP) seeks to ensure that housing conversion proposals do not contribute to harmful concentration or intensification of HMO's in a particular area. This is consistent with the objectives of Planning Policy Wales Edition 9 (PPW) to ensure that housing development, or the cumulative effects of development, does not damage an area's character and amenity.
 5. It is evident from the Council's records of existing HMO licences that there is a high concentration of HMOs in the area. In the vicinity of St Helens Avenue, records
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suggest that around 40% of dwellings are HMOs. A report published in 2015 by Welsh Government (WG), '*Houses in Multiple occupation: Review and Evidence Gathering*', identifies problems commonly associated with high concentrations of HMOs which include damage to social cohesion, a reduction in family homes, anti-social behaviour and increased pressure for parking. Having regard to local petitions and individual representations, I do not doubt that these issues are having some impact in the area around the appeal site.

6. The appeal site is in the Uplands Ward where the evidence indicates that 49% of the population are students. However, although I understand local concerns, it would appear to be the case that HMOs in this area are already established alongside family housing in fairly balanced numbers. An additional HMO in this location would not therefore result in any material change to existing circumstances.
7. In addition, whilst I recognise the cumulative effects that development can have, there is no substantiated threshold to demonstrate the point at which any further HMOs would have an adverse effect on the amenity or character of the area. Although the ward profile and census data establishes a high student population and a large proportion of private rented accommodation in Uplands, there is little evidence that directly relates this to an unbalanced or unsustainable community. The census data shows a good mix of tenure types with over 46% in private ownership, either owned outright or with a mortgage. Similarly, concerns relating to a transient population and the effects on community facilities are not verified by any tangible details as to which community facilities are being affected in the area or to what extent, or how any such effects correlate with HMO accommodation type. Although students are generally away from the area during holiday periods, they are also likely to provide some support for local facilities such as sport centres, libraries and shops. I note that the Council has consulted on supplementary planning guidance for HMOs but given its draft status I am unable to attach any significant weight to it.
8. I accept that houses that are occupied by non-family households are likely to have issues of rubbish management and litter, as well as some noise and /or anti-social behaviour but these are matters capable of being addressed by police enforcement, HMO licensing and street cleansing and community engagement strategies. Moreover, external storage space for refuse and cycle parking is available at the appeal property, and this could be enforced by a condition to ensure that such facilities are provided.
9. On the available evidence I conclude that the proposal would not cause any material harm to the character and amenity of the area. It would therefore comply with UDP Policy HC5 and PPW.
10. I have had regard to the Council's suggested conditions, and in addition to the plans compliance conditions, I have attached a condition relating to the provision of refuse and cycle storage in the interests of general amenity. Given the accessible location of the appeal property and that a change from a family dwelling to a HMO would not result in any material increase in parking demand, it is not necessary to attach a condition relating to the provision and retention of the rear parking space.
11. In reaching my decision, I have taken account of the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.

12. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed.

P J Davies **INSPECTOR**

Schedule of Conditions

- 2) The development shall begin not later than five years from the date of this decision.
- 3) The development shall be carried out in accordance with the following approved plans and documents: site location plan, proposed floor plan dated 31.5.2016, and amended block plan.
- 4) Details of the facilities to be provided for secure storage of 5 cycles and refuse storage shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the agreed detail before the development is occupied.