

# 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, 1 August 2017

**Time:** 2.00 pm

**Chair:** Councillor Paul Lloyd

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### Membership:

Councillors: P M Black, L S Gibbard, M H Jones, E J King, M B Lewis, R D Lewis, P B Smith, 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.
<b>1 Apologies for Absence.</b>	
<b>2 Disclosures of Personal and Prejudicial Interests.</b> <a href="http://www.swansea.gov.uk/disclosuresofinterests">www.swansea.gov.uk/disclosuresofinterests</a>	
<b>3 Minutes.</b> To approve & sign the Minutes of the previous meeting(s) as a correct record.	1 - 4
<b>4 Items for Deferral/Withdrawal.</b>	
<b>5 Public Rights of Way - Proposed Public Path Diversion Order Relating to Footpath No.35 at Perriswood.</b>	5 - 58
<b>6 Determination of Planning Applications under the Town &amp; Country Planning Act 1990.</b>	59 - 132
<b>7 Land off Brithwen Road, Waunarlwydd, Swansea - Residential Development (outline) 2008/0512.</b>	133 - 165
<b>8 Planning Committee Appeal Decisions.</b>	166 - 193
<b>9 Exclusion of the Public.</b>	194 - 197
<b>10 Enforcement Authorisation Report.</b>	198 - 200

**Next Meeting:** Tuesday, 5 September 2017 at 2.00 pm

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, 25 July 2017**

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**Contact: Democratic Services - 636923**

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE PLANNING COMMITTEE

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

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

**Councillor(s)**

L S Gibbard  
R D Lewis  
L J Tyler-Lloyd

**Councillor(s)**

M H Jones  
P B Smith  
T M White

**Councillor(s)**

E J King  
D W W Thomas

**Also Present:**

Councillors J P Curtice, N J Davies, C E Lloyd & P N May

**Apologies for Absence**

Councillors: P M Black, M B Lewis and A H Stevens

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

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

Councillor T M White – Agenda Item 5 – Supplementary Planning Guidance (HMO) – Personal – I have a relative living in the SPG area.

14 **MINUTES.**

**RESOLVED** that the Minutes of the Planning Committees held on 25 May & 6 June 2017 be approved as correct records.

15 **ITEMS FOR DEFERRAL/WITHDRAWAL.**

None.

16 **SUPPLEMENTARY PLANNING GUIDANCE ON HOUSES IN MULTIPLE OCCUPATION AND PURPOSE BUILT STUDENT ACCOMMODATION.**

The Team Leader and the Planning Consultant from Lichfields on behalf of the Head of Planning & City Regeneration presented a detailed report which outlined to Members the representations received during the recent public consultation, and sought to agree the responses to these and proposed amendments to the Guidance, and to adopt the final version as Supplementary Planning Guidance (SPG).

The background details to the preparation of the proposals which have been produced in partnership with the planning consultants Lichfields were outlined and detailed in the report.

The planning context, purpose of the SPG, the public consultation and engagement exercise undertaken, the responses received and the key issues arising from the consultation were all detailed in the report along with the financial and legal implications.

A visual presentation was provided and further late letters of objection were reported.

Mr Roach and Mr Rowe spoke against the proposals.

Councillors C E Lloyd & N J Davies (Local Members) spoke in relation to the proposals, and raised concerns from local residents and sought clarity on certain aspects of the proposed guidance. Councillor P N May (Local Member) spoke against the proposals and suggested proposed amendments to the scheme.

Committee Members then debated and discussed the proposals. The Committee was advised by the Planning Officer that alterations to the SPG that would place additional restrictions on HMOs will give rise to the need for further work to consider the consequential impacts of such changes and the need for other necessary amendments to the SPG. The Committee was also advised by the Legal Officer that amendments to the recommendation in the report that involve changes to the SPG, such as proposed amendments to the threshold limits, could not be done without undertaking a further consultation exercise.

**RESOLVED** that the recommendations as outlined in the report be not approved and that further work be undertaken to revise the SPG and carry out further public consultation. It was resolved that the further work re-examines the threshold limits for HMO's in the County, including the impact of introducing a 15% threshold in the south of the Uplands ward and of introducing a policy to preclude 'sandwiching' of non-HMO properties between HMOs.

17 **APPROVAL OF DRAFT UPDATED SUPPLEMENTARY HOUSEHOLDER DESIGN GUIDANCE FOR CONSULTATION.**

The Head of Planning & City Regeneration presented a report which provided Committee with an overview of the draft updated 'A Design Guide for Householder Development' Supplementary Planning Guidance (SPG) document and sought authorisation to undertake public and stakeholder consultation.

**RESOLVED** that the draft SPG as attached at Appendix A to the report be approved as the basis for public consultation.

18 **TREE PRESERVATION ORDER - 611 LAND AT 344 SWANSEA ROAD, WAUNARLWYDD, SWANSEA.**

The Head of Planning and Regeneration presented a report which sought consideration of the confirmation as a full order, the provisional TPO 611 at land at 344 Swansea Road, Waunarwydd, Swansea.

The objection and representations received regarding the proposal were outlined and detailed in the report.

**RESOLVED** that the Tree Preservation Order 611: Land at 344, Swansea Road, Waunarwydd, Swansea be confirmed.

19 **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 2017/1049/FUL – 123 St Helens Avenue, Brynmill, Swansea**

As the SPG on HMOs was not adopted by Committee, Recommendation B (refusal) was withdrawn.

**#(Item 2) Planning Application 2017/0993/FUL – 90 Hawthorn Avenue, Uplands, Swansea**

Mr M Blagrove (objector) and Mr D Micklewright (in support) addressed the Committee.

A visual presentation was provided.

**#(Item 3) Planning Application 2017/0775/FUL – Land at Heol Pentre Bach, Gorseinon, Swansea**

Mr A Rees (agent) addressed the Committee.

Councillor J P Curtice (Local Member) addressed the Committee and requested that the proposed traffic calming proposals be amended to include plateaus and not speed humps.

Report updated as follows:

Page 242 – Typing error in site history. Application 2015/2506 was approved on 30 September 2016 not 30 September 2011.

Since the report was written, work has started on site to implement planning permission 2015/2506. The planning permission is therefore extant, and will remain in perpetuity. Consequently, and as outlined on page 264 of the report, the principle of development does not need to be considered further.

Approved subject to a S106 agreement.

**#(Item 4) Planning Application 2017/0482/S73 – Land at Drummau House, Birchgrove Road, Birchgrove, Swansea**

Mr N Green (agent) addressed the Committee.

Report updated as follows:

In the penultimate paragraph on page 290 of the report, line 4 should read “save for the replacement of ‘Lucy Thomas’ and ‘Lisa Thomas’ with ‘Louise Thomas’ and ‘Emma Jones’

Approved subject to temporary planning permission for 4 years being granted and to the named individuals as outlined.

**#(Item 5) Planning Application 2017/0768/S73 – Land to the West of Parc Y Bont, off Trinity Place, Pontarddulais, Swansea**

The meeting ended at 4.37 pm

**CHAIR**

## Report of the Head of Legal, Democratic Services & Business Intelligence

Planning Committee – 1 August 2017

### **PUBLIC RIGHTS OF WAY – PROPOSED PUBLIC PATH DIVERSION ORDER RELATING TO FOOTPATH NO. 35 AT PERRISWOOD IN THE COMMUNITIES OF PENRICE AND ILSTON**

#### **Summary**

<b>Purpose:</b>	To determine whether to withdraw the existing Public Path Diversion Order made on the 26 <sup>th</sup> July 2016 and make a new Public Path Diversion Order
<b>Policy Framework:</b>	Countryside Access Plan 2007-2017
<b>Statutory Test:</b>	Section 119 Highways Act 1980
<b>Reason for Decision:</b>	Whilst this Committee previously determined to make a Public Path Diversion Order, it appears that at the informal consultation stage some consultees were provided a different and incorrect version of the Diversion Order Plan. The consultations have now been conducted properly with the correct plan sent to all consultees. All consultees have now had the opportunity to comment on the proposed diversion and the objections received are not considered sufficiently cogent to warrant the complete abandonment of the order. Therefore, it is proposed that a new diversion order be made
<b>Consultations:</b>	Legal, Finance and Access to Services and all the statutory consultees, including local members, landowners and the prescribed organisations.

<b>Recommendation:</b>	It is recommended that: -  <ul style="list-style-type: none"> <li>(1) The Public Path Diversion Order made on the 26<sup>th</sup> July 2016 be withdrawn;</li> <li>(2) A new Public Path Diversion Order be made on the same terms as the previous order; and</li> <li>(3) Should formal objections be made to any such order made and the Council becomes unable to confirm the order, to refer the order to the Planning Inspectorate for determination</li> </ul>
<b>Report Author:</b>	Kieran O'Carroll
<b>Finance Officer:</b>	James Moore
<b>Legal Officer:</b>	Sandie Richards
<b>Access to Services Officer:</b>	Phil Couch

## 1 Background

- 1.1 The Council previously discovered evidence suggesting that an error existed on the Council's Definitive Map of public rights of way in relation to the alignment of footpath number 35.
- 1.2 The current definitive line of the footpath is shown A-B-C-D-E on the plan attached to this report at Appendix 1
- 1.3 It was claimed by some of the local residents that no public footpath existed at this location and that it should never have been recorded as a public right of way.
- 1.4 A report was submitted to the Rights of Way and Commons Sub Committee of the Planning Committee on the 10<sup>th</sup> October 2012 ("the 2012 report") in order to determine:
- (a) whether the evidence submitted by the local residents was sufficient to show that no public footpath existed and whether it should therefore be deleted from the Definitive Map; and



- (b) if that evidence was insufficient to show that the path should be deleted, whether the current alignment was incorrect and whether there was sufficient evidence to realign the path along another route.
- 1.5 The evidence considered in relation to these issues is set out fully in the 2012 report at Appendix 2 of this report and can be viewed as background information only given that these issues are not the subject of this report.
- 1.6 At the Committee of the 10<sup>th</sup> October 2012, it was determined that the evidence of local residents was not sufficient to show the path did not exist; therefore the legal presumption that the definitive map is correct in showing a path could not be rebutted and the path was to remain on the Definitive Map.
- 1.7 Whilst Members decided that the current alignment was an error, it was considered that the evidence available was not sufficient to determine the correct alignment. Hence, no modification order could be made for the realignment of the footpath.
- 1.8 Despite the fact that the anomaly could not be rectified based on the available evidence, The Council has a legal duty under the Highways Act 1980 to assert and protect public paths and to ensure they are available for public use. Therein lay a problem as the definitive line of the path was already known to be incorrect or at least very likely to be incorrect.
- 1.9 It was recognised that there were only a limited number of alternative methods by which the Council could seek to resolve this issue, namely by the making of a Public Path Order or a Public Path Agreement using its powers under the Highways Act 1980. On further investigation and consideration of each type of possible order, it was found that the only

suitable option would be to make a Public Path Diversion Order under Section 119 of the Highways Act 1980.

- 1.10 A report was submitted to the Council's Planning Committee on the 10<sup>th</sup> May 2016 ('the 2016 report'). That report can be found at Appendix 3 annexed to this report. The possible methods of dealing with this issue were set out and only the requirements for a Public Path Diversion Order could be satisfied.
- 1.11 It was concluded in the 2016 report that it would be in the interests of the landowner and the public that the path be diverted from the current definitive line A-B-C-D-E on the Plan at Appendix 1 along the route shown A-F-G-H-I-J-K-E on the same Plan and that this route would be far more convenient to the public and less inconvenient for the landowner.
- 1.12 The route proposed as the alternative was chosen in the interests of fairness as whilst evidence was generally poor, this path was the most likely path to be the true line of the public right of way.
- 1.13 The background for making a public path diversion order together with the consideration of the appropriate legal tests was set out in the 2016 report.
- 1.14 Objections and representations received in relation to the making of the order were set out and can be viewed in the report at Appendix 3.
- 1.15 On the 10<sup>th</sup> May 2016 it was determined by the Council's Planning Committee that a Public Path Diversion Order be made to divert the path as set out in Appendix 1 hereto.
- 1.16 Following the decision of the Committee, a Public Path Diversion Order was made on the 26<sup>th</sup> July 2016.

- 1.17 The procedure for making a diversion order is set out in Schedule 6 of the Highways Act 1980 and requires the service of a notice regarding the making of the order to be given to the owners or occupiers of the land, the local members, the community council and all statutory consultees and interested parties. It further requires a copy of the notice to be published in a local newspaper circulating in the area in which the order relates is situated.
- 1.18 This procedure was correctly followed and the statutory period for the submission of objections or representations to the order ran from 22<sup>nd</sup> August 2016 to 23<sup>rd</sup> September 2016. The notice appeared in the South Wales Evening Post on 22<sup>nd</sup> August 2016.
- 1.19 No formal objections were received to the diversion order. However, it became clear from the correspondence submitted that an administrative error had occurred resulting in several of the interested parties receiving a different version of the proposed diversion order plan for consultation to the plan which appeared in the 2016 report and based upon which the diversion order of the 26<sup>th</sup> July 2016 was made.
- 1.20 In the interests of fairness and so that all parties have an opportunity to comment on the correct diversion plan, it was decided that a further round of informal consultations was necessary, this time correcting the error and ensuring all parties received the correct version of the plan.

## **2 New informal consultations**

- 2.1 The new consultation period ran from the 14<sup>th</sup> June 2017 to the 7<sup>th</sup> July 2017.
- 2.2 In response to the new consultation, four objections were received. However, many of the arguments raised by the objectors related to the existence or non-existence of the path. This matter was already resolved by the Rights of Way and Commons Sub Committee on 10<sup>th</sup>

October 2012 and no new evidence that has not previously been considered has been put forward.

- 2.4 If the objectors have any new evidence which necessitates the reconsideration of this matter, then they are able to make an application to the Council for a modification order based on the new evidence. The new evidence can then be considered together with the evidence considered previously and ultimately a new report will be submitted to Committee for determining the matter.
- 2.5 As it stands, no application has been made for a modification order to delete the path based on new or evidence not previously considered. As a result, this issue shall not be addressed in this report. Committee has already resolved that matter.

### **3 Objections and Representations**

- 3.1 One local landowner opposes the proposed diversion on the grounds that it affects her land yet the Council has not obtained her permission to effect the diversion.
- 3.2 The Council has consulted widely on all matters regarding this footpath since the commencement of the matter in 2008. The Council has consulted this landowner and all other landowners affected at all stages including consulting on the most recent proposal for dealing with the issue on 14<sup>th</sup> June 2017. This landowner's concerns and objections have been carefully considered throughout the matter and the Council is proposing the current diversion as the fairest method of dealing with this issue. There is no requirement in the Highways Act 1980 that the Council must obtain the express consent of any landowner prior to implementing a Public Path Diversion order under Section 119 of the Act. There is merely a requirement to consult.

- 3.3 This objector suggests her preferred route for the path would be for the path to terminate as it does on previous legal records and proper procedures should be carried out to extend the path onto her land by order.
- 3.4 The Council has transposed the route of this path shown on the earlier drafts and editions of the Definitive Map onto plans as an explanatory tool in the past for its consultees. The Council is proposing that the route to be implemented is actually that shown on Ordnance Survey map evidence predating the draft Definitive Maps on the basis that the latter are likely to be attempts at drawing this path onto map of scale 1:25,000 which is an extremely difficult task without the aid of computer technology. The current proposed diversion only slightly differs from previous plans provided at earlier stages of the investigation as Council officers have now been able to plot the route more accurately. It is recognised that the proposed Diversion Order may resolve the alignment issue but will result in the path terminating at a dead-end i.e. a point from which there is no public right of access. However, the Council will consider the necessary action and propose any further orders that may be required at the appropriate time.
- 3.5 Finally she sets out her preferred methods of dealing with this matter including the abandonment of the footpath altogether. It has already been determined by Committee that the evidence is sufficient to show that a public footpath does exist at this location but the exact route is difficult to determine. The Council is proposing the route that is considered to most likely be the correct route based on all the evidence available. It is open to any member of the public to make an application for a public path extinguishment order to delete public footpaths. However, it would be suggested that any such applicant waits until the path is recorded correctly along a particular route e.g. as it would by the confirmation of the proposed diversion order.

It is worth noting at this point that the Council is not able to allow the status quo to prevail. It has a legal duty to resolve such anomalies that are discovered together with a further legal duty to assert and protect public paths and ensure they are available for public use.

3.6 A second landowner affected by the anomaly and a local resident has submitted letters of objection on the grounds that they consider that the evidence discussed previously does not support the public footpath's existence. Opinions have been provided on the legal records and their evidential value. However, it is not the intention of this report to re-open such discussions at this time. The evidence has been considered and Committee has already determined that the evidence favours a public footpath existing. However, the evidence was not sufficient to determine the exact route so no modification order could be made to correct the alignment of the path. The Council is therefore proposing a diversion order which is made on different grounds but is aimed to provide the most likely evidential route of the footpath according to officers.

3.7 It is of course open to any member of the public who discovers evidence not already considered by this Council to make an application for a modification order to have the path deleted from the Council's legal records if that is what they believe the evidence shows. However, it must be emphasised that they would need to provide new evidence before the matter could be considered.

#### **4 Conclusion**

4.1 This matter was reported to the Planning Committee on the 10<sup>th</sup> May 2016 and it was resolved that a Public Path Diversion Order be made.

4.2 This report proposes that the exact same Public Path Diversion Order be made. However, all parties have now received the correct plan with their consultation letters and have had an opportunity to comment on the proposed diversion.

## **5 Financial Considerations**

- 5.1 There is a potential for compensation claims to be made under the provisions of Section 28 of the Highways Act 1980. The cost of any compensation would be charged to the Rights of Way budget should this situation arise. This was set out in the report dated 10<sup>th</sup> May 2016. The actual value of compensation cannot be quantified at this stage but will in the first instance be met from existing Rights of Way budget.

## **6 Legal Implications**

- 6.1 The legal implications are set out in the body of this report and the report dated 10<sup>th</sup> May 2016

## **7 Equality and Engagement Implications**

- 7.1 An Equality Impact Assessment (EIA) Screening has been conducted and a full report is not required

**Background Papers:** ROW-000224/KAO including EIA Screening Form

## **APPENDICES**

APPENDIX 1 – Plan of Proposed Diversion

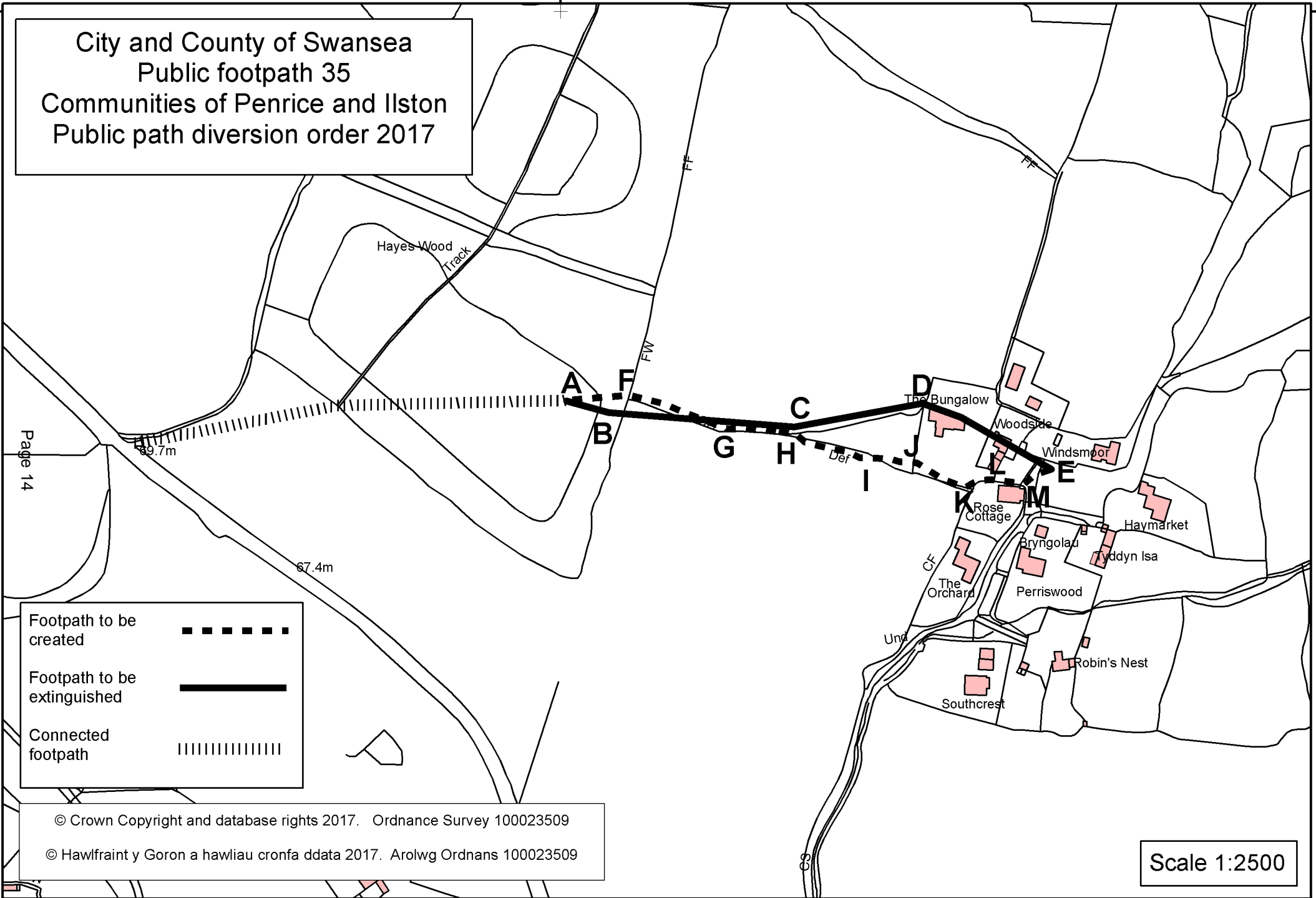
APPENDIX 2 – Report to the Commons and Rights of Way Sub Committee dated 10<sup>th</sup> October 2012

APPENDIX 3 – Report to the Planning Committee dated 10<sup>th</sup> May 2016

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**City and County of Swansea**  
**Public footpath 35**  
**Communities of Penrice and Ilston**  
**Public path diversion order 2017**



Page 14

Footpath to be created	-----
Footpath to be extinguished	—————
Connected footpath	

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# Agenda Item 5

## Report of the Head of Legal and Democratic Services

Planning Committee - 10 May 2016

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

#### COMMUNITIES OF PENRICE & ILSTON

##### Summary

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

1 Introduction

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

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

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

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

## **2 Public Path Creation Agreement**

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

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

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

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

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

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

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

- 3.7 From the various historic ordnance survey maps available, it seems clear that a footpath existed in the location A-F-G-H-I-J-K-E when the area was surveyed in 1913.
- 3.8 It is considered that this route would provide the most convenient route for the public whilst offering a less inconvenient route to the landowners affected than the current definitive line.

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

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

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

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

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

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

## **5 Informal Consultations**

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

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

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

## **6 Other possible methods**

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



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

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

## **7 Compensation**

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

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

## **8 Conclusion**

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

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

## **9 Financial Considerations**

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

## **10 Legal Implications**

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

## **11 Equality and Engagement Implications**

- 11.1 There are no such implications to this report

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

#### **Appendices:**

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

# APPENDIX 1 Proposed diversion of footpath 35

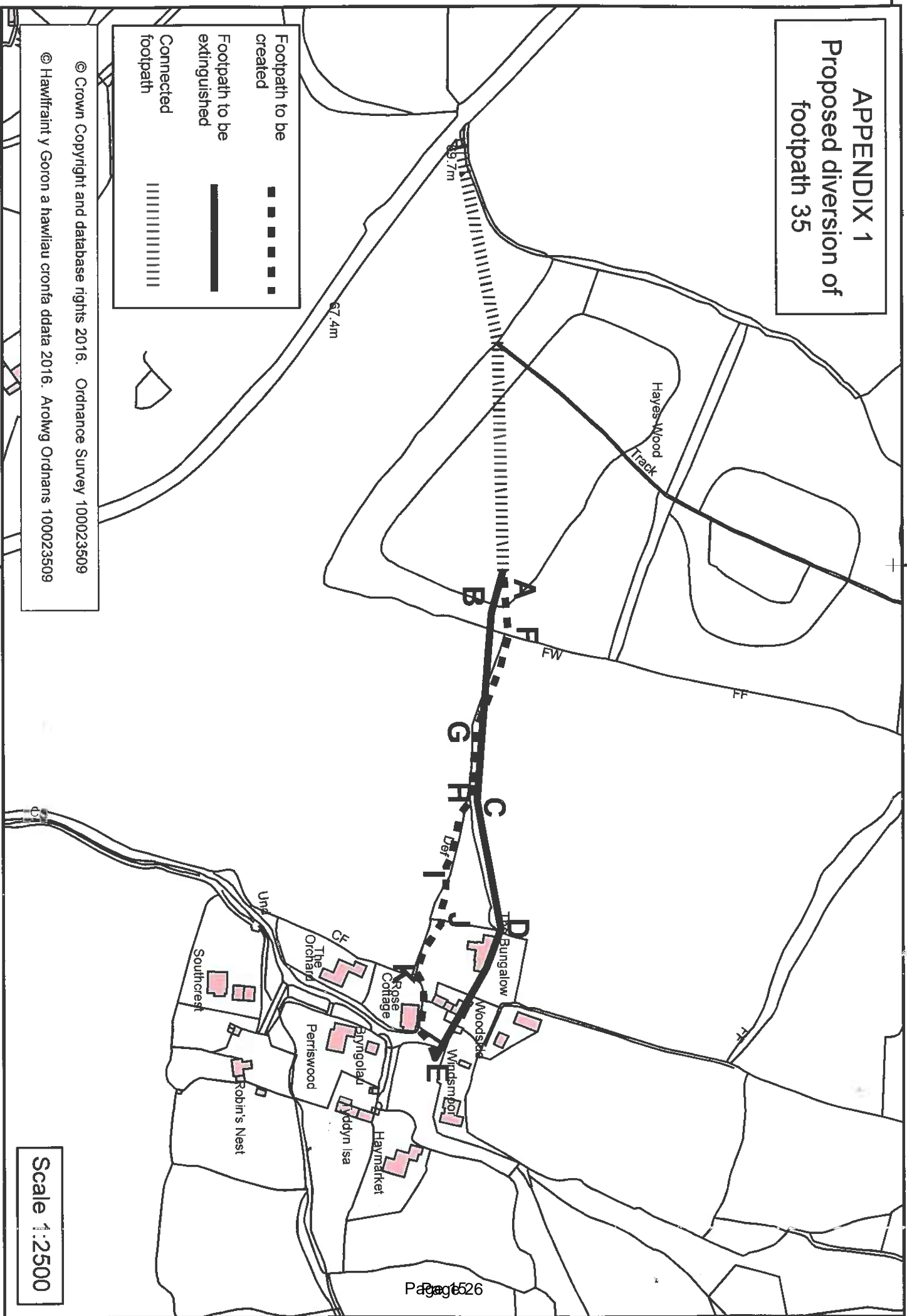
Footpath to be created

Footpath to be extinguished

Connected footpath

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

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

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

#### COMMUNITIES OF PENRICE & ILSTON

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

<b>Recommendation:</b>	It is recommended that: -
	(a) the claim that footpath 35 was incorrectly registered and that no public right of way exists across the land be rejected.
	(b) no modification order can be made to realign the path
<b>Report Author:</b>	Kieran O'Carroll
<b>Finance Officer:</b>	Paul Roach
<b>Legal Officer:</b>	Sandie Richards

## 1 Introduction

- 1.1 The Council has discovered evidence which suggests that an error exists on the Council's current definitive map of public rights of way in relation to the alignment of footpath 35 in the Community of Penrice.
- 1.2 The current definitive line of footpath 35 is shown A-B-C-D-E on Plan 1 attached to this report.
- 1.3 However, after discovering this evidence, some local residents of Perriswood have claimed that no public right of way exists across any of the land affected by the line of footpath 35 and that the footpath should never have been recorded as a public right of way.
- 1.4 Therefore, it is firstly necessary to investigate whether the footpath was incorrectly registered and whether the evidence submitted by the residents is sufficient to warrant making a modification order to remove the path from the definitive map and statement.
- 1.5 Should it be concluded on the evidence that a public right of way does subsist across the land, it will be necessary to determine whether the path's current alignment on the definitive map is correct or whether the evidence suggests that a modification order should be made to realign the path along its correct route.
- 1.6 This report was originally considered at the Committee meeting of the 20<sup>th</sup> June 2012. A letter requesting deferral was presented to Committee on the basis that this individual held new evidence which he would submit shortly for consideration. It was decided that the report be deferred pending the receipt of this new evidence.
- 1.7 The fresh evidence referred to was not received and the report was re-considered at the Committee meeting of the 15<sup>th</sup> August 2012. Two late submissions were presented to the Committee. It was decided that the report should be deferred pending a site visit.

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

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

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

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

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

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

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

#### **4 Informal consultations**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **8 Documentary Evidence of alignment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(f) The Draft Special Review**

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

**(g) The Current Definitive Map**

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

**9 Conclusion on alignment**

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

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

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



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

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

## **10 Financial Implications**

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

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

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

Appendix 2 – History of the depiction of footpath 35

Appendix 3 – Section 53 Wildlife and Countryside Act 1981

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

Appendix 5 – Evidence in support of the Residents' claim

Appendix 6 – Evidence opposing the Residents' claim

Appendix 7 – Legal tests for making a modification order

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

## APPENDIX 1

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

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

## **APPENDIX 2**

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

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

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

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

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

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

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

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

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

## APPENDIX 3

### SECTION 53, WILDLIFE AND COUNTRYSIDE ACT 1981

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

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

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

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

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

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

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

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

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

## APPENDIX 4

### ARGUMENTS PUT FORWARD FOR DELETION OF FOOTPATH 35

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

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

## APPENDIX 5

### EVIDENCE IN SUPPORT OF RESIDENTS' CLAIM

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



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

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

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

## APPENDIX 6

### EVIDENCE OPPOSING THE RESIDENTS' CLAIM

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

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

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

## APPENDIX 7

### LEGAL TESTS FOR MAKING A MODIFICATION ORDER

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

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

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

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

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

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

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

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

## **APPENDIX 8**

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

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

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

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

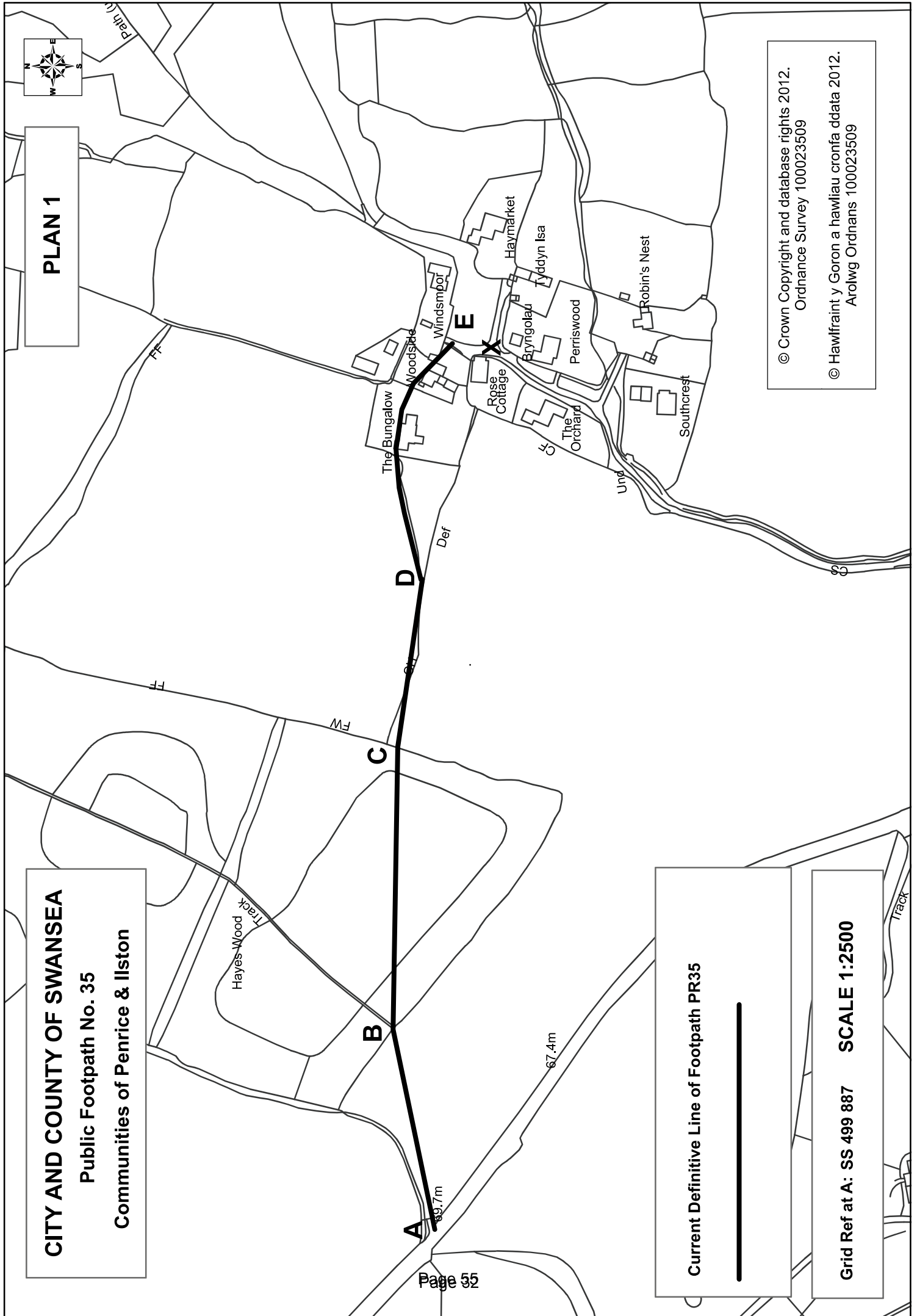
However, other persons within the Parish did make representations on other routes during these reviews, which establishes that the consideration of the status of such paths was brought to the attention of the public at these times.

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



**CITY AND COUNTY OF SWANSEA**  
**Public Footpath No. 35**  
**Communities of Penrice & Ilston**

**PLAN 1**



**Current Definitive Line of Footpath PR35**



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

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Arolwg Ordnans 100023509

**PLAN 2**

**CITY AND COUNTY OF SWANSEA**  
Public Footpath No. 35  
Communities of Penrice & Ilston

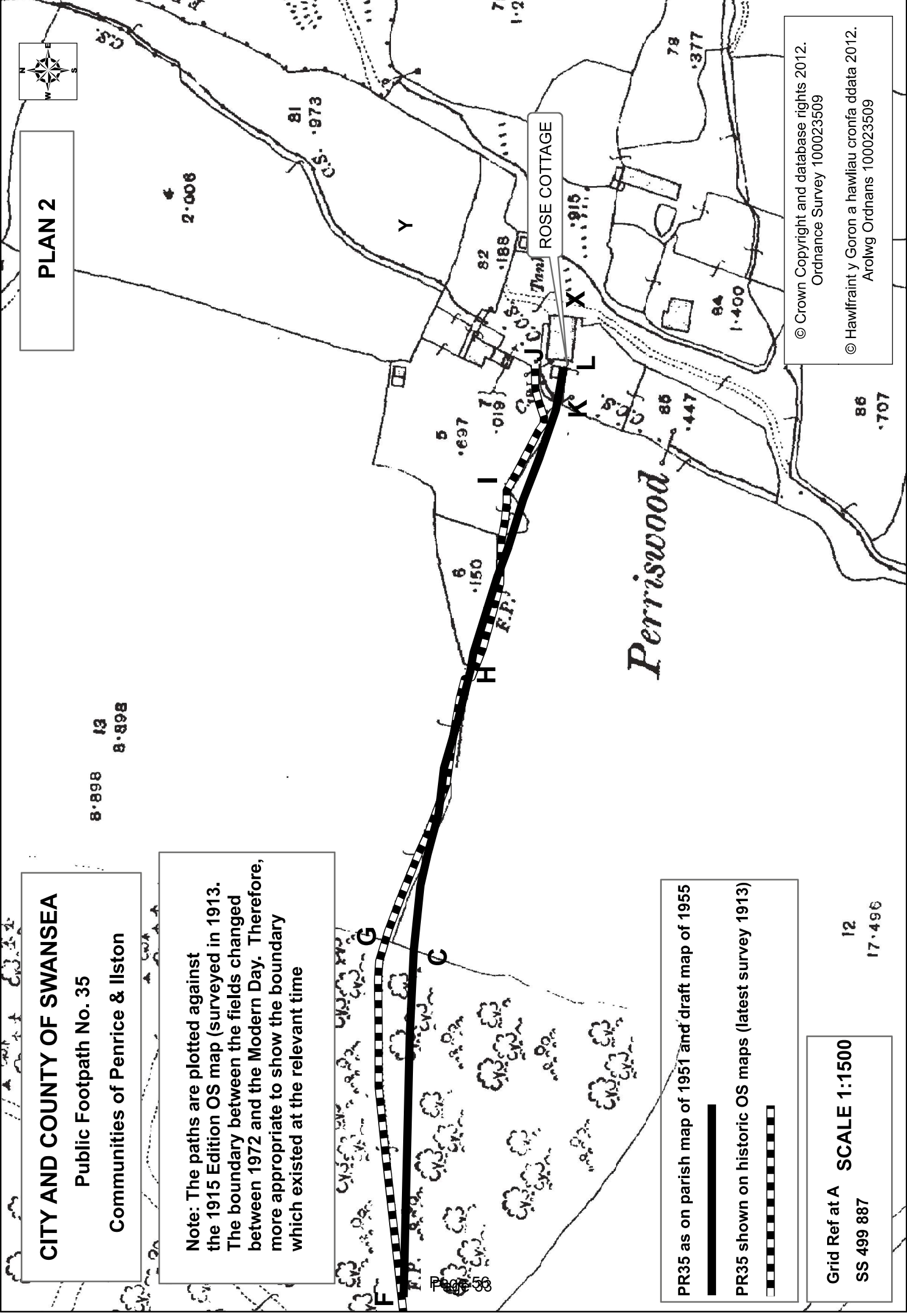
Note: The paths are plotted against the 1915 Edition OS map (surveyed in 1913). The boundary between the fields changed between 1972 and the Modern Day. Therefore, more appropriate to show the boundary which existed at the relevant time

PR35 as on parish map of 1951 and draft map of 1955  
PR35 shown on historic OS maps (latest survey 1913)

Grid Ref at A **SCALE 1:1500**  
SS 499 887

12  
17,496

8,898 13  
8,898



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# CITY AND COUNTY OF SWANSEA

Public Footpath No. 35

Communities of Penrice & Ilston

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

PR35 as shown on Provisional Map published 1964

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

Grid Ref at A SS 499 887  
SCALE 1:1500  
12 17 496

# PLAN 3

2.006

81  
073

79  
1.221

ROSE COTTAGE

78  
377

84  
1.400

*Perriswood*

86  
707

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**CITY AND COUNTY OF SWANSEA**

Public Footpath No. 35

Communities of Penrice & Ilston

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

PR35 as shown on Draft Special Review in 1971



Grid Ref at A  
SS 499 887

SCALE 1:1500

12

17 496

**PLAN 4**

2 006

81  
073

79  
1 221

78  
377

ROSE COTTAGE

83  
915

84  
1 400

86  
707

*Perriswood*

M

N

S

X



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Arolwg Ordnans 100023509

898 13  
8 898

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: 1<sup>ST</sup> AUGUST 2017

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

**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



## TWO STAGE VOTING

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

The first vote is taken on the officer recommendation.

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

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

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

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

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

## CONTENTS

ITEM	APP. NO.	SITE LOCATION	OFFICER REC.
1	2016/3704/FUL	<p>17-18 The Kingsway, Swansea, SA1 5JW</p> <p><b>Construction of purpose built student accommodation building between 5-14 storeys for residential accommodation for students (up to 307 bedrooms) with ancillary communal facilities, cycle &amp; bin stores, with ground floor commercial unit Retail (Class A1) and/or Restaurant (Class A3) and associated works following demolition of existing single storey restaurant building</b></p>	APPROVE
2	2017/0787/S73	<p>(Former Unit Superheaters Engineering Site New Cut Road)Landscaping Adjacent 14, 16,18, 20, 22 (Plots 46-50) Pottery Street, Swansea, SA1 2GA</p> <p><b>Variation of landscaping condition 4 of planning permission 2007/2829 (as approved under reserved matters 2010/0844 granted 22 February 2011) with regard to completion of revised landscaping scheme</b></p>	APPROVE
3	2017/0962/FUL	<p>38 Ffynone Drive, Uplands, Swansea, SA1 6DD</p> <p><b>Change of use from 3 bedroom flat (Class C3) to 4 bedroom HMO for 4 people (Class C4)</b></p>	APPROVE
4	2017/1164/FUL	<p>Digital Technium &amp; Fulton House , Singleton Park Internal Access Road, Sketty, Swansea, SA2 8PP</p> <p><b>Construction of new multi use student activity centre building with link to Fulton House including demolition work to Fulton House, engineering works, replacement car parking and landscaping</b></p>	APPROVE
5	2017/1248/LBC	<p>Fulton House, University Of Wales Swansea, Singleton Park Internal Access Road, Sketty, Swansea, SA2 8PP</p> <p><b>Part demolition of eastern facade to allow creation of new 'link' to connect Fulton House to proposed new student activity centre. Phase 1 internal works to the ground and first floor including the demolition of partitioning, finishes and fittings and consequential making good and reinstatement of original glazing screens to the central refectory space (application for Listed Building Consent)</b></p>	APPROVE

**PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017**

**ITEM 1**

**APPLICATION NO:**

2016/3704/FUL

**WARD:**

Castle - Bay Area

**Location:**

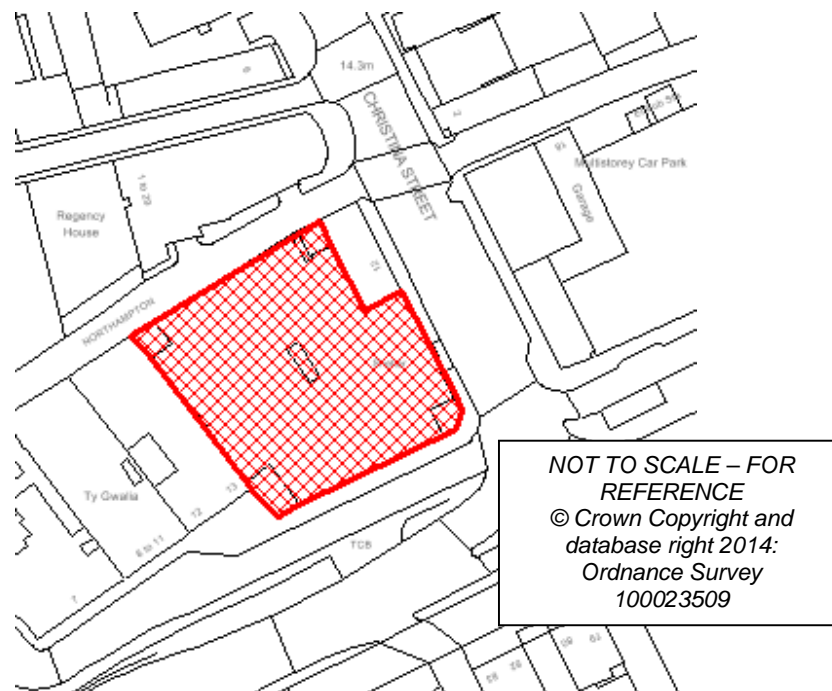
**17-18 The Kingsway, Swansea, SA1 5JW**

**Proposal:**

**Construction of purpose built student accommodation building between 5-14 storeys for residential accommodation for students (up to 307 bedrooms) with ancillary communal facilities, cycle & bin stores, with ground floor commercial unit Retail (Class A1) and/or Restaurant (Class A3) and associated works following demolition of existing single storey restaurant building**

**Applicant:**

**Crosslane Student Developments (UK)Ltd, Eastways Plc And NMJ  
Crosslane Student Developments (UK)Ltd, Eastways Plc and NMJ**



**BACKGROUND INFORMATION**

**POLICIES**

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 - AS5 - Walking and Cycling

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



## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

### ITEM 1 (CONT'D)

APPLICATION NO:

2016/3704/FUL

#### 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 - CC6 - Delivering Improvements in City Centre Accessibility

Promotion of improvements to the City Centre's accessibility through specified improvements. (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)

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

### ITEM 1 (CONT'D)

APPLICATION NO:

2016/3704/FUL

#### 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 - 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 - 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 - HC11 - Higher Education Campus Development

Higher education campus development will be permitted subject to compliance with the defined set of criteria. (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)

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2016/3704/FUL

### SITE HISTORY

App Number	Proposal	Status	Decision Date
2016/3704/FUL	Construction of purpose built student accommodation building between 5-14 storeys for residential accommodation for students (up to 307 bedrooms) with ancillary communal facilities, cycle & bin stores, with ground floor commercial unit Retail (Class A1) and/or Restaurant (Class A3) and associated works following demolition of existing single storey restaurant building	PDE	

### RESPONSE TO CONSULTATIONS

The Wales Planning Act 2015 introduced the requirement in March, 2016 for applications for major development to be accompanied by a pre-application consultation report (PAC). The submitted PAC Report has outlined the pre-application consultation undertaken during November / December 2016. Activities included a public consultation event and the provision of a project website. A number of issues were raised:

- o Car Parking
- o Transportation
- o Design
- o Community Impact
- o Environmental Issues

### ORIGINAL PROPOSAL (Received 23 December 2016)- excluding the 'Nawab' restaurant

The application was advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) by press notice and display of site notices. A letter of objection was been received from Swansea Civic Society raising the following objections to this development proposal for this key City centre location.

1. The Swansea Central Area Regeneration Framework document formally adopted by the City administration in February 2016 redefines the Kingsway to be a business district and employment hub . . . supporting the economy and vibrancy of this part of Swansea's Central Area, and to provide active frontages. This application fails to demonstrate how the creation of a 253 bed student only accommodation block will contribute to any aspect of this objective. The students will be absent in the day time on week days when the strategy sets out to increase commercial activity, and the premises vacant for approximately 1/3 of the year. It should therefore be rejected on principle.

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

### ITEM 1 (CONT'D)

APPLICATION NO:

2016/3704/FUL

2. If permitted to proceed in its current form, the 12 storey element will dwarf and dominate the surrounding buildings to an unacceptable degree as is clear from the drawings submitted. In addition this will set a precedent which in line with the City's definition of tall buildings will permit applicants to achieve even taller structures in the future. It is clear that maintaining 4 -5 storeys as a maximum would not impact the existing building lines of the Kingsway and would not out-scale or overshadow the adjacent structures of note, such as the YMCA. The case for a tall building at this location has not been justified other than developer profit at the expense of the existing residents and their amenities.
3. The application sets out to discourage students from using cars. This is insufficient and inadequate. Discounted or free bus passes may be provided but are not a preventive measure to ensure that there is no vehicle use or ownership. There are no details given of any proposed enforcement procedures sufficient to satisfy local concerns.
4. There are only three parking spaces proposed, allocated to staff and students with impaired mobility. Is it in accordance with Council DDA policy for this development to effectively bar or restrict the numbers of disabled residents to between 0 to 3 out of 253?
5. Reference is made of a student management team based on site as a reassurance that unacceptable behaviour will be avoided. This will necessarily need to be on a 24/7 basis. Office hours and a contact number would be totally inadequate.
6. The site is currently a pay and display car park. The provision of alternative parking within the City centre is not addressed and there is an implication that the reduction in parking provision will improve air quality. This is patently absurd as the need for parking will serve to only increase levels elsewhere in the City. What measure are in place to support alternative parking provisions?
7. The application identifies that there is a demand for quality student accommodation within the City. It does not demonstrate that this is the only suitable site other than commercial advantage to the developer or investor. This is not the basis for sound planning decisions.

### **AMENDED PLANS - including the 'Nawab restaurant Received 6 May 2017 and 11 May 2017**

The revised proposal was re-advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) by press notice and display of site notices. No responses from the public were received.

### **AMENDED PLANS (Received 18 July 2017)**

Amended plans were received on 18 July 2017 responding to design alteration requests from the Local Planning Authority. Additional consultation has been undertaken by Site Notice inviting any further comments in 14 days. No additional representations have been received to date.

### **Statutory Consultee Responses:**

The following responses have been received as part of the application:

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2016/3704/FUL

**Glamorgan Gwent Archaeological Trust** - Note the submission of a Heritage Desk-based Assessment (Report no. 16638, dated December 2016) which identifies the nature and extent of the archaeological resource of the proposed development area, and assesses any potential adverse effect of the application. It concludes that there are no known designated or non-designated sites that may be physically impacted by the development. Furthermore, the previous development of the site, visible on historic Ordnance Survey mapping, is likely to have had a severe effect on any potential remains that may have been present. The setting assessment also concludes that there will be no adverse non-physical effect upon the significance of any historic assets in the vicinity.

As a result there is unlikely to be an archaeological restraint to this proposed development. Consequently, as the archaeological advisors to your Members, we have no objections to the positive determination of this application.

**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.

The proposed development is located within the vicinity of the scheduled monuments known as Swansea Castle (GM012) and Original Swansea Castle (GM441) and within the vicinity of the registered historic park and garden known as PGW (Gm) 55 (SWA) St. James's Gardens and Crescent.

The application area is located some 540m from scheduled monuments Swansea Castle (GM012) and Original Swansea Castle (GM441): 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. Scheduled monument Swansea Castle (GM012) consists of the remains of the 'New Castle', dating from the late 13th to early 14th century. The visible remains consist of the north and south blocks, connected by a short stretch of much-altered curtain wall. The curtain wall was originally continued up Castle Bailey Street on the west, and west from the north block to enclose a roughly rectangular area, with an entrance on the west side. The well preserved south block, which occupied most of the south side of the 'New Castle', is the most spectacular part, with its picturesque arcaded parapet on top of the outside walls. This was probably a slightly later addition to the main building, which was a residential block. At the west end of the block is a spectacular circular garderobe tower standing to its full height, and in the south-east angle is a small turret with an arrow slit.

The castle was built to command the Tawe Valley with significant views along the valley to the north and to Swansea Bay to the south, and also to control land access to the Gower Peninsula with significant views to the east along coastal plain, to the northwest along the Roman road to Loughor and to the west along the line of the present Gower Road.

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

**ITEM 1 (CONT'D)**

**APPLICATION NO:**

2016/3704/FUL

The proposed building will be visible in the latter view but will be seen in long views over the roofs of the modern buildings of the city and will be seen along with a number of other tall buildings such as Sun Alliance House. Consequently, at worst the proposed development will have a very low impact on the setting of scheduled monument Swansea Castle (GM012).

The application area is located some 670m east from the Registered St. James's Gardens and Crescent Historic Park and Garden: However, intervening buildings will block all views to and from the historic garden and the proposed development. Consequently the proposed development will have a no impact on the setting of scheduled monument Swansea Castle (GM012).

**Council's Drainage Engineer** - We have reviewed the application and note that the applicant has applied the SUDS hierarchy, they have considered infiltration based drainage for the site, however in this instance we do not feel it is an appropriate solution due to the makeup of the ground in and around the Kingsway area which has been indicated to be made up of copper slag with all the contaminants that it comes with.

The outline proposals indicate a discharge to DCWW apparatus which is the only viable option in this case and subject to their approval recommend that a condition is appended to any permission given requiring a scheme for the comprehensive and integrated drainage of the site showing how surface water and land drainage will be dealt with. 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.

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

**Natural Resources Wales** - NRW do not object to the above proposal, however, make the following comments:

### Foul Water Disposal

We note from the application form, that foul water flows will be discharged to the main public sewer. This is our preferred means of foul water discharge and is considered to be the most sustainable. We recommend that prior to determination, Dwr Cymru Welsh Water (DCWW) are consulted and asked to confirm that there is sufficient hydraulic capacity within the sewer network at this location to accommodate the flows generated without causing pollution.

### Surface Water Disposal

NRW note the submission of the document entitled; 'Crosslane Student Development UK LTD: Proposed Student Accommodation, The Kingsway, Swansea: Drainage Strategy in Support of Full Planning Application', dated December 2016, by Shear Design. As the drainage system design is ultimately a matter for Local Authority Drainage Engineers, we advise that you should consult them with regards to the proposals.

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

ITEM 1 (CONT'D)

APPLICATION NO:

2016/3704/FUL

Geoscience

NRW note that the proposed development is located on a brownfield site. However, we consider that the controlled waters at this site are not of highest environmental sensitivity and therefore we will not be providing detailed site-specific advice, or comments with regards to land contamination issues for this site.

It is recommended that the requirements of Planning Policy Wales and the: Guiding Principles for Land Contamination (GPLC) should be followed. These comments are based on our assumption that gross contamination is not present at this location. However, if during any development, gross contamination is found to be present at the site then the applicant and Local Planning Authority (LPA) may wish to re-consult Natural Resources Wales.

Ecology and Protected Species

We note the provision of the document entitled; 'Proposed Student Residential Accommodation, The Kingsway, Swansea: Preliminary Ecological Appraisal', dated December 2016, by Opus International Consultants (UK) Ltd. NRW suggest that you discuss the proposals laid down in Section 6: Recommendations, with your Authority's Planning Ecologist.

### **Mid & West Wales Fire & Rescue -**

The site plan of the above application site has been examined and the Fire and Rescue Authority would wish the following comments to be brought to the attention of the Committee / Applicant. It is important that these matters are dealt with early on in any proposed development.

The developer should consider the need to provide adequate water supplies for fire fighting purposes on the site and general guidance on this matter is attached.

Furthermore, the applicant should be advised to contact the Local Authority Building Control Department, which is the responsible Authority, when determining issues concerning means of warning and escape, internal fire spread (linings and structure), external fire spread, access and facilities for the Fire and Rescue Service, in accordance with the 2007 version of Approved Document B.

### **Head of Environmental Management (Pollution Control) -**

Air Quality: I had previously discussed the assessment carried out and requested an additional worst case scenario to be put through the DMRB assessment which produced a predicted NO<sub>2</sub> annual mean of 23.41µg/m<sup>3</sup>. The noise condition below references the requirement for mechanical ventilation which will ensure that 'windows closed' is an option for the residential units. I have no air quality grounds to object to this application.

Noise: The Environmental Noise Assessment has proposed façade acoustic detail to comply with the internal noise levels set out in BS 8233:2014. The comment is made that the 'intended function of the ventilation elements was understood not to have been confirmed'; please could you attach the following condition for the façade acoustic design:-

**PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017**

**ITEM 1 (CONT'D)**

**APPLICATION NO:**

2016/3704/FUL

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:

- o All habitable rooms exposed to external road traffic noise shall be subject to sound insulation measures as stated in section 5.3 of the Environmental Noise Assessment HRS Ref. 124748 AC 2v1. 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.
- o 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.

With regard to the commercial use proposed for the ground floor please attach the following condition:

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

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

- o 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:

The building services plant noise shall be designed to achieve a maximum daytime rating level (dBLeq,Tr), 5dB below the representative background (LA90) sound levels as set out within Table 5 Noise Assessment Environmental Noise Assessment HRS Ref. 124748 AC 2v1. The building services plant noise shall also be designed to achieve a maximum night-time rating level (dBLeq,Tr), of 32dBA90,T as set out within Table 5 Noise Assessment Environmental Noise Assessment HRS Ref. 124748 AC 2v1.

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

- o The use hereby permitted shall not commence until a scheme, which specifies the provisions to be made for the control of ventilation and fume extraction 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.



## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

**ITEM 1 (CONT'D)**

**APPLICATION NO:**

2016/3704/FUL

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

- o The use hereby permitted shall not commence until a scheme, which specifies the provisions to be made for any condensing units relating to refrigeration and freezing of products has been submitted to and approved by the Local Planning Authority. Such works that form part of the approved scheme shall be completed before the premises are occupied.

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

Land:

Unforeseen Contamination

- o If, during the course of development, contamination not previously identified is found to be present at the site no further development [unless previously agreed in writing with the Local Planning Authority] shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a detailed strategy for dealing with said contamination.

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

**Highway Observations** - No formal response provided.

### **APPRAISAL:**

#### **Introduction**

The planning application is for a mixed-use student accommodation-led development at the existing temporary surface car park site on The Kingsway location at the junction of Christina Street / Northampton Lane. The scheme proposes the construction of purpose built student accommodation (PBSA) building between 5-14 storeys for residential accommodation for students (up to 307 bedrooms in a combination of cluster flats and studios) with ancillary communal facilities, cycle & bin stores, a single ground floor commercial unit Retail (Class A1) and/or Café / Restaurant (Class A3) and associated works following demolition of existing single storey Nawab restaurant building. To provide flexibility in securing future occupiers of the commercial floorspace planning permission is sought for either retail (Class A1) or café/restaurant (Class A3) use of the commercial floorspace.

The application was submitted originally in December 2016 and the site boundary did not include the existing Nawab restaurant. The application was subsequently amended in May 2017 to include the Nawab restaurant within the site boundary and further revised plans provided in July 2017.

#### **Application Site and Surroundings**

The site is currently used as a surface level car park and benefits from a temporary planning permission for this use and has an access from Northampton Lane, the site was cleared in 2009 following clearance of 1950s buildings.

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As indicated above, the existing Nawab restaurant building will be demolished, which is a single storey building situated on the north-eastern corner of the site and has little architectural merit.

The site abuts the offices of Pobl Housing Association (formerly Gwalia) to the west. This is a 1920s building over 3-4 floors with a light stone elevation and a positive character. Further to the west is the substantial YMCA building over 5 floors which has a high architectural quality with red brick elevations and bath stone dressings and is grade II listed. Along the site frontage there is the Newton Road service road, which separates the site from The Kingsway to the south which is a busy and wide street where significant public realm enhancements are scheduled to be commenced / completed in 2017 / 2018. Along the southern side of The Kingsway there is a variety of mixed commercial uses with underused upper floors, plus the Oceana site which is in Council ownership and is being cleared potentially to accommodate a 'business hub' that forms an element of the City Deal projects for Swansea. Slightly to the south-west is the Potters Wheel public house which has permission for extension upwards with 4 stories of residential accommodation above.

To the east the site abuts Christina Street which is a busy part of the city movement network. Currently this is one way north bound but this is likely to revert back to two way as part of the wider Kingsway public realm project. On the eastern side of Christina Street is a mixture of 4 storey NCP multi storey car park and 3 storey commercial buildings. The site abuts Northampton Lane along its northern boundary, where a 4 storey residential accommodation block is situated which has its main entrance onto Christina Street and windows face the site across Northampton Lane.

### **Proposed Development**

The PBSA building will range between 5 - 14 storeys. It is highlighted in the Planning Statement that the height has been restricted to 5 storeys adjacent to the northern boundary to avoid any overbearing effect on the residential flats in Regency House along the northern side of Northampton Lane, and the original proposed height on the Northampton Lane elevation was reduced by a storey in response to the Pre-Consultation process with the residents. Additionally, privacy windows are also incorporated in the rear elevation to avoid direct overlooking of habitable-room windows.

The commercial unit is proposed at ground floor level along the southern elevation to Newton Road in order to provide an active street frontage. The principal entrance / reception area for the student accommodation would be situated at the south-east corner of the site at the junction with Christina Street which is appropriate and will increase the footfall towards The Kingsway. The building will have facades to Northampton Lane, Christina Street and The Kingsway and will be arranged around a central internal courtyard, which will be accessed through the building. This will provide an external amenity area for residents, as well as internal access from the ground floor to the bin and cycle storage area, which is positioned at the north-western corner of the building, accessed from Northampton Lane. The refuse storage facility will be serviced externally from Northampton Lane.

The proposed development will be car-free, and therefore no on-site parking is provided. The accompanying Management Statement and Travel Plan, sets out that the prospective occupiers will be advised prior to taking out a tenancy that parking will not be available and it will not be possible to apply for a residents' on-street parking permit.

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This will be reinforced through the tenancy agreements of those who occupy the accommodation. The application highlights that the applicants own and operate student living schemes of this nature throughout the UK and beyond and that their City Centre schemes are, almost without exception, car-free and these are managed effectively. The proposed PBSA will be managed by an Accommodation Manager and associated staff with a controlled access from the main entrance. The Management Statement outlines the student tenancy agreements which highlight that it is a breach of the tenancy to bring a car to the building.

### **Planning Application**

The planning application has been supported with the following documents:

- o Design and Access Statement;
- o Planning Statement;
- o Management Strategy;
- o Flood Risk Assessment;
- o Ecology Assessment;
- o Fire Safety Assessment;
- o Acoustic Assessment;
- o Air Quality Assessment;
- o Heritage Impact Assessment;
- o Transport Statement including Travel Plan;
- o Drainage Strategy;
- o Townscape & Visual Assessment including Verified View Montages;
- o Wind Micro Climate Assessment;
- o Daylight & Sunlight Assessment;
- o Pre-application 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 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;
- o Impact on Ecology;
- o Refuse and Waste Management;
- o Fire Safety.

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### **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.

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PPW states that the Welsh Government defines economic development as development of land and buildings for activities that generate wealth, jobs and incomes and the planning system should support economic and employment growth alongside social and environmental considerations.

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

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

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

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

### Swansea Central Area Regeneration Framework (SCARF)

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

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

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The current regeneration framework for the city centre designates Kingsway / Orchard Street as a 'complementary area' with the vision theme of 'Living, Working and Learning' and is focussed on its potential to provide the Central Area with a new defined Working, living and learning zone with a new business district. The SCARF document states that the Kingsway could become a more attractive location for employment and upper floor residential development. New mixed use development with active frontages at street level will be encouraged around a new street scene and public realm, made possible by the removal of traffic lanes from the Kingsway.

Clearly there is a need to regenerate the Kingsway area with new vibrant uses and an improved quality of the built environment and the public realm. The Kingsway is highlighted in the SCARF document as the heart of a new 'living, working and learning area' with the strategic objective of increasing employment opportunities, injecting a wider mix of uses and adding to the vibrancy of the Central Area. The proposed development would be compatible with this initiative.

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

- o Scale and Height - add scale to existing buildings and encourage design solutions of at least four storeys which (vertically) integrate complementary uses and occupation; Explore the potential for new tall buildings (subject to the review of the Tall Buildings Strategy).
- o Frontage Improvement - Promote the improvement in existing built frontages and use section 215 powers from the Town and Country Planning Act 1990 if necessary to ensure improvements.
- o Active Frontages - Ensure all developments incorporate active frontages to bring vitality to the street scene and help to create a sense of place and reference. All new developments must have active frontages at street level. Where there is scope for new development to abut Oxford Street, then the active frontage should be retail space, whilst on Kingsway the active frontage could be office lobby and public facing elements such as staff facilities / break out space.
- o New land uses - Encourage new uses which generates and attracts pedestrian movement. A diverse range of occupiers and uses should be encouraged including city living on upper floors.
- o Green space - Substantially increase green space through planting, pocket parks within the streetscape and 'green' architecture. A variety of greening initiatives could be explored including tree planting, pocket parks, green walls and green roofs.
- o Public Art - Include public art to enhance the attractiveness of the area.
- o Car Parking - There is potential to expand or re-develop The Kingsway NCP Car Park with active frontage.
- o Legibility and connections - New development should create routes and enhanced legibility to reinforce north / south connections to Oxford Street and beyond.

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- o Building Design - Reinforce and reference existing modernist character in approach to building design. There may also be scope for some new developments to step forward to a new building line utilising the reduced carriageway to break up the linear nature of Kingsway.
- o Materials - Promote the use of high quality materials and workmanship and design which requires less maintenance without scarifying quality.
- o Public Realm - introduce improvements to pavements including planting, feature lighting and other elements of public realm.

### 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.

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.

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- 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.
- 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.



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- 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.

As indicated above, the Tall Building Strategy SPG was updated in November 2016, and one of the main changes was the definition of Kingsway corridor as a 'consider zone' for tall buildings. A tall building is defined as a building twice the height of the immediate context and the consider zone is defined as an area where tall buildings may have a positive impact, subject to the availability of supporting information to justify the proposals. Currently the eight storey Dragon Hotel is the tallest building on Kingsway (at the eastern end) and the inclusion of Kingsway in the tall building consider zone is in recognition of the need to diversify the uses and to increase the urban scale as part of the city centre regeneration.

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

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

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- o Maximise density in accessible location - as indicated above the, site is in a highly accessible location. It is well served by public transport, walkable to the city centre and a cycle ride to the various university areas. The Residential Design Guide sets the objectives of maximising densities in accessible locations, and whilst there is a high density, this assessment of the scheme demonstrates that there are no significant impacts and that the proposal has significant regeneration benefits.
- o Legible and welcoming entrances - a key requirement for all forms of development is that the entrances are easy to locate, and are safe and welcoming. This can be ensured by facing the entrances onto streets and public realm areas and also by emphasising the entrances as part of the architectural design. The proposed main student entrance will be from the controlled entrance lobby at the corner of Christine Street and will be highly visible and legible.
- o Address residential amenity in terms of overlooking, overbearing and overshadowing - addressed below.

### Urban Design and Townscape / Visual impact

The scheme broadly comprises 307 student bedrooms mainly organised as cluster flats with shared lounge/ kitchen areas, plus commercial unit at ground floor. It is arranged partly as an 'urban scale' block that redefines the street edges. This is six stories with the top floor setback to be recessive adjoining the Pobl Building. A 14 storey tower emphasises the corner of Kingsway and Christina Street which is slender and elegant through the façade treatment, then a further urban scale block of six stories onto Christina Street that drops to five stories onto Northampton Lane.

The urban block elements onto Kingsway and Christina Street have the top floors inset to reduce the sense of scale and reflect the 'roof' floors of traditional buildings. The elevation materials for these blocks is proposed to be red brick that references the listed YMCA buildings and the inset top (roof) floor is clad in recessive grey standing seam metal cladding. The full height windows which will maximise natural lighting of the rooms are grouped across floors to create architectural interest and also to reference the elevation treatment of the adjacent Pobl Building. Therefore this is clearly a building of its time, but it is considered to successfully reference positive aspects of the existing context.

The urban block element onto Northampton Lane is reduced in height and treated different to respect the amenity of the residents of Regency House opposite that are less than 10m away. This part of the scheme was amended following the statutory pre consultation (PAC) in response to concerns of the residents of Regency House in relation to residential amenity. To avoid overlooking and a loss of privacy, the openings to the student bedrooms on the Northampton Lane elevation have been designed with angled windows to look diagonally across the lane and to stop direct overlooking to the existing windows. The height onto Northampton Lane has been reduced from six to five floors to avoid issues of overbearing. Given the location of the proposed development to the south of Regency House, overshadowing is inevitable and this is not uncommon in an urban situation. Plus whilst the rooms in Regency House will lose their outlook, there is no planning right to a view and the car park was only approved as a temporary use of land.

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Therefore it is considered that the design and scale of the urban block onto Northampton Lane is acceptable in terms of urban design and residential amenity with regard to the tests set out in the Residential Design Guide.

In principle a tall building is acceptable on this site subject to the design tests as defined by the consider zone of the tall building strategy SPG. The siting of the tower on the corner of Kingsway and Christina Street is strongly supported; this reinforces this urban corner whilst allowing the tower to feature positively in views west along Kingsway.

The tower dimensions are 18m north-south, 18m east-west and 40.5m high. It is approximately 40% the height of the 107m Meridian Quay tower and 55% the height of the approved Mariner Street with 72m tower. The tower has been through a number of design revisions to ensure that the elevations appear slender and the top makes a positive contribution to the skyline. As the prominent south and east elevations are 18m wide and the tower is relatively low rise in height this has required the elevation to be broken up into two vertical bands using changes of materials and steps in the façade. This has been positively achieved in the final scheme with two vertical frames of Portland Stone effect screen cladding (this material to reflect the Pobl Building). This light coloured cladding is separated by a golden metal iridescent cladding which would be a bold and colourful finish. The elevation is further positively articulated by full height windows grouped to reinforced the slenderness and verticality. The skyline has been positively addressed in the final scheme by using the striking golden metal cladding for this element; reducing the massing of the upper floors; and by raising the south east corner to a point that is symmetrical and responds to the junction of Kingsway and Christina Street.

The ground floor active frontage areas incorporate a shallow colonnade where the masonry and structure from above comes down to ground level with the extensive glazing set back behind. This creates a high quality street elevation with active frontage. The entire ground floor onto Kingsway maximises active frontage with a commercial unit and entrance to the student accommodation. The commercial unit is a small scale café type unit which is considered appropriate in size, given the objective of accommodating smaller scale mixed uses in this area (the Swansea Central area to the south is the main focus for large footprint commercial uses). The student communal facilities wrap around to Christina Street to provide natural surveillance of the adjacent bus stop. There are student bedrooms on Northampton Lane at ground level. This will help make the lane feel safer but the privacy and security of these bed rooms will be paramount and this can be ensured by a suitably robust metal railing boundary treatment.

The urban scale block and tower incorporates windows in the side elevations that reflect that this building will be seen in the round from all sides. This address visibility looking east along St Helens where the southern frontage steps forward of the Pobl Building and looking and south down Christina Street.

The scheme incorporates an internal private courtyard for students only. There is no external public realm proposed as part of this application and therefore a contribution towards the public realm enhancements on Kingsway immediately adjacent to the site should be sought to address the requirements of the Tall Building Strategy SPG.

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There is no on site car parking proposed due to the accessibility of the site and proximity to existing city centre multi storey and surface car parks. Furthermore drop off can be achieved from the service road that wraps around the southern frontage parallel to Kingsway from Newton Street. This approach is supported and allows the ground floor to incorporate a private residential courtyard for students. There is however a cycle store access off Northampton Lane.

The proposal is accompanied by a desk top wind effects report that highlights issues of limited duration on the south east corner that could affect persons waiting at the bus stop on Christina Street. Mitigation in the form of a wind canopy fixed to the building and sides to the bus stop are suggested and it is considered that this can be adequately addressed through a condition.

The architectural approach reflects the post-war heritage of Kingsway in a positive manner. The red brick and Portland stone effect cladding finishes reference buildings in the area and the golden metal cladding will be an especially striking addition. The windows typically are joined across floors with feature spandrel panels which is a characteristic of the post war architecture of Kingsway. The materials are quality and robust, and there is no render proposed. The final detail of the materials including fixings etc can be controlled by a condition requiring a composite sample to be constructed on site.

This will be the first significant development scheme on Kingsway and it is considered to be a positive and bold addition to the city centre. The 307 student rooms and new commercial space will generate significant levels of footfall. The layout redefines the street edges and the tower will become a new landmark on Kingsway.

### Townscape and Visual Impact Analysis

A Townscape and Visual Impact Assessment (TVIA) has been submitted to provide an analysis of the potential townscape and visual affects arising from the proposed development. In summary, the assessment considers:

- o The townscape character of the site and surrounding area;
- o The visual role of the site in the surrounding area;
- o The sensitivity of townscape and views to change, having regard to the susceptibility of receptors to change and the value of the townscape and visual resources;
- o The scale of the change arising from the proposed development to the townscape and views, and
- o Whether the change would be beneficial, neutral or adverse.

This TVIA should be read in conjunction with the drawings and documents contained in the application submission including the Design and Access Statement and Accurate Visual Representations (AVRs) prepared by iCreate.

The TVIA has been undertaken from a number of public vantage points including:

- o The Kingsway - bus stop to south eastern end of The Kingsway
- o The Kingsway - adjacent to 64 The Kingsway
- o Community Garden within the former 'Vetch Field'
- o St. Helen's Road - opposite junction with George Street
- o Nicander Parade - Mayhill

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### Conclusions

The TVIA concludes that the proposed development would respond positively to the local context, enhancing it through:

- o Redefining the frontage to the Kingsway, Christina Street and Northampton Lane, providing natural surveillance and high quality building frontages
- o Acting as a visual marker of the approach to the City Centre from St. Helen's Road, and generally aiding legibility within this area of City
- o Contributing to a more coherent urban character for the northern edge of The Kingsway

It is anticipated that the character of The Kingsway will be undergoing change as a result of the ongoing regeneration of the City and the development site lies within an area highlighted as 'City living, working and learning' as defined within the Swansea Central Area: Regeneration Framework (February 2016). One of its key objectives is to 'increase employment opportunities, inject a wider mix of uses and add to the vibrancy of the Central Area'. The proposed development has the opportunity to be one of the first developments to kickstart the regeneration of this key complementary area.

In keeping with the aspirations of the Swansea Tall Building Strategy (October 2015) the proposed development would fulfil the following roles:

- o Create a distinctive skyline that projects a new image for the city;
- o Form a key landmark within a legible city;
- 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, optimising densities, and proximity to public transport.

The effect of the proposed development upon views has been considered from a number of representative viewpoints. This assesses the visual impact using an accurate 'grey box' representation of the proposals overlaid onto photographs from these viewpoints.

The visual role of development on the site from the surrounding area would be notable and in longer range views its role will be to provide a new city centre landmark within the wider panorama. The residents at Regency House, Northampton Lane will experience the greatest visual effects resulting from the proposed development.

The increased level of enclosure provided by the development would be beneficial to users of The Kingsway, the northern end of Dillwyn Street and pedestrians at the junction of Christina Street and Mansel Street. The visibility of the proposals from the eastern end of St. Helen's Road would also prove beneficial, providing the opportunity for the creation of a new focus and potential for improved legibility for those using this key route to the City Centre from the west.

While the development of this site will be visible from a number of viewpoints due to its location and height, the proposals would generally have either a neutral or beneficial effect upon views and visual amenity. It is considered that the proposed development would be compatible with the townscape character of the surrounding area, and would enhance both the site and its surrounding, creating an attractive new piece of townscape and providing a contemporary landmark for the city.

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The TVIA assessment concludes that the proposals would have either a neutral or beneficial effect upon views and visual amenity, and is concurred with and the proposal will clearly be visible as a focal point and this is considered to be a bold beneficial addition to the city scape.

Wind Microclimate Assessment

The original submission was accompanied by a Desk-based Pedestrian Level Wind Microclimate Assessment. This concluded that with the proposed development built out, wind conditions at the site are expected to be generally suitable for the intended pedestrian use at ground floor, with the exception of lone location that required additional shelter. The increase in building massing over the existing site results in a generally windier environment, however, this remains similar to the baseline assessment. Mitigation measures have suggested to mitigate windy conditions to the south east corner where there is a bus stop.

Following the design amendments the wind microclimate assessment has been reviewed. The proposed amendments to the scheme include an increase to the height of the main tower, which occupies the southeast part of the development site. This increase in height would be expected to make conditions slightly windier at ground level, due to the increased impact of 'down-washed' wind from the sides of the tower. While this change would likely be small, the conditions in this area were already close to the upper threshold of acceptability.

It is recommended that further localised mitigation measures are developed for the area around the southeast corner of the site (in addition to the bus stop mitigation, which would still be required) to ensure a suitable wind environment for pedestrians. This mitigation would be likely comprise either landscaping at street level or horizontal elements (e.g. a canopy or fin) projecting from the façade of the building. With appropriate localised mitigation in place this should be suitable for the intended pedestrian usage.

**Impact on Residential Amenity**

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

A Daylight and Sunlight Report has been submitted to determine the impact upon the amenity of the occupants of the neighbouring properties. Daylight and sunlight calculations have been undertaken in accordance with the Building Research Establishment Report 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice' 2nd Edition, 2011(the "BRE guide") and also British Standard 8206 - 2: 2008 - 'Lighting for Buildings - Part 2: Code of Practice for Daylighting', to which the BRE guide refers.

The Report has summarised the impact on Daylight as follows:

Of the 72 windows tested, 69 (96%) will continue to meet the targets set out in the BRE guide. The BRE numerical target for daylight using VSC measurements is for the surrounding buildings to retain 0.8 times, or more, their existing values. An aperture to both 2 and 4 Christina Street marginally transgress this target at 0.76 and 0.72 times their existing values.

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However, both of these apertures are the third aperture in two bay windows, and the two additional mitigating apertures in both bays meet the BRE targets. It is considered that there will be no noticeable difference in the effect on daylight amenity to either 2 or 4 Christina Street. In the mirror image scenario for 10 -11 Christina Street, of the 52 windows tested 45 (84.4%) will continue to meet the targets set out in the BRE guidelines. The failed windows on the third floor will retain between 0.79 to 0.73 times the existing which although do fall marginally below the BRE target, existing light level remain good reaching VSC levels between 23.99% to 25.16%. The windows to the second floor that do not meet the target will retain 0.79 times their existing values only narrowly missing the BRE targets by 0.01 times and there will be no materially noticeable difference in the daylight amenity in this scenario. Using the alternative targets provided in the BRE guide the test results to the surrounding buildings generally meet the targets with only limited minimal transgressions.

The Report has summarised the impact on Sunlight as follows:

Of the 51 windows tested, 50 (99%) will continue to meet the targets set out in the BRE guidelines. The non-compliance with the target is, in part, due to existing restrictions, affecting the window concerned, caused by projections from existing adjoining buildings and/or the subject buildings itself. The property that is affected has other windows in the same elevation that meet the target and the single failed aperture will continue to receive relatively good levels of sunlight. The BRE's sunlight target is 25% of the annual amount of sunlight available and the failed window exceeds this at 33% APSH, while also retaining 2% for the winter sunlight level when the target level is 5%.

Given the urban nature of the location, and the fact that the existing site is underdeveloped for an urban setting, the Report considers the results to be good. The results suggest that, in overall terms, the effects to the surrounding buildings are within conventionally acceptable limits, and are in line with the BRE's recommendations for properties in an urban setting.

As indicated above, the height of the building has been restricted to 5 storeys adjacent to the northern boundary to avoid any overbearing effect on the residential flats in Regency House along the northern side of Northampton Lane, and the original proposed height on the Northampton Lane elevation was reduced by a storey in response to the Pre-Consultation process with the residents. Additionally, privacy windows are also incorporated in the rear elevation to avoid direct overlooking of habitable-room windows.

These amendments now meet the amenity criteria of the BRE Guide, and 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 to the north on the opposite side of Northampton Lane 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.

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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.

A Transport Statement has been submitted in order to assess the impact of the development. The site is located in an extremely sustainable location in the City Centre and along a major bus route and so as excellent access to public transport both bus and rail and a number of local amenities within a short walk. The Transport Statement Assessment indicated that the Highway Network could accommodate the additional traffic generated by the proposal.

### Car Parking

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

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



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One of the objections received against the proposal is that the development would result in the loss of the existing surface pay and display car park resulting in a reduction in the parking provision within the city centre. However, the site only benefits from a temporary planning permission which expires 3 August 2017 (Ref:2015/1175) pending the redevelopment of the site.

### Pedestrian and Cycle Access

It is proposed that pedestrian and cycle facilities are to be enhanced by the development. A sum of £97,415 has been agreed with the developer in line with the Council's Supplementary Planning Guidance on Highways contributions. The contribution to be made at an agreed point in the development and tied into the beneficial occupation of any of the units. It is proposed to provide 80 cycle parking spaces within the development which is considered appropriate and would encourage students to use this sustainable mode of transport.

### Highways Infrastructure

As indicated the developer has agreed to make contributions of £97,415 towards works to upgrade the cycle and pedestrian facilities in the area. The redevelopment of the whole site will require new footways and public areas and this will need to be undertaken by a Section 278 agreement if the developer wants to keep the footways etc as adopted highways as they currently are. The plans indicate that the footways are to be laid out to tie into the public areas surrounding the proposed building envelope.

There is an existing strip of land along the site frontage (but within the proposed development site) indicated to be 'adopted highway boundary'. The development of this areas will require the 'highway' land to be subject to a Stopping Up Order either under the Planning Act or Highways Act. The former is a simpler process to enable development to be carried out in accordance with a granted planning permission.

### Conclusions

The Transport Statement indicates that the development will not result in a material increase in car usage and associated congestion, subject to the mitigation measures proposed and a robust tenancy agreement to prevent car ownership is secured in a Section 106 Planning Obligation. The Section 106 Planning Obligation will also secure the financial contributions of £97,415 as outlined above for the upgrade works to the pedestrian and cycle facilities. Planning conditions will also require all highway works to be completed to Highway Authority Standards and Specification and the implementation of a Travel Plan. On this basis the application is considered to be acceptable in relation to its impacts upon highway safety and parking in the area.

### **Impact on Archaeology and Cultural Heritage**

#### Archaeology

The application is accompanied by a Heritage Desk-Based Assessment which has included a Written Scheme of Investigation which was principally a desk-based study.

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This concludes that there are no designated historic assets located within the site and therefore there are no significance archaeological remains which may be truncated by the proposed development. If there are any unknown / unidentified archaeological remains surviving beneath the site, they would have likely to be already been truncated by previous modern development. Glamorgan Gwent Archaeological Trust (GGAT) concurs with the conclusions of the Heritage Desk-based Assessment that there are no known designated or non-designated sites that may be physically impacted by the development and as a result there is unlikely to be an archaeological restraint to this proposed development.

### Cultural Heritage

Policy EV1(x) of the UDP states that new development shall have regard to the desirability of preserving the setting of any listed building. Policy EV2 (vi) states that new development must have regard to the physical character and topography of the site and its surroundings by avoiding detrimental effects on the historic environment. Policy EV6 seeks to protect, preserve and enhance Scheduled Ancient Monuments and their settings as well as unscheduled archaeological sites and monuments and their settings.

The Heritage Desk-Based Assessment has identified two Scheduled Monuments located within the 1k study area, both relating to the buried and upstanding remains of Swansea Castle approx. 540m to the east of the Site. Additionally, St. James Gardens and Crescent, a Grade II Registered Park and Garden, is located approx. 645m west of the site. CADW have been consulted on this application in their remit as assessing the likely impact on Scheduled Monuments and Registered Historic Parks and Gardens. Whilst the proposed building would be visible from the top of the Castle over the roofs of the existing city centre buildings, CADW conclude that at worst the proposed development will have a very low impact on the setting of scheduled monument Swansea Castle. In respect of the Registered St. James's Gardens and Crescent Historic Park and Garden, the intervening buildings will block all views to and from the historic garden and the proposed development, and consequently the proposed development will have a no impact on its setting.

There are 8 Listed Buildings which have been identified as potentially susceptible to an impact. These are:

- o Mond Buildings, Grade II Listed c.185m east of the site;
- o Llewellyn Hall and YMCA Building, Grade II Listed c.85m south-west of the site;
- o Pagefield House / Quaker Meeting House, Grade II Listed c.115m south-west of the Site;
- o The Former Albert Hall, Grade II Listed c. 210 north-east of the site;
- o Mount Pleasant Baptist Church, Grade II Listed c.210m north-east of the site;
- o Carlton Cinema, Grade II Listed c.175m southeast of the site;
- o Tavern Public House, Grade II Listed c.190m south-east of the Site; and
- o St Andrew's United Reformed Church, Grade II Listed c.250m south-west of the Site.

The Oxford Street / Nelson Street / Union Street Conservation Area is located to the east of the site, however, the Assessment concludes that due to the prevailing urban character, the proposals would not harm the character of the Conservation Area. In assessing the settings of the historic assets, the Assessment has identified that there will be no adverse non-physical effects upon their heritage significance; and in reaching this conclusion had had regard to the provisions of Swansea City Council's Tall Buildings Guidance in reaching this determination.

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Whilst the Assessment has identified the above listed buildings within 400m of the site, given the intervening urban fabric of the site only the following historic assets have a visual relationship:

- o YMCA - this is the closest to the site (less than 100m away). The proposal would either be viewed as foreground or background to views of the YMCA looking east and west. Whilst the 14 storey tower will be a new landmark, this does not diminish the presence or architectural interest of the YMCA as there is sufficient separation within the urban street scene context and there would not be a detrimental impact on the setting.
- o Former St Andrews Church (now Mosque) - the dual pinnacles of St Andrews are a landmark looking along west Kingsway and the proposed 14 storey tower will not diminish this. As per the YMCA, the tower would be in the far background beyond the church when looking east along St Helens Road, so there would be no impact on the setting.
- o Mount Pleasant Baptist - the TVIA shows that in the view from Kingsway circle with the gable frontage of Kingsway Baptist Church in the medium foreground, the 14 storey tower would be visible in the further distance. Given the separation there is no impact on the setting.

Overall, it is concluded that the proposed development will have no adverse impact on the heritage assets and the proposed development would be consistent with the guidance within the provisions of Planning Policy Wales (Edition 9) and Technical Advice Note 24: The Historic Environment (May, 2017).

### **Flood risk and Drainage**

The Flood Risk Assessment and Drainage Strategy confirm that the site is entirely within a Flood Category Zone A and therefore has a low chance of flooding. The site is currently 95% impermeable and drains to the existing adopted combined sewer system to the north and east of the site. The Drainage Assessment has determined that the most appropriate method for the surface water management associated with the proposed scheme is to discharge to the public sewer system, although soakaway/infiltration techniques cannot be completely discounted until a site investigation has been undertaken. The design of the surface water drainage to serve the scheme will have no net effect on the existing sewer infrastructure capacity. The proposed development incorporates a green/sedum roof and a courtyard landscaped area therefore surface water runoff rates may in fact reduce. With regards to foul water flows, it is assumed that the existing foul water flows from the site unrestricted to one or more of the existing combined sewers adjacent to the site. The proposed on-site surface and foul water drainage systems to serve the scheme will be designed as separate systems and will not combine before connecting into the public sewer in accordance with current Building Regulations Part H. The Drainage Assessment concludes that the proposed development can be delivered in accordance with the requirements of the Local Authority and current Building Regulation requirements, subject to detailed design. Dwr Cymru Welsh Water and the Council's Drainage Engineers raise no objections in this regard.

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## Pollution

### Noise

An Environmental Noise Assessment has been undertaken to determine the site's suitability for residential student accommodation and to assess the ambient noise data in order to identify the requirements in respect of the façade and ventilation strategy to meet internal dwelling noise level requirements and also to assess external plant noise emissions from the development on surrounding noise sensitive receptors, in particular the nearest residential properties being the apartment block on the northern side of Northampton Lane.

A day and night ambient noise survey has been undertaken at the proposed development site at the Junction of Christina Street and Newton Street. The noise climate during the day is primarily dictated by the local transport system, with both The Kingsway and Christina Street experiencing large traffic flows. During the night period the noise climate changes dramatically when traffic flows are reduced. This concluded that the site was exposed to moderate to high noise levels from traffic on Christina Street and The Kingsway during the day. Noise sources during the night comprised traffic on Christina Street and The Kingsway, although such noise during this period was moderate.

The noise survey data have been used to determine the anticipated facade acoustic performance requirements in line with the guidance provided in BS 8233:2014 and recommends that moderate to high acoustic performance glazing and ventilation elements will be required. The use of opening windows to provide rapid ventilation (should this be an option on this particular development) has been identified as a moderate to high risk strategy due to the external noise levels at the site and consideration of a mechanical ventilation and / or cooling strategy is recommended. The data have also been used to determine plant noise emission limit criteria in line with the guidance provided in BS 4142:2014.

The Head of Housing & Public Protection has confirmed the conclusions of the Environmental Noise Assessment and recommends that conditions are imposed to ensure all habitable rooms exposed to external road traffic noise shall be subject to sound insulation measures as stated in section 5.3 of the Environmental Noise Assessment HRS Ref. 124748 AC 2v1. 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.

With regard to the commercial use proposed for the ground floor, it is recommended that conditions are imposed requiring a scheme is implemented that adequately restricts the flow of sound energy through party walls and floors between the commercial and residential class uses within the development. Additionally, for the building services plant noise shall be designed to achieve a maximum daytime rating level as set out within the Noise Assessment Environmental Noise Assessment, a scheme for the control of ventilation and fume extraction and for a scheme which specifies the provisions to be made for any condensing units relating to refrigeration and freezing of products.

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Air Quality

An Air Quality Assessment Screening Report has been submitted with the application. The Head of Housing & Public Protection has discussed the assessment with the applicant's Consultants and requested an additional worst case scenario to be put through the assessment which produced a predicted NO<sub>2</sub> annual mean of 23.41µg/m<sup>3</sup>. The recommended noise conditions above reference the requirement for mechanical ventilation which will ensure that 'windows closed' is an option for the residential units. The Head of Housing & Public Protection states there are no air quality grounds to object to this application.

**Impact on Ecology**

A Preliminary Ecological Appraisal has been undertaken and includes a desk study and an Extended Phase 1 Habitat Survey. The site is dominated by the hardstanding of the temporary surface car park and there was no evidence of any protected species and has no biodiversity value. The single storey Indian Restaurant has been assessed for bat activity but the report concludes that it has negligible bat roost suitability. The Council's Ecologist confirms that the site does not have any significant ecological value. As such the application is acceptable in respect of its impact upon ecology.

**Refuse and Waste Management**

Policy R16 states that proposals for major new developments will be required to incorporate adequate and effective waste management facilities. The supporting text states that when assessing proposals for major new developments, the provision of waste management facilities for the collection, recycling and other management of all waste likely to be generated must be included.

There will be one central refuse store to service both accommodation blocks and will be located in Block B adjacent to Northampton Lane for ease of collection. The refuse strategy will be a managed system for collection days. The bins will be moved from the refuse store by the management team on collection day and located adjacent to the bin store within the site boundary. The refuse vehicle can then pull alongside the bin drop point and empty the bins. Once emptied, the bins will be moved back into the refuse store by the management staff. This will help make the process more efficient reducing the refuse vehicle's stop time.

The Council's Waste Management Team originally expressed concerns that the refuse store would not have sufficient capacity for a fortnightly domestic collection service but the Waste Team did indicate that a chargeable commercial service could be provided. Discussions have since been held with Swansea Council's Waste Management Department in order to develop a suitable refuse strategy proposal for the scheme in line with the Council's guidance and initiatives. As the scheme's use is student accommodation it has been discussed and agreed that development is a commercial offering and therefore falls under commercial waste and recycling. As such, the development's operator will engage with the Council to arrange for commercial refuse pick-ups. It has been agreed that the above proposal is agreeable in principle, with the finer details to be agreed at a later date and therefore a suitably worded planning condition is included.

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### **Fire Safety**

The application has been accompanied by a Fire Safety Overview Report which envisages that during the design development this report will be developed into a complete Fire Strategy for the approvals process. This complete fire strategy report will include any details of calculations, fire engineering analysis/ justifications required in the formal approval process from the relevant authorities. This report is provided for information only to inform the design of the issues that needs to be considered in the detailed design.

The report confirms that the design of the building has been carried out in accordance with British Standard BS 999:2015 Fire Safety in the design, maintenance and use of residential building Code of Practice. This includes fire detection and alarm systems, evacuation approach and fixed fire-fighting systems. The building will need to incorporate a sprinkler system, and additionally emergency lighting and smoke control / ventilation. It is also indicated that the external surface of the wall should adequately resist the spread of fire across the façade of the building in accordance with BS991:2015. The Report has also assessed the access and facilities for the Fire Service and concludes that the surrounding roads will allow access to the building.

### **Conclusion**

The proposal makes efficient use of an underutilised brownfield parcel of land which is in accordance with PPW's aspiration for the redevelopment of previously developed land. The site is not considered environmentally valuable and therefore there is no detriment to the natural environment. It has been demonstrated that the proposal accords with planning policy and that it comprises sustainable development as it provides social and economic benefits with limited environmental impacts. It has also been demonstrated that the scale and massing of this development is acceptable in this location given its sustainable location. The tower will be a bold addition to the City skyline and symbolises the successful regeneration of the Kingsway within the City Centre. The 307 student rooms and ground floor commercial space will generate significant levels of footfall and add a substantial boost to the diversification of The Kingsway. The proposal incorporates a slender tower of bold design with distinctive sloping roof profile. The site is close to many heritage assets and the proposals will have a consistently beneficial relationship so these precious buildings.

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

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**RECOMMENDATION:**

**APPROVE**, subject to the completion of Section 106 Planning Obligations to include the following clauses to prevent cars being brought to the development area and to include a financial contribution to highway infrastructure:

**1. Car Parking Management**

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

**2. Highway Infrastructure**

Financial contributions to fund upgrade works to the pedestrian and cycle facilities £97,415 within the vicinity of the development site. The contributions to be made at an agreed point in the development and tied into the beneficial occupation of any of the units.

3. Section 106 Management and Monitoring Fee - Costs incurred against the management of the obligation based on 2% of the value of the obligations = £1,948.30

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 and HC17 of the City and County of Swansea Unitary Development Plan (November 2008).

and subject to the following planning conditions:

- 1 The development hereby permitted shall begin not later than five years from the date of this decision.  
Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.

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- 2 The development shall be carried out in accordance with the following approved plans and documents:

AL-90-001 - Existing Block Plan; AL03-001 Rev B - Existing Site Location Plan; AL—03-002 Rev E - Existing Topographical Survey; AL-03-003 Rev P3 - Existing Stopping Up Order Plan; AE-03-001 Rev B - Existing Contextual Elevation; 16221 -100 Rev A - Drainage Plan - plans received 6 May, 2017.

415-16\_AL-20-001 Rev K - Site Plan, 415-16\_AL-20-002 Rev K - Ground Floor Plan,  
415-16\_AL-20-003 Rev G - First to Fourth Floor Plan,  
415-16\_AL-20-004 Rev F - 5th Floor Plan  
415-16\_AL-20-005 Rev G - 6th Floor Plan  
415-16\_AL-20-006 Rev G - 7th - 12th Floor Plan  
415-16\_AL-20-007 Rev G - 13th Floor Plan  
415-16\_AL-20-008 Rev F - Roof Plan

415-16\_AE-20-001 Rev F - Contextual Elevation;  
415-16\_AE-20-002 Rev F - Elevation 1 of 4;  
415-16\_AE-20-003 Rev F - Elevation 2 of 4;  
415-16\_AE-20-004 Rev F - Elevation 3 of 4;  
415-16\_AE-20-005 Rev E - Elevation 4 of 4;  
415-16\_AE-20-002 Rev F - Coloured Elevation 1 of 4;  
415-16\_AE-20-003 Rev F - Coloured Elevation 2 of 4;  
415-16\_AE-20-004 Rev F - Coloured Elevation 3 of 4;  
415-16\_AE-20-005 Rev E - Coloured Elevation 4 of 4;

415-16\_AS-20-001 Rev C - Cross-Section A-A 1 of 3;  
415-16\_AS-20-002 Rev C - Cross-Section B-B 2 of 3;  
415-16\_AS-20-003 Rev B - Cross-Section C-C 3 of 3;

- amended plans received 19 July 2016.

Reason: To define the extent of the permission granted.

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

Reason: In the interests of visual amenity.

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



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

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

Reason: In the interests of visual amenity.

- 5 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.

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

- 6 Notwithstanding any detail shown on the approved plans, details of all wind mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The proposed mitigation measures shall be referenced to the wind microclimate assessment and shall be implemented in accordance with the approved scheme and retained thereafter to serve the approved development.

Reason: In the interests of visual amenity and to ensure that the wind mitigation measures create an acceptable wind microclimate in and around the development.

- 7 Notwithstanding the details shown on any approved plan, precise details of the location, extent, design and finish of all visible external ventilation shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any superstructure works. Development shall thereafter take place in accordance with the approved details.

Reason: In the interests of visual amenity.

- 8 Prior to the beneficial occupation of the ground floor commercial unit with a Class A3 use, a method of ventilation and fume extraction shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented and retained thereafter to serve the use in accordance with the approved details.

Reason: To prevent any nuisance from fumes and/or cooking odours to the occupiers of neighbouring premises.

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking or amending that Order), Part 24 (Telecommunications) of Schedule 2 shall not apply.

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

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- 10 Notwithstanding the details shown on any approved plan, no superstructure works shall commence until a scheme for the hard and soft landscaping of the site has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall be carried out within 12 months from the completion of the development. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted  
Reason: To ensure that the site is satisfactorily landscaped having regard to its location and the nature of the proposed development, and to accord with Section 197 of the Town and Country Planning Act 1990.
- 11 All works to the Highway (footway and carriageway) shall be undertaken under a Section 278 agreement with the Highway Authority. This will include resurfacing of the footways on all frontages to Newton Street, Christine Street and Northampton Lane.  
Reason: In the interests of highway safety and to provide for an appropriate juncture between the highway and the development site.
- 12 Notwithstanding the details indicated in the application and prior to the commencement of development, a scheme to provide details of the highway frontage along Northampton Lane shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of how refuse vehicles and cyclists will service and access the area and providing a suitable boundary treatment to the ground floor residential units.  
Reason: In the interests of highway and cyclists safety.
- 13 The development shall be carried out in accordance with a Travel Plan to be submitted to and approved in writing by the Local Planning Authority prior to any beneficial use of the development commencing.  
Reason: In the interests of sustainability and to prevent unacceptable highway congestion.
- 14 Prior to the commencement of the development, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved CMS.  
Reason: To prevent impact on the public including minimising traffic impacts on the surrounding highway network.
- 15 Prior to the commencement 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.
- 16 Prior to the beneficial use of the development, details of a Waste/ Refuse Management Plan (including recycling facilities) for the future operation of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter take place and be managed in accordance with the approved plans.

**PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017**

**ITEM 1 (CONT'D)**

**APPLICATION NO:**

2016/3704/FUL

Reason: To ensure the management and movement of refuse within the site in the interests of site safety.

- 17 Prior to the occupation of the development 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 be brought into beneficial use in accordance with the approved drainage scheme, and this scheme shall be retained and maintained as approved.

Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment and to minimise surface water run-off.

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

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

- 19 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 on the ground floor.

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

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

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

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

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### ITEM 1 (CONT'D)

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

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

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

- 22 Prior to beneficial use of the development a scheme, which specifies the provisions to be made for any condensing units relating to refrigeration and freezing of products has been submitted to and approved by the Local Planning Authority. Such works that form part of the approved scheme shall be completed before the premises are occupied.

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

- 23 If, during the course of development, contamination 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 the said contamination.

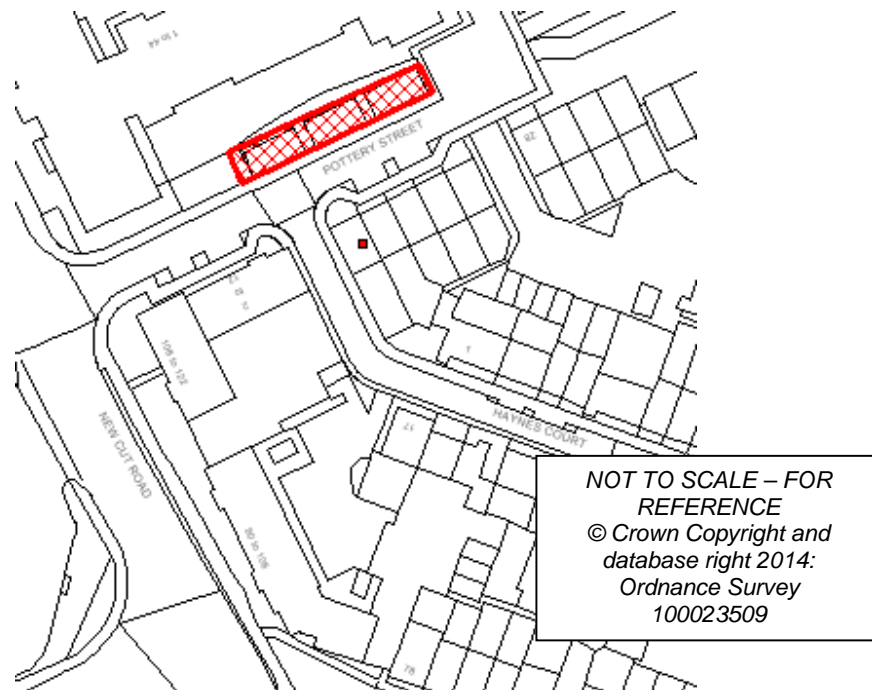
Reason: To ensure that the safety of future occupiers is not prejudiced.

### INFORMATIVES

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: (UDP Policies EV1, EV2, EV3, EV4, EV5, EV6, EV13, EV33, EV35, EV36, EV38, EV40, HC11, HC17, R16, AS1, AS2, AS5, AS6, CC1, CC2 & CC6)
- 2 The Developer must contact the Highway Management Group, The City and County of Swansea, Guildhall Offices, c/o The Civic Centre, Swansea SA1 3SN before carrying out any works and specifically in respect of works in the public highway.
- 3 **Notification of Commencement of Development & Display of Notice**  
The developer is reminded of the requirements to notify the local planning authority of the initiation of development in accordance with Schedule 5A of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 or any order revoking or re-enacting that order and to display a site notice in accordance with Schedule 5B of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 or any order revoking or re-enacting that order.
-

PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

ITEM 2 APPLICATION NO: 2017/0787/S73  
WARD: Landore - Area 1  
Location: (Former Unit Superheaters Engineering Site New Cut Road)Landscaping  
Adjacent 14, 16,18, 20, 22 (Plots 46-50) Pottery Street, Swansea, SA1  
2GA  
Proposal: Variation of landscaping condition 4 of planning permission 2007/2829  
(as approved under reserved matters 2010/0844 granted 22 February  
2011) with regard to completion of revised landscaping scheme  
Applicant: Mr Simon Hughes Bellway Homes



**BACKGROUND INFORMATION**

**RELEVANT PLANNING POLICIES**

**National Planning Guidance**

Planning Policy Wales (PPW - Edition 9 (Nov. 2016))

Technical Advice Note 12 - Design

**Swansea Unitary Development Plan**

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

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

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

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

### Supplementary Planning Guidance:

River Tawe Corridor Study

Places to Live: Residential Design 2014

### RELEVANT PLANNING HISTORY

- 2007/2829 Mixed use development comprising 967 student accommodation units within 1 no. part 6 storey, part 7 storey, part 8 storey part 10 storey block, incorporating ground floor retail unit (Class A1), and 1 no. part single storey part 6 storey block plus up to 349 residential units, freestanding café/restaurant (Class A3), bicycle storage, car parking, riverside walkway, reconfigured public open space, landscaping, highways and infrastructure works (outline).
- 2008/1990 Details of landscaping for proposed student accommodation (reserved matters approval pursuant to outline planning application ref: 2007/2829) (resolved to grant planning permission 19th August 2008)  
Decision: Grant Permission Conditional  
Decision Date: 21/05/2009
- 2010/0844 Construction of 106 residential units (59 two & three storey dwellings and 38 apartments in 3 three/four storey blocks & 9 "flat over garages") (details of the siting, design, external appearance, means of access and landscaping pursuant to conditions 2,4 & 7 of the outline planning permission 2007/2829 granted on 19th December 2008)  
Decision: Grant Permission Conditional  
Decision Date: 22/02/2011
- 2013/1016 Revised ground floor layout to phase 1 Student Accommodation incorporating management suite/common room, refuse store, plant room and retail area; and external layout comprising additional vehicular access via residential estate road together with 5 space car park and revised cycle provision, substation relocation and landscaping (reserved matters approval pursuant to the outline planning permission 2007/2829 granted on 19th December 2008)
- 2015/1293 Revised layout to phase 2 Student Accommodation (340 bedrooms) including 'handing' Block D and incorporating re-arrangement of management suite / plant room and external layout of courtyard comprising landscaping, circulation and site access, car parking and cycle provision, refuse stores and sub-station (reserved matters approval pursuant to the outline planning permission 2007/2829 granted on 19th December 2008)

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### RESPONSE TO CONSULTATIONS

The application was advertised in accordance with the Town and Country Planning (Development Management Procedure) Order 2012 (as amended) by neighbour notification letters to properties in Pottery Street and through display of a site notice dated 20 April 2017.

### PETITION OF OBJECTION

A PETITION OF OBJECTION with 41 signatures from 30 households in Llais Tawe has been received, together with a joint LETTER OF OBJECTION from the occupiers of 14, 16, 18, 20 & 22 Pottery Street and an individual LETTER OF OBJECTION have been received. The principle points of objection may be summarised as follows:

- If permitted, this would destroy a key feature of the approved landscaping plan to create an avenue of semi-mature trees along the main axis of the Llais Tawe development, and damage the quality of environment for all residents of Llais Tawe and visitors to the riverside walkway.
- The properties and landscaping along the south side of Pottery Street were completed at an early stage in Bellway's Llais Tawe development, as the northern side was part of the St David's construction site.
- Bellway assured purchasers that as soon as St David's Phase 1 was completed, the landscaping on northern side of Pottery Street would be completed to the same standard in accordance with the landscaping plan
- The landscaping scheme indicated an avenue of semi-mature trees along Pottery Street running between New Cut Road and the River Tawe.
- When Phase 1 St David's was completed all the remaining properties in Llais Tawe had been sold. At this point Bellway decided to minimise expenditure on the landscaping, and only 2 of the 4 trees were planted, one of which has since died.
- Bellway have only submitted this retrospective application for the down -graded landscaping following a complaint and a Council enforcement case.
- Bellway have made no justification for the down-grading of the landscaping other 'proximity to street lighting and insufficient space for tree', which is entirely spurious.
- Down-grading the number of quality of trees on the northern side of Pottery Street destroys the key design objective of creating an avenue of trees.
- Bellway rightly emphasised in the approved landscaping plan that trees "provide a vertical element to balance the height of the houses and apartments, and soften the built form". This argument is even more crucial given its immediate proximity to the 7 - 10 storey bulk of the St Davids development.
- The down-grading of the final phase of landscaping affects all residents and visitors to Llais Tawe, including pedestrians to the river walkway.
- The amended plan is an improvement but falls short of the approved landscape plan.
- On the revised plan, trees 1-4, 6, and 8-10 are shown as the same size: only trees 5 and 7 are shown as smaller. Yet on the original approved plan the key feature of the landscaping design was that trees 1-7 would all be large 'semi-mature hornbeams' to create an avenue of 'key structural trees' leading from New Cut Road towards the river Tawe (the 'key cross-site axis' to use Bellway's own words) while trees 8-10 are shown as small/medium ornamental trees.
- As so far implemented, trees 1-3 and 8-10 are in accordance with the approved plan.

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- However on the north side of Pottery Street, Bellway has so far planted 2 trees (in positions 4 and 6) but these are similar to the 'small/medium ornamental trees' in positions 8-10 - they are NOT 'semi-mature hornbeams' of a size and quality to match trees 1-3. [Tree 6 is also dead and has not been replaced].
- I am sure that the residents would accept the need to 'set back' the position of trees 5 and 7 because of the street-light close to position 5 - but only provided that all 4 trees (4-7) are semi-mature hornbeams of the same size and quality as trees 1-3 in accordance with the approved plan.
- The revised plan indicates grass to the north and east of the parking spaces to replace the existing stone chippings. This is a welcome move towards the approved plan, but Bellway still proposes to omit the shrub beds and small/medium ornamental trees in front of the St Davids boundary wall/railings. Why? This is not acceptable.

### APPRAISAL

#### Introduction

The application is reported to Committee for decision at the request of Councillor Bev Hopkins. The Constitutional threshold has been met as a petition of objection containing 41 signatures from a minimum of 30 separate addresses has been received.

This Section 73 application relates to the Landscaping Condition 4 under the original outline planning permission ref:2007/2829 (and as implemented under the reserved matters approval ref:2010/0844) for the Llais Tawe residential development at New Cut Road, Swansea. In particular, it relates to a section of the landscaping adjacent to the car parking area on the northern side of Pottery Street which abuts the St David's Student Accommodation.

#### Background

Outline Planning Permission under ref :2007/2829 was granted on 19 December, 2008 following the completion of a Section 106 Agreement for a mixed use development comprising 967 student accommodation units and up to 349 residential units, freestanding café/restaurant (Class A3), bicycle storage, car parking, riverside walkway, reconfigured public open space, landscaping, highways and infrastructure works. The planning permission comprised a 'hybrid' outline planning application, whereby full details of siting, design, external appearance and means of access were provided and approved in respect of the student accommodation element of the scheme, including the retail store (but excluded the details of the landscaping being reserved for subsequent submission - ref:2008/1990 granted 21 May, 2009) with the remainder of the site (comprising the residential development and the riverside walkway / open space) to be subject to a reserved matters submission.

The reserved matters approval for Bellway Homes (ref:2010/0844) for the residential component of the scheme has been completed together with the riverside walkway and open space provision.

Phases 1 and 2 of the student accommodation unit (totalling 722 bedrooms) have been completed (with Phase 2 to be occupied later this summer (2017) and a revised ground floor layout to the Phase 1 area together with a revised external layout was approved under ref:2013/1016.



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### Description

The approved landscaping scheme for this section of the residential development, as indicated on the Landscape Strategy drg. No. 374.01 indicates the planting of 4 no. 'structural trees' in between the car parking spaces with a grassed area to the rear of the car parking spaces and a strip of planting abutting the boundary with the student development to contain a shrub bed with additional small / medium ornamental trees. The completed landscaping has involved the planting of only 2 trees and the laying of stone chippings abutting the boundary wall / railing of the student development.

It should be noted that since the original reserved matters approval, the siting of the boundary to the Phase 1 student development was revised under planning permission 2013/1016 which resulted in the construction of the existing dwarf boundary wall / railing being brought closer to Pottery Street. This has reduced the available landscaping area as originally proposed.

Additionally, it should be noted that there is a strip of land at the back edge of Pottery Street, which was previously used as a temporary bin store area. This area is under the control of the St. David's student development and the ground has recently been reinstated / prepared in readiness to be grass seeded.

The current proposed amended landscaping scheme from Bellway proposes to plant 4 no. 'Carpinus betulas' hornbeam trees between the car parking spaces (to replace the 2 no. existing trees if dead / damaged) and to replace the stone chippings with turf.

### Policy Issues

Policy EV1 of the Unitary Development Plan seeks to establish the principles of development to ensure new development shall accord with a defined set of criteria and Policy EV2 indicates that new development must have regard to the physical character and topography of the site and its surroundings by avoiding locations that would have a significant adverse impact on landscapes, open spaces and the general locality, including loss of visual amenity. Whilst Policy EV4 seeks to ensure new development will be assessed against its impact on the public realm.

### MAIN ISSUES

The main issue to consider in this application is whether the revised landscaping scheme is acceptable having regard to visual amenity and the character of the area.

### Visual Amenity

As referred to in the representations, the approved landscape strategy identified the key axis running through the site (along Pottery Street) from New Cut Road to the Riverside Walkway. The axis was intended to be highlighted with an avenue of semi-mature 'Carpinus betula' hornbeam trees. The development has been substantially completed in accordance with this strategy, save for the area in question, and as indicated above, since the original scheme was approved, the boundary enclosure to the Phase 1 St David's student development has encroached into this area thus reducing the available landscaping area as originally proposed.

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The planting of the 2 additional trees and replacement of the 2 existing trees (if dead or diseased) would accord with the general landscape strategy of creating the 'avenue' of trees to soften the impact of the scale of the buildings. It is therefore considered that the revised scheme, even with the absence of some of the lower level planting of the form scheme, along with the provision of grass seeding/turfing of areas abutting the car parking area provides an acceptable visual solution to the street scene and accords with policies EV1, EV2 and EV4.

In order to ensure the scheme be implemented as approved it is proposed that a condition be imposed requiring the implementation of the scheme within 3 months of the date of the permission and that if trees planting in accordance with the scheme are removed, die or become seriously diseased within 2 years of planting are replaced with trees of a similar size and species.

### **Conclusions**

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.

As a Section 73 application, the only matter which can be considered is the condition to which the application relates and the permission itself is not a matter for consideration. The Section 73 application allows the LPA to reconsider conditions other than that which is the subject of the application to modify; however, in this instance the development has been completed and there is therefore not necessary to re-impose previous conditions. As indicated above, it is considered appropriate for a condition to be imposed requiring the revised landscaping scheme to be implemented within 3 months of this permission.

In conclusion, having regard to all material considerations, including the Human Rights Act., the proposal would represent a satisfactory form of development which complies with the criteria of Policies EV1, EV2 and EV4 of the Unitary Development Plan and would improve the appearance of the area. Approval is therefore recommended.

### **RECOMMENDATION:**

#### **APPROVE, subject to the following condition;**

- 1 The development shall be carried out in accordance with the following approved plans and documents: [17050(05) 100A - Site Layout & 17050(05)101A - Proposed Landscaping - plans received 26 May, 2017).  
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.

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**ITEM 2**

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- 2 The landscaping scheme as indicated on drg. No. 17050 (05) 101A shall be completed within 3 months from the date of this permission, and any trees which within a period of 2 years die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

Reason: In the interests of the visual amenity of the area and to ensure the site is satisfactorily landscaped in accordance with the approved landscape strategy.

**INFORMATIVES**

- 1 The development plan covering the City and County of Swansea is the City and County of Swansea Unitary Development Plan. The following policies were relevant to the consideration of the application: UDP Policies EV1, EV2 & EV4.
-

**PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017**

**ITEM 3**

**APPLICATION NO:**

2017/0962/FUL

**WARD:**

Uplands - Bay Area

**Location:**

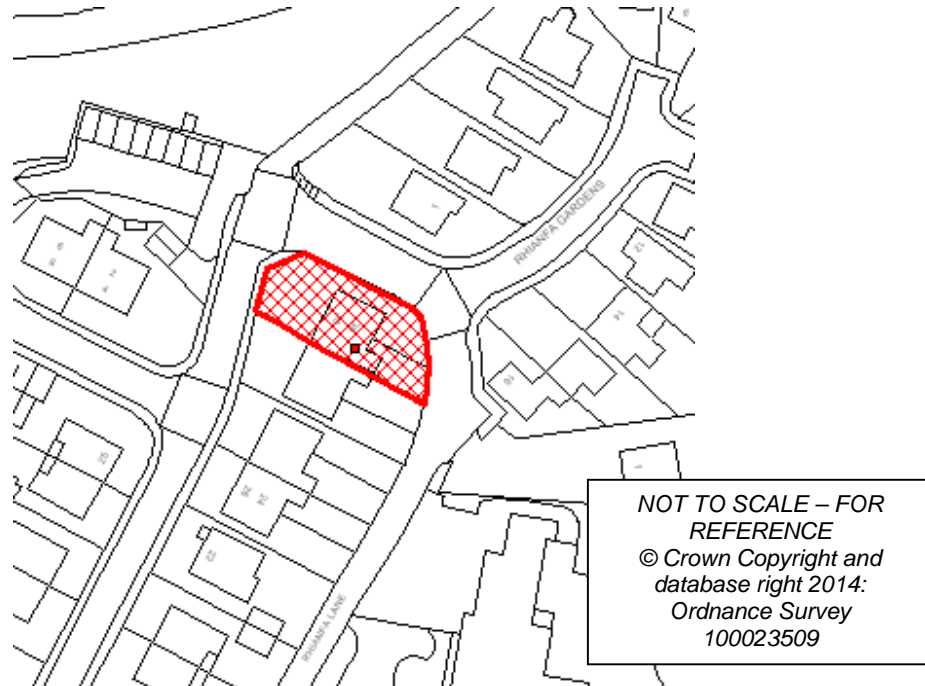
**38 Ffynone Drive, Uplands, Swansea, SA1 6DD**

**Proposal:**

**Change of use from 3 bedroom flat (Class C3) to 4 bedroom HMO for 4 people (Class C4)**

**Applicant:**

**Mrs Polly Priestley**



**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 - 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)

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### ITEM 3 (CONT'D)

APPLICATION NO:

2017/0962/FUL

#### 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)

#### UDP - AS6 - Parking/Accessibility

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

### SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/0962/FUL	Change of use from 3 bedroom flat (Class C3) to 4 bedroom HMO for 4 people (Class C4)	PDE	

### RESPONSE TO CONSULTATION

TWO neighbouring properties were consulted and the proposal was advertised on site. SIX LETTERS OF OBJECTION have been received which are summarised as follows:

- 1) There are too many HMOs in the area
- 2) Refuse concerns
- 3) Parking concerns
- 4) Noise concerns
- 5) The proposal exceeds the proposed SPG limits
- 6) Property not suitable for HMO
- 7) Fire hazard due to HMOs
- 8) Impact on the conservation area
- 9) HMOs are shabby and un-kept
- 10) Property is 2 bed not 3 bed

Additionally a petition of objection has been received containing 30 signatures citing the number of HMOs in the area as being too many and parking concerns.

**Welsh Water** - No objection

**Pollution Control** - No comment

**Highway Authority** - The applicant states that there will be 4 people sharing hence it is still below the 6 person threshold.

One off street parking space is proposed in the form of garage parking, it is stated that there is also an open parking space opposite however this has not been shown within the red line boundary on submitted details.

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**ITEM 3 (CONT'D)**

**APPLICATION NO:**

2017/0962/FUL

On street parking is unrestricted. It is clear from objections received that parking has been highlighted as a problem with competition for spaces being high, however, there is currently no residents parking scheme in existence and following a discussion with the Residents Parking Officer there are no recorded complaints or requests for such a scheme therefore there are currently no plans to implement one.

Submitted plans indicate that cycle storage for 4 no. cycles will be made available.

Based on recent appeal decisions, it is not considered that a refusal from Highways could be justified at appeal despite ongoing concerns regarding the cumulative impact of increasing numbers of HMOs in the area.

On that basis, no highway objections are raised to the proposal subject to:

1. The dwelling being used by no more than 4 persons in the interests of highway safety
2. Cycle parking to be provided in accordance with the submitted details prior to beneficial occupation of the HMO.

### **APPRAISAL**

This application is reported to committee for decision at the request of Councillor Peter May. Additionally, a petition of objection containing 30 signatures 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 38 Ffynone Drive, Uplands.

Amendments have been sought and gained following concerns raised by the case officer with the applicant with regard to the intensity of development and the impact of subdividing a bay window on the property's character and appearance. The amended plans, received 12 July 2017, have omitted the subdivision and reduced the number of bedrooms to 4.

The existing unit occupies the first floor of a semi-detached property which was constructed as a flatted development. The ground floor provides a separate unit of accommodation. The property is situated within the residential area of Uplands. The area comprises traditionally designed dwellings.

External alterations include the provision of 'velux' type windows to provide for the loft conversion. Cycle parking is proposed to the side of the property for 4 cycles and a waste and recycling area to the rear.

The original proposal sought consent for the reconfiguration of the first floor to create 5 bedrooms (including loft conversion). However following concerns raised regarding the unsuitability of the layout and the overintensive nature of the proposal the scheme has been revised to retain the existing 3 bedrooms at first floor level and create the additional bedroom in the loft.

ITEM 3 (CONT'D)

APPLICATION NO:

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### Main 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'.

### 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 the Local Planning Authority has produced a draft SPG related to HMOs 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, there would be an increase in the number of bedrooms by one.

**PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017**

**ITEM 3 (CONT'D)**

**APPLICATION NO:**

2017/0962/FUL

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 flat

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 is currently 1 HMO registered on Ffynone Drive out of approximately 30 properties. This equates to a percentage of 3.3% HMO within the street. With that being said 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'. Planning inspectors in recent appeal decisions have stated that whether or not a proposal is harmful depends on a planning judgement. In this instance given there are limited numbers of HMOs in this area and only one on this street, without empirical evidence, it is regarded that this is not a harmful concentration such that it complies with the aims of this criterion.



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There would be no significant adverse effect on local car parking and highway safety

In terms of highways matters the application property provides garage parking which is located separate to the main curtilage of the site on land opposite and the remainder of parking takes place on the street. Cycle parking is proposed to be provided on site for up to 4 cycles. Consultation has been undertaken with the Highway Authority who raise no objection with the application. The Highway Authority make reference to the objections received as part of this application citing parking being a problem with competition for spaces being high, however, refer to there being no current residents parking scheme and no recorded complaints or request for such a scheme.

Based on recent appeal decisions, the Highway Authority does not considered that a refusal from Highways could be justified at appeal. No objection is made subject to the following two requested conditions:

1. The dwelling being used by no more than 4 persons in the interests of highway safety
2. Cycle parking to be provided in accordance with the submitted details prior to beneficial occupation of the HMO.

With regard to the request to limit the number of people residing at the property a large family could currently reside at the property outside the control of the Local Planning Authority. However, due to concerns regarding the potential for overintensive use of the property as a 5 bedroom HMO it is considered reasonable to restrict the number of occupants to 4 in this instance. It is reasonable to require additional details in connection with the cycle parking to be provided prior to occupation of the HMO.

Appropriate refuse storage arrangements can be provided

The submitted plans show provision of a waste and recycling area to the rear of the property and this would be sufficient for the purposes of the HMO use.

### **Response to consultations**

With regard to the issues raised in the letters of objection, points 1-6 have been addressed above. With regard to the Conservation Area, the premises is not located within the Conservation Area and is considered to be of a nature that would have no tangible impact upon the nearest Conservation Area (Ffynone and Uplands). Fire hazards and property upkeep are not material planning considerations and are covered under separate legislation. With regard to the existing number of bedrooms, the Local Authority can only consider that which is submitted. Furthermore, the proposed arrangement is considered acceptable in this instance.

### **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.

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**ITEM 3 (CONT'D)**

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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 received 30th May 2017; proposed first floor plan (01), proposed attic plan (04), proposed elevations (05) received on 12th July 2017.  
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 No more than four residents shall live at the property, as part of the HMO hereby approved, at any one time.  
Reason: In order to control the density of development in the interests of residential amenity.
- 4 The HMO shall not be occupied until facilities for the secure storage of four bicycles 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 for the lifetime of the use.  
Reason: In the interest of 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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**ITEM 4**

**APPLICATION NO:**

2017/1164/FUL

**WARD:**

Sketty - Bay Area

**Location:**

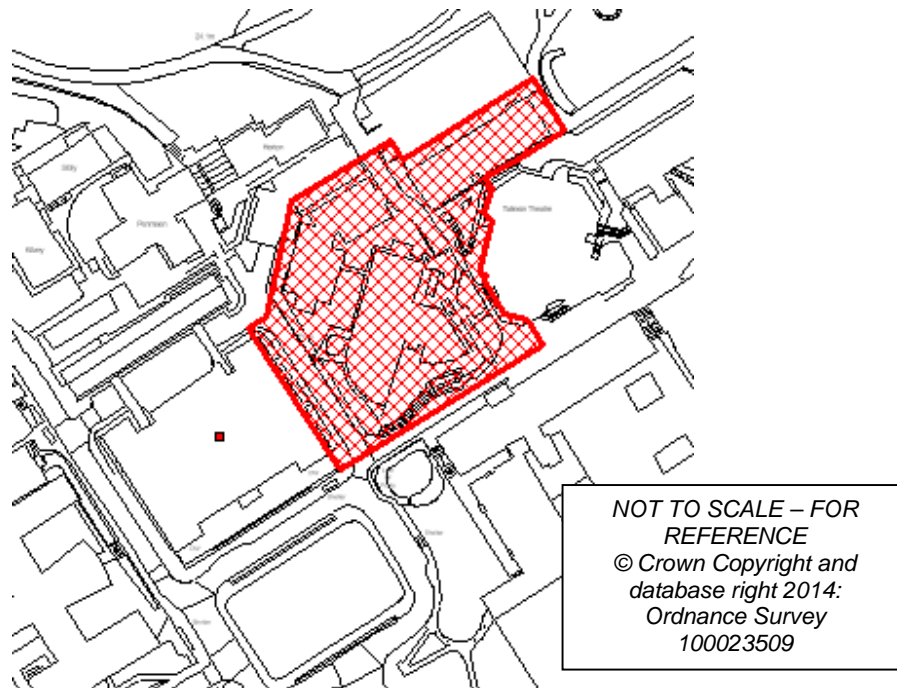
**Digital Technium & Fulton House , Singleton Park Internal Access Road, Sketty, Swansea, SA2 8PP**

**Proposal:**

**Construction of new multi use student activity centre building with link to Fulton House including demolition work to Fulton House, engineering works, replacement car parking and landscaping**

**Applicant:**

**Swansea University**



**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 - 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)

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### ITEM 4 (CONT'D)

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#### 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 - EV9 - Development in Conservation Areas

Development within or adjacent to a Conservation Area will only be permitted if it would preserve or enhance the character and appearance of the Conservation Area or its setting. (City & County of Swansea Unitary Development Plan 2008)

#### UDP - HC11 - Higher Education Campus Development

Higher education campus development will be permitted subject to compliance with the defined set of criteria. (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 - 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)

### SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/1164/FUL	Construction of new multi use student activity centre building with link to Fulton House including demolition work to Fulton House, engineering works, replacement car parking and landscaping	PDE	

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ITEM 4 (CONT'D)		APPLICATION NO:	2017/1164/FUL
2017/1248/LBC	Part demolition of eastern facade to allow creation of new 'link' to connect Fulton House to proposed new student activity centre. Phase 1 internal works to the ground and first floor including the demolition of partitioning, finishes and fittings and consequential making good and reinstatement of original glazing screens to the central refectory space (application for Listed Building Consent)	PDE	
2004/2241	New shopfront (Application for Listed Building Consent)	APP	25.01.2005

### RESPONSE TO CONSULTATIONS

The proposal was advertised on site and in the local press. No response has been received.

**Highways** - No objection. The applicant has supplied a proposed car parking plan which includes adequate replacement provision to ensure that the parking numbers are not compromised (as per the Highways comments on the pre-application enquiry).

The cycle parking has not been agreed but appropriate provision can be sited and as such this can be secured by condition prior to beneficial occupation of the new centre. No highway objections are raised to the proposal subject to conditions relating to car parking provision and cycle storage.

**Welsh Water** - No objection subject to sewerage conditions.

**Tree Officer** - No objection. The trees present on site are not protected by tree preservation order or by Conservation Area status, however under Section 197 of the Town and Country Planning Act 1990 it is the LPA's duty to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation of trees that contribute to amenity.

One tree is categorised as A (BS5837) - a large oak; the remaining trees (category C) are smaller, younger and planted as landscaping around the existing building. The proposed building will require the category C trees to be removed.

The removal of these trees will have little impact on the local amenity and are shown to be compensated for in the landscaping plan provided. There is no objection to the removal of these trees on this basis.

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The large oak requires protection during construction to prevent damage occurring to it. The tree protection plan (TPP) provided is not adequate to give this protection. The TPP is not an enforceable document as it uses 'should' several times, not 'must', 'will' or 'shall'. Assurance that no excavation will occur within the RPA is also required.

In the event of approval, a suitably updated tree protection plan condition is required.

**Drainage Officer** - No objection subject to condition relating to the submission of a comprehensive and integrated drainage of the site.

**Pollution Control** - No objection subject to a condition requiring details of soil type due to the presence of some contamination highlighted in the ground investigation report.

**Ecology** - No comments received to date.

**Design and Conservation Team Leader** - The proposed redevelopment of the Digital Technium site and construction of a Student Activity Centre (SAC) is supported by a comprehensive and well-illustrated Design and Access Statement that explains and justifies the proposals and also sets out the scheme evolution through the options explored and discounted.

The proposals have been subject to positive pre-application discussion including two Design Review Sessions with the DCfW in November 2016 and March 2017. The main DCfW comments can be summarised as follows:

**Design Commission for Wales ('DCfW')** - November 2016 comments:

- o Importance of original campus masterplan
- o Address people flows to, from and around the SAC
- o Ensure the scale of the SAC responds to the 'bookends' of Fulton House and avoid a dominant relationship
- o Ensure the scale and massing also relates positively to the Taliesin Arts Centre
- o Address the experience of moving between the old and new buildings internally
- o Use the elevations to highlight the entrances
- o Consider the elevation design in relation to Fulton House
- o Design the elevations in response to environmental aspects such as solar gain on the south side

DCfW March 2017 comments:

- o Encouraged an exemplar approach
- o Clarify the vision which is diluted by conflicting objectives
- o Address routes and wayfinding - especially on the north side
- o Design for flexibility
- o Address the energy strategy
- o Important relationships to Fulton House and Taliesin

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**ITEM 4 (CONT'D)**

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These issues highlighted by the DCfW have all been addressed in the final scheme as outlined in the following sections. The current Digital Technium building does not respect setting of Fulton House, it does not make good use of the plot, it does not relate well to the public realm of the Mall nor does it respect the underlying masterplan grid of Singleton Campus. Therefore although it is a new building, there is no objection to its demolition in terms of design and heritage.

It is accepted that the wider functions provided by the SAC cannot be accommodated within Fulton House as this would require a degree of internal alteration that is harmful to the listed building status, plus the space requirements simply would not fit. Therefore the proposal to construct a new SAC building alongside Fulton House with a link a wide internal ground and first floor link is supported.

Overall it is considered that the SAC is a well-designed building in its own right and it would be a positive and bold addition to Singleton Campus. Whilst it is a large building, the quality of the design and the careful handling of the massing (including the cutting back of the left top corner) ensures that the SAC would enhance the setting of the grade II listed Fulton House and it would also relate positively to the Taliesin Arts Centre. Approval is therefore recommended subject to conditions relating to its detailed design.

**CADW** - CADW consider there to be a neutral impact on the registered park and garden, Singleton Abbey and Sketty Hall as a result of the proposal and have raised no objection to the scheme.

### **Description**

Full planning permission is sought for the construction of a new multi-use student activity centre building with link to Fulton House including demolition work to Fulton House, engineering works, replacement car parking and landscaping. The building is of a comparable scale to the adjacent Fulton House with a footprint measuring approximately 55m in width (67m including link section to Fulton House), 45m in depth and a height of 18.5m over 4 floors. The link section is storeys in height and fully glazed to the front elevation.

### **ISSUES**

The main issues for consideration in this instance relate to the acceptability of the proposal at this location; the impact on the visual amenity of the area; the impact on the setting of the adjacent listed building and historic park; trees, drainage, the impacts on the residential amenities of neighbouring occupiers, the impacts on highway safety and ecology having regard to the criteria set out in Policies EV1, EV2, EV3, EV9, HC11, AS2, AS6, EV35 and EV36 of the City and County of Swansea Unitary Development Plan 2008.

Policy EV1 relates to design and specifically refers to, amongst other criteria, development having regard to the desirability of preserving the setting of any listed building; and requires development to sensitively relate to the existing development patterns, protecting natural heritage and cultural environment. The application site is located adjacent to and connect with Fulton House, a Grade II\* listed building and it is against this backdrop the application is assessed.

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**ITEM 4 (CONT'D)**

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Policy HC11 refers to higher education campus development and seeks to support schemes that demonstrate a layout, design and materials choice that are satisfactory; the intrinsic qualities of the site are respected; a satisfactory relationship with adjacent buildings and spaces; appropriate means of access and parking; quality landscaping integrated within the scheme; and no adverse impact upon residential amenity, natural heritage and historic environments.

Technical Advice Note 12 (TAN 12) Design (March 2016) includes advice on how promoting sustainability through good design may be facilitated through the planning system. The TAN sets out a 'route to good design' which encompasses an initial review of planning policy through to a continuous approval and collaboration stage which involves assessing design issues and pre-application discussions.

Technical Advice Note 23 (TAN23) Economic Development (February 2014) provides guidance for local planning authorities on developing high level economic planning objectives and assessing the economic benefits of new development. The guidance notes that economic development should contribute to all dimensions of sustainability and where economic development would cause environmental or social harm which cannot be fully mitigated careful considerations of the economic benefit will be necessary.

Technical Advice Note 24 (TAN 24) The Historic Environment (May 2017) contains guidance on planning application affecting the historic environment. The TAN encourages the use of Conservation Principles (2011, CADW) to guide such assessments. In terms of assessing setting, paragraph 1.25 identifies that some of the factors to consider and weigh in the assessment include the prominence of the historic asset, the expected lifespan of the proposed development, the extent of tree cover and its likely longevity and non-visual factors affecting the setting of the historic asset.

### **Background**

Swansea University is a wholly campus-based institution located on the South Wales coastline. The university comprises two individual campuses, the Singleton Park Campus and the Bay Campus, following the completion of the teaching facilities at The Bay Campus in 2015. Singleton Park accommodates the majority of the University's recreational facilities. The university received its charter in 1920 and in 1948 became the first UK campus-based institution. As such, Singleton Park now inherently accommodates all of the university's historically important buildings, the majority of which are excellent examples of British post-war architecture. Several developments have been undertaken at the university in recent years, to update/replace areas of building stock nearing the end of its life. As the Singleton Park Campus is bound on all sides, by either coast, a Hospital or conservation area, development land is extremely limited. As such, any future development options are highly constrained. Campus developments within the last 7 years include the re-cladding of Faraday Tower and the LIC Building, entrance improvements to Union House and the construction of Phase II Institute for Life Sciences building.

The applicant, within the submission, states the Student Precinct at Swansea University provides an opportunity for a comprehensive development at the heart of Singleton Campus which would provide an outstanding 'world class' student facility; Improve the 'stickiness' of the singleton campus and enhance the social activity throughout the day;



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Create attractive social opportunities for existing and prospective students; Ensure a true 'one stop shop' for student welfare and support; Improve overall student experience at Swansea University; And improve Swansea University's appeal to prospective students.

Justification has been provided which puts forward the case that the University has identified the need to centralise student academic and social welfare at the Singleton Campus. The proposed Student Precinct is to offer an improvement on the existing recreational facilities, welfare support services and teaching spaces to all students from both the Singleton Campus and the newly operational Bay Campus on Fabian Way. It is proposed that the new student precinct will act as the fulcrum to student life on the campus, linking existing routes and enhancing accessibility to surrounding buildings.

Fulton House is of special architectural and historic interest as recognised by the grade II listing bestowed by Cadw. Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory requirement in determining application for listed building consent to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. Paragraph 5.13 of TAN 24: The Historic Environment provides further explanation of the considerations including the importance of the building; its particular physical features; its setting; the impact of the proposed works on the significance for the building; and the potential community/ regeneration benefits. This consultation response applies these tests.

This grade II listed building was built in 1962 as the focal point for student life on Singleton Campus. The listing primarily relates to overall modernist architectural design and the role as the focal point within an early campus masterplan.

In recent years, Fulton House has become marginalised with the catering function reduced and the former dining spaced repurposed for teaching and group studies. The ground floor remains the function of student retail, but the internal commercial frontages have been much altered. This application should be read in conjunction with the current application (ref: 2017/1248/LBC), also under consideration at this committee, as the LBC application would facilitate the connection through the part demolition of the eastern façade to allow the link connection to Fulton House from the Activity Centre.

The significance of Fulton House extends beyond the building itself. The building and campus masterplan were both designed by Percy Thomas - one of the leading architects of the period. Together the building and masterplan represented an early move towards co-ordinating and organising educational developments that were prior to that ad-hoc and organic. The masterplan approach has come to typify higher education developments but unfortunately the masterplan at Singleton Campus has been watered down and recent buildings such as the Digital Technium have not respected the masterplan. The process of analysis that underpins this application has reasserted the importance of the grid masterplan and Swansea University has indicated that this will once again underpin any future development / redevelopment proposals at Singleton Campus.

Fulton House has become marginalised on campus; the main canteen at first floor closed, the ground floor evolved into an unappealing passage of retail units and cramped circulation areas, the upper floor former dining rooms converted to teaching space all due to changing student expectations.

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**ITEM 4 (CONT'D)**

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The current proposal is an opportunity to breathe new life into Fulton House and relaunch it at the heart of contemporary campus life.

The building that currently occupies the site is known as Digital Technium and was granted permission (2001/1545) by the Local Planning Authority in 2001. The University now considers the building surplus to requirements and has sought and received confirmation from the Local Planning Authority (2016/0661) that prior approval for its demolition is not required.

### **Visual Amenity and setting of Listed Building**

The application site is location along the 'Mall' on Campus and would replace the existing Digital Technium building and will act as a focal point for students and staff. The Mall is a key pedestrian route on campus and the site is bounded to the west by Fulton House and to the east, The Taliesin Arts Centre. The site can be viewed from the main approach from Mumbles Road. The Singleton Campus has several assets of significant heritage merit, none more so than Fulton House, which serves as the primary focal point when approaching from the main campus entrance. The proposed Student Activity Centre is located immediately to the right hand side of Fulton House and careful consideration has been given to the detailed design of the proposal and its relationship with Fulton House.

The site's topography is as such that there is a gradual slope towards the rear with a land level difference of approximately 3m. The building has been designed to accommodate the topography with side/rear access at a higher level, connecting to the first floor of the adjacent Taliesin building. The redevelopment of the Taliesin is subject to a further application (ref: 2017/1402/FUL) which is currently under consideration. It should be noted that the application site, Fulton House and the Taliesin all form an incremental, intrinsically linked and comprehensive redevelopment package to contribute to the overall campus redevelopment strategy.

The proposed four storey SAC would form a new central hub to Swansea University's Singleton Campus. It would contain student facilities, student welfare support, student union, food offerings, student retail, group and individual study space and teaching space. This project would also reinvigorate the adjacent grade II listed Fulton House as the focal point for eating and group study.

The siting and layout of the SAC responds to the underlying original Singleton Campus grid masterplan. It fills the plot and creates active frontage to define the adjacent public realm areas to the north, east and south.

The ground floor level of the SAC relates direct to the Mall and to public realm areas at different levels on the north, east as well as south. This comprises entrances and highly glazed areas; therefore the building maximises active frontage which is welcomed. The entrances are welcoming and legible, and they facilitate routes north-south and east-west through the building so that it becomes part of the public realm in its own right. The western internal link comprises the ground and first floor connection into Fulton House. Internally the large scale atrium will in effect be a new covered public space for the university that rises the full height of the building. Externally the architectural approach has been to 'float' the masonry above the glazed ground floor and to layer the facades with angled structural columns set back behind the glass.

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**ITEM 4 (CONT'D)**

**APPLICATION NO:**

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On one hand this positively marks the building out as 'of this time' whilst the design also references other works of Percy Thomas through the double height slot windows, Fulton House in through the scale and use of modernist architectural language and the Taliesin Arts Centre through the 45 degree angled elements.

The width of the ground and first floor connections to Fulton House relate to the width of the first floor refectory space which is the area of greatest significance in Fulton House. This would link through to the atrium of the SAC to create an internal plaza that is designed to create a distinction between the new building and listed building.

Although the SAC is taller than the immediate SW corner of the Taliesin Arts Centre, the proposed scale is similar to the overall Taliesin height to the main theatre space. The separation is informed by the original campus grid and the scale is relationship is mitigated through the use of materials with the glazed elevation rising up three stories and the stone cladding to the top floor only. This creates a light weight corner with the solid element apparently rising dramatically above the Taliesin.

There is a consistent architectural treatment to all elevations (there is no back), this means that the SAC relates positively not only to all parts of the surrounding campus, and also positively to Singleton Park which has a designated grade I historic status as well as enhancing the setting of the adjacent Sketty Conservation area which are 55m away at the closest point.

As well as the immediate direct relationship with Fulton House, the grade II listed law library and grade II listed Wallace Building are both within 100m of the proposed SAC building to the east and west respectively. Given the general built up nature of the campus it is considered that the proposal will have a neutral impact in respect of the wider listed university buildings.

The red line comprises more than the building footprint, this allows the Mall to the south be upgraded to allow spill out and the area to the east between the SAC and Taliesin Arts Centre to be remodelled to create a more useable space that works with the levels. The area between the SAC and Fulton House would become a service area that is close to public access. Whilst this would remove a pedestrian route, it is not currently well used and instead the intention is to direct pedestrian movement from the halls of residence to the north through the SAC. To the north, the existing trees are retained and there is scope for a softer public realm treatment, and beyond this the existing surface car parking is retained. It is recommended that the details of these external works are controlled through condition.

The application is considered to be acceptable in relation to its design, impact on visual amenity of the area and surrounding heritage assets and complies with the criteria set out in Policies EV1, EV2 and EV9 of the City and County of Swansea Unitary Development Plan 2008.

### **Residential Amenity**

The proposed unit is located within the Singleton Campus. There are residential towers to the rear of the site which form part of the halls of residence associated with the University. It is considered, however, that the proposal would not result in an adverse impact upon the occupiers or future occupiers of these units over and above that currently experienced as a result of the existing uses on campus.

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### ITEM 4 (CONT'D)

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The nearest privately owned residential accommodation are located a considerable distance away, beyond the boundaries of Singleton Park. As such there are no residential amenity issues associated with this scheme.

#### **Trees**

The Council's Tree Officer has provided comments following consultation and has confirmed that the removal of the trees specified in the submitted arboricultural report will have little impact on the local amenity and are shown to be compensated for in the landscaping plan provided. The imposition of a suitable condition relating to the tree protection is recommended.

#### **Drainage**

The Council's Drainage Officer has offered no objection to the scheme subject to a condition relating to surface water run-off. This condition is recommended.

#### **Highway Safety**

The Head of Transportation and engineering has raised no objection to the proposal subject to conditions relating to vehicular and cycle parking. These conditions are recommended.

#### **Ecology**

Whilst no comments have been received from the Council's Ecologist, the submitted Preliminary Ecological Appraisal (March 2016) confirms that the potential for bats, reptiles and amphibians to be present is negligible. On this basis the application can be considered acceptable in relation to its impact upon ecology. A standard bat and bird informative is recommended.

#### **Conclusion**

Having regard to all material planning considerations, including the Human Rights Act, it is considered that the proposal represents an acceptable form of development having particular regard to the criteria set out in Policies EV1, EV2, EV3, EV9, HC11, AS2, AS6, EV35 and EV36 of the City and County of Swansea Unitary Development Plan 2008 and, critically, the proposal would, subject to conditions, serve to enhance the special intrinsic quality of the adjacent listed building and would relate positively to the Taliesin Arts Centre. Accordingly, 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.

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**ITEM 4 (CONT'D)**

**APPLICATION NO:**

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**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 (18005 Rev P8), proposed site plan (18001 Rev P8), Proposed link floor plans (10011 Rev P8), proposed site plan detail (18007 Rev P8), Key buildings section (30001 Rev P8), proposed link elevations and sections (20001 Rev P7), GA elevations Student Precinct (20001 Rev P7), Ground floor (10006 Rev P8), first floor (10007 Rev P8), Second floor (10009 Rev P8), Third floor (10009 Rev P8), Roof plan (10010 Rev P8), Proposed drainage scheme (91003), landscape plan (91040 Rev P8) received on 25th May 2017.  
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Notwithstanding the submitted details, a large scale drawing to an appropriate scale shall be submitted to and approved in writing by the Local Planning Authority illustrating the following details:
  - Ground floor glazing
  - The south entrance
  - Stone cladding (soffit, facade, parapet and fixings)
  - The glazed link
  - The external cladding to the projecting lecture hall
  - Typical upper floor windowsAdditionally, a composite sample panel shall be constructed on site and made available to view by the Local Planning Authority prior to works commencing. The development shall be carried out in accordance with the approved details/materials.  
  
Reason: In the interest of visual amenity.
- 4 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 and soil details. 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.

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### ITEM 4 (CONT'D)

APPLICATION NO:

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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.

- 5 Notwithstanding the details hereby approved the works relating to the public realm improvements shall be carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The works shall be completed prior to the beneficial occupation of the building.

Reason: In the interest of visual amenity

- 6 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.

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.

- 8 The car parking, as indicated on the plans hereby approve, shall be laid out and made available for the purposes of car parking prior to the beneficial occupation of the development and retained as such in perpetuity.

Reason: In the interest of highway safety.

- 9 Prior to the beneficial occupation of the development, cycle parking shall be installed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall thereafter be retained in accordance with the approved details.

Reason: In the interest of 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, EV2, EV3, EV9, HC11, AS2, AS6, EV35 and EV36 of the City and County of Swansea Unitary Development Plan 2008.
- 3 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).

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ITEM 4 (CONT'D)

APPLICATION NO:

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The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of [www.dwrcymru.com](http://www.dwrcymru.com)

The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

- 4 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).

- 5 Birds may be present in this building and grounds please note it is an offence under the Wildlife & Countryside Act 1981 (as amended) to intentionally (intentionally or recklessly for Schedule 1 birds) to:

- Kill, injure or take any wild bird
- Take, damage or destroy the nest of any wild bird while that nest in use or being built
- Take or destroy an egg of any wild bird

Care should be taken when working on buildings particularly during the bird nesting season March-August.





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ITEM 5 (CONT'D)

APPLICATION NO:

2017/1248/LBC

### SITE HISTORY

App Number	Proposal	Status	Decision Date
2017/1164/FUL	Construction of new multi use student activity centre building with link to Fulton House including demolition work to Fulton House, engineering works, replacement car parking and landscaping	PDE	
2017/1248/LBC	Part demolition of eastern facade to allow creation of new 'link' to connect Fulton House to proposed new student activity centre. Phase 1 internal works to the ground and first floor including the demolition of partitioning, finishes and fittings and consequential making good and reinstatement of original glazing screens to the central refectory space (application for Listed Building Consent)	PDE	
2004/2241	New shopfront (Application for Listed Building Consent)	APP	25.01.2005

### RESPONSE TO CONSULTATIONS

The proposal was advertised in the local press and on site. No response has been received.

### APPRAISAL

This application is reported to committee for decision as it is associated with planning application 2017/1164/FUL which is being considered on this agenda.

### Description

This application seeks Listed Building Consent for:

- o Minor reconfiguration of ground floor east end to connect to the Student Activity Centre (SAC) - this comprises removal of non-original internal walls to the chaplaincy area and formation of openings to reopen the original internal link between SE and NE stairs. This will reveal 4 no. original circular internal columns that are currently lost within later alterations.

## PLANNING COMMITTEE – 1<sup>ST</sup> AUGUST 2017

ITEM 5 (CONT'D)

APPLICATION NO:

2017/1248/LBC

There will be some loss of external brick walling, window surrounds and window frames to make ground floor link - but these items are not unique and are repeated multiple times on the east and west elevations. The internal works will not affect the south-east and north-east stairs nor the ladies toilets with granite cubicle screens - these are original historic fabric.

- o Opening up first floor elevation including removal of brickwork, surrounds and eight windows (Fusion Café) to connect to SAC. Again whilst there is some loss of external walling and windows to make ground floor link they are not unique and together with the ground floor open up, this is still a modest proportion of the overall façade. The proposal is that structural columns will be retained and clad in circular to match other exposed columns in FH.
- o Removal of Fusion Café (originally the 'Snack Room') and reinstatement of glazed screen to main refectory space (to mirror the west screen that is still in place). This will reveal 4no original circular columns that are currently lost within later alterations and the original timber flooring is to be retained and refurbished. This will also include the insertion of a new screen at the north end of this space on the original alignment as shown in the as built first floor plan. This screen will define a modest café space off the main plaza area.
- o Sensitive refurbishment of main first floor refectory space. This grand double height space is the most significant space within the building retaining many original fittings. The proposed refurbishment includes; new acoustic ceiling, replacement of concealed plant within ceiling void, refurbishment of lighting, refurbishment of glazed screens and doors, refurbishment of timber panelling and refurbishment of flooring. This space will no longer be primarily a food space; instead it will be furnished with loose furniture to facilitate individual and group study as a learning commons. None of the furniture will be fixed, so it can all be removed for functions as per the original purpose of the space. It should be noted that the proportions of this space will not be altered by the proposed first floor link to the SAC due to the reinstatement of the glazed screen to what is currently the Fusion Café space. Therefore there will be connectivity from the refectory to the link and atrium within the SAC but it will be a distinct space in its own right.
- o New two storey link structure meeting Fulton House. This will be glazed to contrast with the existing brickwork and will meet the reveals of the former window openings. It is also set back at ground and first floor to ensure a distinct separation between the SAC and Fulton House.

The application has been supported by a Historic Impact Assessment and Design and Access Statement.

### ISSUES

The main issue for consideration relates to the visual impact of the proposals in terms of the need to preserve the Listed Building or its setting or any features of special architectural or historic interest which it possesses having regard to Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Technical Advice Note (TAN) 24: The Historic Environment (2017) and Policy EV7 of the City and County of Swansea Unitary Development Plan 2008.

ITEM 5 (CONT'D)

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### Impact upon Listed Building

Fulton House is of special architectural and historic interest as recognised by the Grade II listing bestowed by Cadw. Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory requirement in determining application for listed building consent to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. Paragraph 5.13 of TAN 24: The Historic Environment provides further explanation of the considerations including the importance of the building; its particular physical features; its setting; the impact of the proposed works on the significance for the building; and the potential community/ regeneration benefits.

This Grade II listed building was built in 1962 as the focal point for student life on Singleton Campus. The listing primarily relates to overall modernist architectural design and the role as the focal point within an early campus masterplan.

In recent years, Fulton House has become marginalised with the catering function reduced and the former dining spaced repurposed for teaching and group studies. The ground floor remains the function of student retail, but the internal commercial frontages have been much altered. This application should be read in conjunction with the current application (ref: 2017/1164/ful) which proposes the demolition of the Digital Technium building and construction of a Student Activity Centre (precinct) as the proposed link section connects with Fulton House. This listed building application would facilitate the connection through the part demolition of the eastern façade to allow the link connection to Fulton House from the Activity Centre. The works encompass the ground and first floor levels and include the demolition of partitioning, finishes and fittings and the consequential making good.

The proposals at Fulton House are supported by a comprehensive and well-illustrated Heritage Impact Assessment (HIA) in accordance of with the requirements of the recently released TAN24. This explains the history and significance of the heritage asset and justifies the proposed alterations. Given that Fulton House (formerly College House) was completed in 1962 the HIA contains many as built photos and plans which helps significantly in understanding the listed building.

When considering applications for Listed Building consent TAN24 sets out the Conservation Principles that should be used to assist in the decision making process. There are four heritage values which need to be understood before the significance of the asset can be assessed with these being; evidential value, historic value, aesthetic value and communal value.

The evidential value is considered to be medium on the basis that although the building has been altered internally (such as the repurposing of the various hierarchal dining rooms, replacement of main southern curtain wall glazing) during its relatively short life, it does still communicate the original purpose as the physical and social heart of the campus.

The historic value is considered to be medium on the basis that it symbolises a quality modernist building and early movement into campus masterplanning and the design by Percy Thomas, one of Wales's leading modernist architects.

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ITEM 5 (CONT'D)

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The aesthetic value is considered to be medium on the basis that Fulton House is a well-designed modernist building that was designed as the visual focal point of the campus; especially to close the long view up the Avenue from Oystermouth Road. Internally, the double height first floor refectory space is the most significant space retaining most of the original finishes and fittings, plus art works at east and west ends. This space occupies the focal front (southern) part of the building behind the recently replaced curtain wall glazing.

The communal value is again considered to be medium on the basis that Fulton House was designed as the social heart of campus. Whilst it has become somewhat marginalised and underused in terms of function, the central location means that there is scope to reinvigorate the building.

Therefore overall heritage value is considered to be medium and there is considerable scope for this listed building to evolve in order to remain relevance and function at the heart of Singleton Campus.

The significance of Fulton House extends beyond the building itself. The building and campus masterplan were both designed by Percy Thomas - one of the leading architects of the period. Together the building and masterplan represented an early move towards co-ordinating and organising educational developments that were prior to that ad-hoc and organic. The masterplan approach has come to typify higher education developments but unfortunately the masterplan at Singleton Campus has been watered down and recent buildings such as the Digital Technium have not respected the masterplan. The process of analysis that underpins this application has reasserted the importance of the grid masterplan and Swansea University has indicated that this will once again underpin any future development / redevelopment proposals at Singleton Campus.

Fulton House has become marginalised on campus; the main canteen at first floor closed, the ground floor evolved into an unappealing passage of retail units and cramped circulation areas, the upper floor former dining rooms converted to teaching space all due to changing student expectations. The adjacent SAC is an opportunity to breathe new life into Fulton House and relaunch it at the heart of contemporary campus life.

Overall the changes to the listed building outlined above are considered to be beneficial. Whilst some historic fabric is lost due to the ground and first floor connection to the SAC, these elements are not unique. Whilst internal spaces will be altered; this generally entails removing insensitive modern alterations. The main refectory space is to be sensitively refurbished which is welcomed. Therefore approval is recommended subject to referral to Cadw and providing for conditions to ensure the following details are submitted and approved:

- o Details of protection of flooring, doors and walls in areas where alterations are proposed
- o Details of protection of art works within first floor refectory area
- o Details of new ceiling to first floor refectory space
- o Methodology for refurbishment of internal fittings such as refectory lights, glazed screens, internal doors, timber panelling, timber flooring
- o Details of circular casings to exposed structural columns
- o Large scale details of interface of ground and first floor link from SAC to Fulton House
- o Details of any alterations to plant, vents and M&E services

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**ITEM 5 (CONT'D)**

**APPLICATION NO:**

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The Council's Urban Design and Conservation Team Leader has been consulted as part of the application and has recommended this application is approved subject to the above condition. The proposal is therefore considered to respect the Listed Building and its special features in compliance with the tests set out in the Planning (Listed Building and Conservation Areas) Act 1990 and is in accordance with the criteria set out in Policy EV7 of the City and County of Swansea Unitary Development Plan 2008, having no significantly adverse impact upon the special character and appearance of the Grade II Listed Building that would warrant a refusal in this instance.

### **Conclusion**

Having regard to all material considerations including the Human Rights Act, the proposal is considered to represent an acceptable form of development that would serve to protect the special character and appearance of the Grade II listed building and would be in accordance with the criteria set out in Policy EV7 of the City and County of Swansea Unitary Development Plan 2008, paving the way for the link section and Student Precinct development.

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 and referral to CADW for further direction:**

- 1 The development hereby permitted shall begin not later than five years from the date of this Listed Building Consent.  
Reason: To comply with the provisions of Section 18 of the Listed Building and Conservation Areas Regulations 1990.
- 2 The development shall be carried out in accordance with the following approved plans and documents: Site location plan (SI241\_STL\_XX\_00\_DR\_A\_XXXX\_18010\_P8), Proposed site plan detail(SI241\_STL\_XX\_00\_DR\_A\_XXXX\_18012\_P8), proposed link floor plans (SI241\_STL\_XX\_01\_DR\_A\_XXXX\_10011\_P8), proposed link elevations and sections (241\_STL\_XX\_01\_DR\_A\_XXXX\_20002\_P8), key buildings sections (SI241\_STL\_XX\_XX\_DR\_A\_XXXX\_30001\_P8) received on 6th June 2017.  
Reason: For the avoidance of doubt and to ensure compliance with the approved plans.
- 3 Notwithstanding the plans hereby approved and prior to works commencing a scheme shall be submitted to and approved in writing by the Local Planning Authority that includes:

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**ITEM 5 (CONT'D)**

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- Details of the protection of flooring, doors and walls in areas where alterations are proposed;
- Details of protection of art works within the first floor refectory area;
- Details of the new ceiling to the first floor refectory space;
- A methodology for refurbishment of internal fittings such as refectory lights, glazed screen, internal doors, timber panelling and timber flooring;
- Details of circular casings to exposed structural columns
- Large scale details to an appropriate scale of the interface of the ground and first floor link from the Student Activity Centre to Fulton House;
- Details of any alterations to plan, vents and M&E Services.

The scheme shall be implemented in accordance with the approved details.

Reason: In the interest of safeguarding the special character and appearance of the listed building.

**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: Policy EV7 of the City and County of Swansea Unitary Development Plan 2008.
-

## **Report of the Head of Planning & City Regeneration**

**Planning Committee - 1 August 2017**

**Planning Application Ref: 2008/0512**

**Residential Development (outline)  
Land off Brithwen Road Waunarlwydd Swansea SA5 4QX**

### **1.0 Background**

1.1 This application was reported to the Area 2 Development Control Committee on the 25<sup>th</sup> June 2013 with the recommendation that planning permission be approved subject to conditions and subject to the applicant entering into a S106 planning obligation in respect of:

- i) The provision of 30% Affordable Housing, which shall be “pepper potted” throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.
- ii) Prior to beneficial use of the site commencing, the provision of road safety enhancements shall be undertaken on Swansea Road.

A copy of the report to Planning Committee is attached as Appendix A.

1.2 Following the committee resolution, the applicant has stated that the viability test for the site shows that the scheme could not support the affordable housing contribution of 30%. As a result, the Section 106 agreement has not been signed and the planning permission has not been issued.

### **2.0 Main Issues**

2.1 The applicant has submitted numerous viability tests over the last year, and following an assessment of the submitted viability appraisals, a meeting and further negotiation, it is considered that a reduction in the level of affordable housing is appropriate. The applicant has offered 15% affordable housing, based on a scheme of 27 units, which equates to 4 affordable housing units.

2.2 In this location, the Housing Enabling Officer has confirmed that the ‘need’ is for social rented housing rather than for low-cost home ownership. The affordable housing price for social rented is 42% Acceptable Cost Guidance (ACG). The level of ACG cannot be negotiated as the Registered Social Landlord (RSL) cannot take social rented housing for higher than 42% ACG.

2.3 The application is in outline form with all matters reserved. As no actual numbers of units are specified within the application, it is considered that the density of the site can be increased from the 27 units quoted within the applicants viability appraisal to

accommodate the required number of affordable units without making the site unviable.

### **3.0 Recommendation**

3.1 It is recommended that:

The applicant entering into a S106 planning obligation in respect of:

- ii) The provision of 15% Affordable Housing (to DQR standards), with an ACG of 42% which shall be “pepper potted” throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.
- ii) Prior to beneficial use of the site commencing, the provision of road safety enhancements shall be undertaken on Swansea Road – a contribution of £10,000 towards new signage and road markings.

If the Section 106 planning obligation is not completed within 3 months of the foregoing resolution then delegated powers be given to the Head of Economic Regeneration and Planning to exercise discretion to refuse the application on the grounds of non-compliance with policies HC17 and HC3 of the City and County of Swansea Unitary Development Plan (November 2008).

### **BACKGROUND PAPERS**

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

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

<b>Contact Officer:</b>	<i>Chris Healey</i>	<b>Extension No:</b>	<i>7424</i>
<b>Date of Production:</b>	<i>30<sup>th</sup> June 2017</i>	<b>Document Name:</b>	<i>Brithwen Road.</i>



# Appendix A

ITEM	APPLICATION NO.	2008/0512
	WARD:	Cockett Area 2

**Location:** Land off Brithwen Road Waunarlwydd Swansea SA5 4QX  
**Proposal:** Residential development (outline)  
**Applicant:** Liberty Properties (Homes) Ltd

This application was DEFERRED at the Area 2 Development Control Committee on the 16<sup>th</sup> April, 2013, for the provision of further clarification on various issues including land availability; the capacity of the sewerage system; ecology; impact on the bridleway; school capacity; and mine workings. I have expanded on these issues in more detail in my report, but would summarise the key points as follows:-

## Land Availability

As indicated in my report the majority of this application site (apart from a small strip of land adjacent to the river) has been allocated for residential development for many years (since approx 1989), and was originally allocated in the Swansea Local Plan and is currently allocated for residential development in the City and County of Swansea Unitary Development Plan. The principle of this land being suitable for residential development has therefore been long established. As an allocation in an adopted development plan this land is considered to be committed for development and forms part of the committed land bank.

The selection of allocated housing sites for the UDP has been based on an adopted land use strategy set out in the UDP (refer to paragraphs 3.3.1 – 3.3.3, page 83), which explains the sequential testing process. This highlights that existing sites, such as Brithwen Road which are in the committed land bank, were considered together with previously developed land and brownfield land, before considering any new infill or greenfield sites. The site at Brithwen Road also met the rigorous selection criteria set out in Planning Policy Wales, with no known constraints that could not be overcome.

The current housing allocation was subject to higher scrutiny at the last UDP Inquiry when the Welsh Government Inspector agreed that the allocation should remain in the Plan. Moreover, since the UDP Inquiry the EAW (now NRW) have revised their Flood Maps so that no part of this site is now in the critical C2 Zone, and there is therefore no flooding constraint to the development of the site.

In conclusion, whilst there may be brownfield sites in the area, these would not take priority over this committed land bank site and would be considered on their own merits, having regard to any constraints to development. There are no known grounds to depart from the UDP policy allocation which allocates this site in West Swansea for up to 30 houses under Policy HC1 (127).

## Capacity of the sewerage system

This development will separate surface water and land drainage from foul water, so the only drainage impact on the existing sewerage drainage system to Gowerton WwTW would be

the foul connections. It is estimated that the maximum foul flow (from a maximum of 24 houses) from this site will be the equivalent of removing surface water from approximately two existing small houses, which is very small in hydraulic capacity terms, and can easily be accommodated by compensatory water savings already made from other brownfield developments in the area.

Dwr Cymru Welsh Water has not objected to this scheme. Whilst the Environment Agency (now Natural Resources Wales) raised concerns last autumn regarding the impact of new residential development on the water quality of the estuary, there is no conclusive evidence that supports this view, and the Agency has since agreed to the Council's adopted Habitats Regulation Assessment. The HRA conclusions are based on **objective information available through the 2010 Environment Agency's own Review of Consents of Gowerton WwTW.**

**The current outline application if approved will be subject to planning conditions controlling drainage, including the use of SUDs, and will require further detailed information to be submitted at Reserved Matters stage. On this basis, there is no known evidence to justify refusal at outline planning stage on drainage grounds.**

### Ecology

The Department's ecologist has revisited the site this month and has reviewed the Ecological Survey information previously submitted, and is satisfied that this is still representative of the ecological footprint on this river meadow site. In addition to the 7m berm along the river protected by Bye Law and the TPO's, my report recommends conditions and informatives to protect the high value species and habitats along the river. These include a requirement for further surveys to check for roosting birds or dormice if any future work is planned along the public footpath or riparian corridor. In conclusion, it is considered that there are sufficient controls available to the Council and NRW to protect the most important habitat which is the riparian corridor and TPO trees.

### Impact on Bridleway

The site boundary is drawn up to and adjacent to the bridleway but does not physically encroach onto it, apart from a very small area of dual use where the new highway access would enter the site. As such there is no direct harm to the continued use of this bridleway.

### School capacity

As previously indicated in my report, the latest capacity school figures (published by the Education Department in Autumn 2012) demonstrate that there are no current capacity issues at the local feeder schools. It should be noted that the trigger points identified in Part 3 of the current S106 guidance are not prescriptive and form the basis for negotiation. In this case, it is known that the abnormal costs of delivering this 'allocated UDP' site are high given the need for pre commencement ground investigations, etc. Moreover, the overriding need for 30% affordable housing in this area and the need for traffic calming on Swansea Road, are still considered to meet the S106 tests as being 'necessary' and 'reasonable' on this relatively small site, and would still, it is considered, take precedence over any other requests for contributions.

### Mine workings

The application was submitted with a supporting document, 'Geoenvironmental, Geotechnical & Mining Desk Study Report', and due to the presence of the nearby conjectured coal seams and relatively shallow depths, a Coal Authority report was sought by the applicants, which does not raise any issues or objection to this development.

#### Additional correspondence

The report has also been updated to include four further letters of objection, which have not raised any fundamental issues not already addressed in the report.

#### Conclusions

My report has been updated to provide further clarification and detail of the above issues. In the light of these further considerations, my recommendation remains for APPROVAL, subject to conditions and a S106 requiring 30% affordable housing and highway contributions.

### **BACKGROUND INFORMATION**

#### **POLICIES**

<b>Policy</b>	<b>Policy Description</b>
Policy EV36	New development, where considered appropriate, within flood risk areas will only be permitted where developers can demonstrate to the satisfaction of the Council that its location is justified and the consequences associated with flooding are acceptable. (City & County of Swansea Unitary Development Plan 2008)
Policy HC1	Allocation of housing sites for 10 or more dwellings. (City & County of Swansea Unitary Development Plan 2008)
Policy EV34	Development proposals that may impact upon the water environment will only be permitted where it can be demonstrated that they would not pose a significant risk to the quality and or quantity of controlled waters. (City & County of Swansea Unitary Development Plan 2008)
Policy EV1	New development shall accord with a defined set of criteria of good design. (City & County of Swansea Unitary Development Plan 2008).
Policy EV2	The siting of new development shall give preference to the use of previously developed land and have regard to the physical character and topography of the site and its surroundings. (City & County of Swansea Unitary Development Plan 2008).
Policy EV3	Proposals for new development and alterations to and change of use of existing buildings will be required to meet defined standards of access. (City & County of Swansea Unitary Development Plan 2008)
Policy EV22	The countryside throughout the County will be conserved and enhanced for the sake of its natural heritage, natural resources, historic and cultural environment and agricultural and recreational value through: i) The control of development, and

ii) Practical management and improvement measures.  
(City & County of Swansea Unitary Development Plan 2008)

- Policy EV23 Within green wedges development will only be permitted if it maintains the openness and character of the green wedge and does not contribute to the coalescence of settlements or adversely affect the setting of the urban area. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV24 Within the greenspace system, consisting of wildlife reservoirs, green corridors, pocket sites and riparian corridors, the natural heritage and historic environment will be conserved and enhanced. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV25 Development, alone or in combination with other plans or projects, which is likely to adversely affect the integrity of a European protected site (SAC, Marine SAC, SPA and Ramsar Sites) and is not directly connected with or necessary to the management of the site. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV30 Protection and improved management of woodlands, trees and hedgerows which are important for their visual amenity, historic environment, natural heritage, and/or recreation value will be encouraged. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV33 Planning permission will normally only be granted where development can be served by the public mains sewer or, where this system is inadequate, satisfactory improvements can be provided prior to the development becoming operational. (City & County of Swansea Unitary Development Plan 2008)
- Policy EV35 Development that would have an adverse impact on the water environment due to:  
i) Additional surface water run off leading to a significant risk of flooding on site or an increase in flood risk elsewhere; and/or,  
ii) A reduction in the quality of surface water run-off.  
Will only be permitted where it can be demonstrated that appropriate alleviating measures can be implemented. (City & County of Swansea Unitary Development Plan 2008)
- Policy HC3 Provision of affordable housing in areas where a demonstrable lack of affordable housing exists. (City & County of Swansea Unitary Development Plan 2008)
- Policy HC17 The Council will negotiate with developers to secure improvements to infrastructure, services, and community facilities; and to mitigate against deleterious effects of the development and to secure other social economic or environmental investment to meet identified needs, via Section 106 of the Act. (City & County of Swansea Unitary Development Plan 2008)

Policy AS1	Accessibility - Criteria for assessing location of new development. (City & County of Swansea Unitary Development Plan 2008)
Policy AS2	Accessibility - Criteria for assessing design and layout of new development. (City & County of Swansea Unitary Development Plan 2008)
Policy AS3	Accessibility - Protection of public rights way. (City & County of Swansea Unitary Development Plan 2008)
Policy AS6	Provision of car parking in accordance with adopted standards. (City & County of Swansea Unitary Development Plan 2008)

## **SITE HISTORY**

<b>App No.</b>	<b>Proposal</b>
89/0732/01	HOUSING DEVELOPMENT. Decision: Withdraw Decision Date: 05/11/1990
2005/1879	Detached dwelling (outline) Decision: Refuse Decision Date: 20/12/2005
2006/0868	One detached dwelling (outline) Decision: Grant Permission Conditional Decision Date: 24/10/2006
78/1088/01	RESIDENTIAL DEVELOPMENT Decision: Withdraw Decision Date: 01/08/1980
80/0120/01	RESIDENTIAL DEVELOPMENT Decision: Withdraw Decision Date: 01/01/2001
81/1697/01	RESIDENTIAL DEVELOPMENT Decision: *HGPC - GRANT PERMISSION CONDITIONAL Decision Date: 11/05/1982
75/0866/01	RESIDENTIAL DEVELOPMENT Decision: *HRP - REFUSE PERMISSION Decision Date: 22/12/1975

## **RESPONSE TO CONSULTATIONS**

## **ORIGINAL SUBMISSION**

The application was advertised on site and in the press as a development that may have a substantial impact on the amenity of the area in which it is situated, and two individual properties were consulted individually. A PETITION OF OBJECTION (562 INDIVIDUAL NAMES) and 17 NO. LETTERS OF OBJECTION were received and 1 NO. LETTER OF OBSERVATION, which are summarised as follows:-

#### PETITION OF OBJECTION

1. Concerns regarding the initial advertising of the application, which was subsequently re-advertised in the Press as being of substantial impact.
2. Question why CCS is determining the application and concerns regarding the ethics given that the applicant receives sponsorship from the Council in other areas of its operations.
3. The development site is an area of water meadow and woodland, including oak woodland, lying south of current housing.
4. Concerns regarding the status of this land - Question whether the application site is in Green Belt.
5. Concerns regarding the nature reserve in this area.
6. Cumulative impact of this development with other development in the area.
7. Concerns regarding the validity given the timing of the survey, and provenance of its findings the ecological survey having regard to local knowledge on wildlife in this area.
8. This site is in a floodplain and concerns that building on this land will exacerbate flooding in this area.
9. Sewer in this area is known to have severe infiltration issues and attempts by Welsh Water in 2001/2 have failed to resolve this. Further development will make this situation worse.
10. Concerns regarding previous development in the area off Gorwydd Road that has caused problems.
11. Concerns regarding traffic on Brithwen Road.
12. Additional pupils in local primary where we are aware there are deplorable buildings and pupil numbers on the roll are already at capacity.
13. Pointed out that if there is a need for extra housing in the area the Alcoa site is ideal even though it is a huge development with infrastructure problems. (i.e. Existing development site not Greenfield).

#### LETTERS OF OBJECTION

1. Concerns that the scale of this development will have a substantial deleterious impact on the amenity of the area.

2. The land is a mature woodland and set-aside pasture located on the floodplain of the Gorsfawr brook, home to numerous species of wildlife.
3. Concerns that this land will cause flooding in this area.
4. Neighbours bought properties because the land was protected from development.
5. Land used by the community from walkers to cyclists and somewhere children can play safely.
6. Concerns that development will increase anti-social behaviour.
7. The capacity of Brithwen Road is poor with it being reduced to one lane due to cars being parked along it.
8. The access to Brithwen Road would need a mini roundabout at the junction of Brithwen Road and Swansea Road which would mean more highway for the Highways Department to maintain.
9. Development of this site will cause more pollution.
10. Concerns that electrical mains wiring work was taking place in Brithwen Road prior to the new development being granted approval.
11. Concerns regarding the validity given the timing of the ecological survey, and provenance of its findings. Reference to report from RSPB.
12. Concerns over flash flooding and drainage capacity in this area.
13. The land allocated for this development has the main 600mm diameter sewer from Upper Killay, Three Crosses, Dunvant and Killay passing through it. Known that this sewer has severe infiltration issues and attempts by Welsh Water in 2001/2 have failed to resolve this. Being monitored by third party contractor for CCS and DCWW. Further development will add more pressure to an aging sewer network that is struggling to cope with the demands of today.
14. Is the land fit for development given previous mining history in the area.
15. Noted that density and layout of previous development in the area off Gorwydd Road allowed at Appeal has caused problems.
16. Concerns regarding traffic from this development which could generate another 60 cars trying to exit the estate where there is already a very busy junction where Brithwen Road meets Swansea Road.
17. Concerns over impact on the local school and further development need at the school with loss of some of its land. Congestion of traffic at school time and additional traffic will cause hazards for children.
18. Concern that extra development will have on amenities and services in the area such as medical facilities which are already strained in this area.
19. Reference to alternative possible housing sites in the area such as the Alcoa site.

20. No objection in principle but made the following points:-

1. Previous submission for building adjacent to 94 Brithwen Road (applications 93/0829 and 2006/0868) were refused on grounds that applicant required to conform to building line established with No. 96. Assume this should apply to any new development alongside 94 Brithwen Road.
2. Environment Agency objected to 2006/0868 on flooding grounds as that development encroached in part into the Flood Zone. Presume the EA will make same recommendation to be consistent.
3. The application contains a supporting survey from a commercial company who surveyed the trees with Tree Preservation Orders that could affect the application. Concern that this report is carefully inspected by Council's tree specialist.
4. Cost of loss of habitat should be considered, and impact of traffic and need for mini roundabout considered, as well as future impact of detailed layout on No. 94 Brithwen Road.

#### FURTHER ECOLOGICAL INFORMATION SUBMITTED (27/06/08)

Following the submission of further ecological survey reports, further consultations were carried out with neighbours and previous objectors, as well as Andrew Davies AM, the RSPB and Countryside Council for Wales. A subsequent letter was received confirming that the PETITION OF OBJECTION still stands. 1 Letter of OBJECTION was received reiterating a previous objection.

#### AMENDED SITE PLAN SUBMITTED (14/07/09)

An amended site plan was submitted to ensure that the red line boundary abutted the nearest public highway. The application was accordingly re-registered and re-advertised in the press as a development that may have a substantial impact on the amenity of the area in which it is situated, and neighbours and previous objectors were re-consulted. PREVIOUS PETITION OF OBJECTION (562 INDIVIDUAL NAMES) and 9 No. LETTERS OF OBJECTION received reiterating previous concerns, and the following additional point:-

1. Concerns that one access off this site is not suitable for additional traffic. An access point from Hillbrook Close is essential.

#### Environment Agency (17/04/08)

Original Observations summarised as follows:-

The Agency advised that the application be DEFERRED pending the submission of further information for review. The application site lies partially within zone C2, as defined by the development advice maps (dam) referred to under TAN15 Development and Flood Risk (July 2004). The Agency's Flood Map information, updated on a quarterly basis, confirms the site to be at risk of flooding. Request that the applicant should submit an Assessment of Flood Consequences. Also the applicant should submit details of the proposed surface water management. SUDs should be used where possible. If the above information is not forthcoming the Agency would in accordance with Para.11.2 recommend that the application be refused.



Updated response (4/03/09):-. The Agency WITHDREW ITS OBJECTION on the basis that the site is no longer identified as falling in a flood risk area, and the Agency no longer require a FCA to be submitted. However, as the site is served by the Gowerton Sewerage Treatment Works the Agency raised concerns regarding the ability of this site to deal with new flows generated from this site during storm or wet weather flows, and the possibility of a storm discharge which could result in pollution of controlled waters. The application must be accompanied by a full surface water drainage scheme, which details (along with diagrams) how surface water with assurances that any discharge will not place additional stress on the STW. In addition the Agency recommends SUDs and Conditions to any planning permission.

Updated response (27/08/09):- Observations summarised as follows:-

Note that the plans now include access onto Greenways. No additional comments refer to previous letters on the 17/04/08 and 2/03/09.

Updated response (17/10/12) summarised as follows: -

OBJECTION on the grounds that the Agency understands that the combined sewage infrastructure which serves the location of this development is hydraulically overloaded. This has manifested itself in a number of spills from a downstream combined sewer outflow at Waunarwydd Caravan Site (Asset No. 70321 and Permit No. BP0243001). This CSO has an indirect impact on designated shellfish waters and should not spill more than 10 times per annum, averaged over a 10 year period. This is to ensure compliance with the EC Shellfish Waters Directive (2006). This CSO has been modelled to currently have a spill rate of 33 times per annum averaged over a 10 year period. In the light of these concerns the Agency have grave concerns in allowing further connections and input to this hydraulically overloaded system. The EC are currently scrutinising the local situation with a view to possible infraction in relation to the Urban Waste Water Treatment Directive. Hence any further deterioration must be avoided. The Burry Inlet, in addition to the shellfish waters designation also constitutes part of the Carmarthen Bay and Estuaries European Marine Site, which is a sensitive receptor. Dwr Cymru is aware of the capacity issues on this part of the network and has provisionally programmed works to remedy the problem in AMP 7 (2020 – 2025). This would mean that the issue would not be addressed before 2020.

In summary, the Agency has suggested a Grampian condition restricting the start of development but has also noted that the timescale of 2020 takes us beyond the standard period for a planning permission (5 years). Therefore the Agency asks the LPA to consider an alternative mechanism. An example is for the developer to help pay for works to remove existing surface water from the system.

If the developer feels unable to wait for DCWW's programmed works and is unwilling/unable to enter into agreement with DCWW to undertake works to free up capacity in the short term, then the Agency would object to the application and recommend that the Local Planning Authority refuse the application.

In addition, the EAW referred to flood risk which now shows the site is outside the current flood outline. A Flood consequence assessment is not required but as the site lies adjacent to Gors Fawr Brook, classified as a main river, if recommended for approval the Agency requests a condition to protect the riparian corridor and protect the interests of maintaining access to the watercourse. The Agency also requests SUDs, Japanese Knotweed, and pollution prevention to be controlled by condition.

Dwr Cymru Welsh Water (29/04/08) –

NO OBJECTION, subject to conditions and informatives.

E-mail response (4/03/13) summarised as follows:- DCWW are not objecting to this development; the overloading issue which the EA refer to is at Gowerton WwTW so its the MOU side of spills rather than the sewerage network between the site and the treatment works.

Countryside Council for Wales (27/05/08) -

Original Observations summarised as follows:-

OBJECTS as there is insufficient information for the Agency to assess the proposals. Requests a comprehensive survey of the possible adverse effects on otters, bats and dormice, which are European protected species under the Conservation (Natural Habitats &.) Regulations 1994. If necessary details of a scheme for conservation of the species should be submitted. Where these species are present a development may only proceed under a licence from the Welsh Assembly Government.

Updated response (31/07/08) –

NO OBJECTION but CCW advised that scrub clearance should be undertaken between August and March and natural tree species planted as part of landscaping scheme. In addition a 7 metres undisturbed riparian corridor should be retained along the length of the stream bank to protect habitats for bats and a movement corridor for otters. All artificial lighting should be directed away from this corridor. The tree lines along all site perimeters should be retained.

Updated response (26/08/09) –

OBJECTS because there is not enough information to assess the possible effects on the Carmarthen Bay and Estuaries Special Area of Conservation (SAC), Burry Inlet Special Protection Area (SPA), and Burry Inlet RAMSAR. Recommend that a Test of Likely Significant Effect is undertaken prior to determination to assess whether the plans/project is likely to have a significant effect alone or in combination with other plans/projects. The issues to be included in the TLSE to include Surface water drainage and Foul Water drainage.

Updated response (13/03/13) –

CCW has NO OBJECTION in principle to the proposal.

HRA issues - CCW refer to the following document : “Habitats Regulations Assessment of the effects of wastewater associated with new development in the catchment of Carmarthen Bay and Estuaries European Marine Site: Final Version (v2) David Tyldesley Associates, 10 December 2012 “ , and confirm that they are content with the approach that the Council will be using for all planning applications in Swansea that drain within the catchment area for Burry Inlet and Loughor Estuary (unless there are ecological concerns that fall outside the water quality issues covered by the final report).

Site Drainage/Hydraulic Capacity issues - Also refer the Council to the advice of DCWW and EAW on hydraulic capacity and the surface water removal requirements/planning conditions for this application. Also refer to advice regarding the separation of surface water from the site and attenuation requirements. Whilst it has been demonstrated that this is no longer a HRA issue, it is in the interests of all stakeholders around the Burry Inlet to work towards improving the water quality , not only to help secure the long term objectives for the European and international nature conservation sites, but also to achieve compliance with the Water Framework, Urban Waste Water, Shellfish and Bathing Water Directives. Therefore, CCW recommend that the schemes should be provided to the satisfaction of the EAW and DCWW prior to determination.

Finally, CCW draw our attention to the additional comments in their letter of 26<sup>th</sup> August, 2009 regarding the ecological mitigation and recommendations in the Ecological Report (26 June 2008).

Public Rights of Way Officer (6/11/08) -  
Observations as follows:-

There is a bridleway that runs adjacent to the proposed site which has been in existence for 160 years. Potential to redivert through the development that could be beneficial to the proposed development and the bridleway.

Housing Enabling Officer (27/11/08) - Observations as follows:-

The application is for outline planning for residential units, in an area of recognised housing need as identified in the Local Housing Market Assessment. As such the Housing Service would be requesting a provision of Affordable Housing in the region of 30% (mix of social rent and intermediate low cost home ownership to be determined/negotiated). The Housing Service would expect the AH units to meet the Welsh Housing Quality Standard and Development Quality Requirements guidelines of the Welsh Assembly Government (necessity for rental) and that the affordable units are pepper-potted throughout the development (where appropriate).

(27/03/13) - Observations on S106 request, to read as follows:- The provision of 30% Affordable Housing, which shall be "pepper potted" throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.

Highways Observations

Final Amended Recommendation (7/03/13)

This is an outline application for development of land adjacent to 96 Brithwen Road, Waunarlwydd. An indicative layout has been submitted which indicates 24 dwellings on the site and whilst the application is in outline form I have assessed the impact of up to 30 dwellings being erected. This does not mean that 30 houses are proposed and the figure has merely been used as a worse case scenario for assessing traffic impact.

Access to the site is intended from the junction of Brithwen Road and Greenways. Greenways is a privately maintained highway and therefore is not fully surfaced. The applicant will be required to construct a speed table at the site access to accommodate movements from the site, Brithwen Road, Greenways and the lane access to the south. Some road widening on the bend is likely to be required which will need to be accommodated from the application site. The internal layout would be subject to detailed plans and if consented will have to conform to adopted standards.

Brithwen Road is above the standard width that is normally required for a residential estate road and currently varies in width between 6.8m and over 8m wide in parts. Normal estate road width is 5.5m. Waunarlwydd Primary School is accessed from Brithwen Road and therefore traffic movements and on-street parking increases at the start and end of the school day. I estimate traffic movements associated with the proposal to be in the region of 22 vehicle movements in the peak hour (assuming 30 houses). This is not a high volume of movements and there is no technical reason why Brithwen Road could not support this number.

With regard to highway safety, I am satisfied that the improvements at the proposed junction will increase safety by controlling and slowing down traffic movements. The junction of Brithwen Road with Swansea Road is located near to the bend and whilst visibility is acceptable there is evidence of excessive speed in that vicinity. It would be prudent therefore for the development, if consented, to contribute towards the provision of road safety features in that vicinity. This would help to improve safety for the additional vehicle movements and also help to slow traffic down in that area.

### Local Concerns

Local concern has been raised with regard to the ability of Brithwen Road to accommodate the additional traffic and also the suitability of the access proposal. I am satisfied that the standard of Brithwen Road is sufficient to accommodate this relatively small increase in use and the proposed access layout will not prejudice highway safety. Also of concern is the Brithwen Road/Swansea Road junction and I would recommend that a contribution to road safety enhancement is made here.

### Recommendation

I recommend no highway objection subject to the following;

1. Prior to beneficial use of the site commencing, the developer shall complete the installation of a raised table junction and associated works at the site access in accordance with details to be submitted and approved.
2. Prior to beneficial use of the site commencing, road safety enhancements shall be undertaken on Swansea Road. (This will necessitate a contribution from the developer and will need to be secured via a Section 106 Agreement.)
3. All internal roads shall be constructed in accordance with details to be submitted and approved.
4. Each dwelling shall be provided with on-site parking in accordance with adopted parking guidelines.
5. A Travel Plan shall be submitted for approval within 12 months of consent and the approved Travel Plan shall be implemented on first occupation of the dwellings.

Note: The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary. Advice on Travel Plans can be obtained from Jayne Cornelius, SWWITCH Travel Plan Co-ordinator Tel 07796 275711.

Note: The Developer must contact the Network Manager City and County of Swansea, Highways Division, Players Industrial Estate, Clydach, Swansea, SA6 5BJ. Tel 01792 841601 before carrying out any work.

### APPRAISAL

This application is reported to Committee for decision at the request of Councillors Keith Morgan and Vanessa Webb. A Site Visit was held on the 16<sup>th</sup> April, 2013, as requested by Councillor Ann Cook because of local concerns

This application seeks outline planning permission for residential development, on land off Brithwen Road, Waunarlwydd, and has been submitted with details of access derived solely off the adjacent highway of Brithwen Road, with all other matters reserved for future consideration. Whilst an indicative layout plan for approximately '24' dwellings has been submitted, this is for illustrative purposes only.

The 1.06 hectare greenfield site currently comprises an irregular shaped parcel of land located on the western side of Brithwen Road in close proximity to established housing areas to the north and east, and the site abuts two relatively new dwellings built in recent years immediately to the south of the application site (on part of the original allocated site for housing at Brithwen Road). The western boundary of the site is defined by the river, Gors Fawr with countryside designated as Green Wedge on the other side of the river.

This site is allocated in the City and County of Swansea Unitary Development Plan for residential development (Refer to Policy HC1 (127)) apart from a small strip approximately 7m in depth adjacent to the river defined as 'white land' on the UDP Proposals Map. The site has been allocated for residential development for many years (since @1989) and was included in the Swansea Local Plan, the SLP Review No. 1, and in the current UDP, adopted in 2008. As an allocation in an adopted plan this land is considered to be committed for development and forms part of the committed land bank. This clearly establishes the principle of the land being suitable for residential development.

During the course of this application amended plans and additional information have been submitted, which have necessitated further statutory consultation as detailed above. This has included further ecological information, and an amendment to the red line boundary to ensure the site has access up to the public highway, which required the application to be re-registered and re-advertised in July 2009.

This application has also been held in abeyance due to various concerns raised by the Environment Agency and Countryside Council for Wales relating to environmental issues. At first this related to flooding issues on site, but this is no longer an issue following refinement in the Environment Agency Flood Maps. Latterly determination of the application has been delayed by strategic issues relating to drainage into the Loughor Estuary and Burry Inlet and the impact of development on the wider environment of the European protected sites, including Carmarthen Bay and Estuaries Special Area of Conservation; Carmarthen Bay Special Protection Area; and Carmarthen Bay RAMSAR (CBEEMs). A Habitat Regulation Assessment has been carried out by the Local Planning Authority, which considers the impact of this and other development projects on the water quality of CBEEMs, and concludes that an Appropriate Assessment is not required in this case. This assessment is described in more detail below.

In addition, as required by the provisions of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, the application was screened when it was originally submitted because it exceeds 0.5 hectares in area, but on the basis of the information received it was considered that an Environmental Impact Assessment was not required for this proposed development. Following the submission of the ecological survey and completion of the HRA, it is considered that there is no change in this assessment.

### Main Issues

The main issues for consideration with regard to this application relate to the acceptability of the residential development at this 'greenfield' site in terms of its impact on visual and

residential amenity, highway safety and environmental interests, having regard to the prevailing provisions of the relevant policies of the City and County Unitary Development Plan, and National Planning Policy Guidance. There are considered to be no additional issues arising from the provisions of the Human Rights Act.

### Policy Considerations

Under the provisions of Section 54A of the Town and Country Planning Act 1990 (as amended) planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan is the City and County of Swansea Unitary Development Plan (UDP) which was adopted on 10<sup>th</sup> November 2008.

The UDP comprises two parts, Part 1 and 2. Part 1 sets out the broad vision and aspirations for development and conservation together with the overall strategy for pursuing them. Part 2 translates these goals and objectives into more detailed policies and development proposals. The UDP policies relevant to this application are:-

- Part 1 Policies SP1, SP2, and SP3 (Creating a quality environment); , SP7 (Providing Homes and Community Facilities), and SP14 (Improving Accessibility).
- Part 2 Policies EV1(Design), EV2 (Siting and Location), EV3 (Accessibility), EV22 (Countryside), EV23 (Green Wedges), EV24 (Greenspace System), EV25 (Sites of International Importance), EV30 (Trees, Woodland and Hedgerow Protection), EV33 (Sewage Disposal), EV34 (Protection of Controlled Waters), EV35 (Surface Water Run-Off), EV36 (Development and Flood Risk), HC1 (Housing Sites), HC3 (Affordable Housing), HC17 (Planning Obligations), AS1 (New Development Proposals), AS2 (Design and Layout), AS3 (Public Rights of Way), and AS6 (Parking).

The following policy issues relevant to this particular site are expanded in more detail below:-

As referred to above, the majority of this site has been allocated for residential development in the Unitary Development Plan under Policy HC1(127) on land off Brithwen Road, Waunarlwydd. The UDP allocation indicates an estimate of 30 units which is based on the former planning history and is not a defined number for this site, following an original planning permission for residential development granted in 1982 - ref. 81/1697/01. Planning permission was also granted for one house on this land in 2006 (ref. 2006/0868). As an allocation in an adopted plan this land is considered to be committed for development and forms part of the committed land bank.

In line with the objectives of Planning Policy Wales 2012 and TAN 12: Design, UDP Policies EV1 and EV2 seek to ensure that new development is appropriate, inter alia, to its local context and integrates into the existing settlement with no detrimental impact on local amenity. In addition, UDP Policies EV3, AS1, AS2 and AS6 require that new development provide satisfactory access and facilities for parking, and AS3 relates to the requirements for protection of rights of way.

The current proposal needs to be considered in the context of the surrounding area. As an edge of urban area site, located close to designated Green Wedge, consideration needs to be given to the principles of Policies EV22 and EV23 which seek to protect and enhance the open countryside from adverse development that affects the setting. The natural environment of this site is further supported by Policies EV24 which protects the riparian

corridor of the river and natural and wildlife heritage, and Policy EV30 which particularly seeks to protect and improve woodlands, trees and hedgerows.

With regard to drainage from this site, full regard has to be given in this case to Policy EV25 and the impact of drainage on the water quality of the European protected sites in the Carmarthen Bay and Estuaries Special Area of Conservation; Carmarthen Bay Special Protection Area; and Carmarthen Bay RAMSAR (CBEEMs), and the requirements of related Policies EV33, EV34, EV35, and EV36 regarding sewage disposal, surface water run-off, and development and flood risk.

This site falls within the Swansea West Strategic Housing Zone which is identified in Policy HC3 as an area where smaller sites such as this are considered for affordable housing. Policy HC17 allows the Local Planning Authority to enter into negotiations with developers to deliver planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), and these provisions should be fairly and reasonably related in scale and kind to the individual development.

#### Future Policy

Finally, whilst this site has been put forward as a 'Candidate site' to be considered in the preparation of the Local Development Plan, (which will in due course supersede the Unitary Development Plan), the LDP is still in a very early stage of its preparation and it is considered premature to place any weight at this stage to this process.

#### **Land Availability Issues**

As explained above, this application site (apart from a small strip adjacent to the river) has been allocated for residential development for many years and was originally allocated in the Swansea Local Plan and is currently allocated for residential development in the City and County of Swansea Unitary Development Plan. As an allocation in an adopted development plan this land is considered to be committed for development and forms part of the committed land bank.

The principle of this land being suitable for residential development has therefore been long established, (since @1989), and has been subject to higher scrutiny at the last UDP inquiry when the Welsh Government Inspector concluded in his report that, *'Planning permission for housing development on this site has already been granted. As such it is already committed for development, and allocation in the Plan simply acknowledges this fact. The allocation should therefore remain in the Plan, although consideration should be given to reducing the extent of the site as depicted on the Proposals Map to exclude any area determined as unsuitable for development as a result of its location within zone C2 of the flood risk development advice map.'*

As explained in more detail below, the EAW (now NRW) have reviewed their Flood Maps since the UDP Inquiry so this site is no longer in the critical C2 zone and there is no flooding constraint on the site.

With regard to the selection of sites for housing in the UDP, this has been based on an adopted land use strategy set out in the UDP (refer to paragraphs 3.3.1 – 3.3.3, page 83), which followed a rigorous selection process and tested each site against the selection criteria set out in Planning Policy Wales. In practice, the strategy followed established sequential principles which start by maximising use of the existing committed land bank (including this site at Brithwen Road) together with previously developed land and buildings

in settlements (brownfield sites). These were considered before new infill sites and green field sites. In addition factors such as accessibility; capacity of infrastructure to accommodate development; impact on local community; and physical and environmental constraints were fully considered. A similar approach is now being applied for the selection of housing sites for the next Development Plan, the Swansea Local development Plan (LDP).

The Brithwen Road site was allocated in the UDP because it met the above tests and does not fall within the Green Wedge; will round off the settlement; and was previously allocated for housing; with no known constraints that could not be overcome.

The release of land allocated for housing in the UDP has not been phased and there is no requirement to develop brownfield allocations before greenfield ones.

In conclusion, whilst there may be brownfield sites in the area, these would not take priority over this committed land bank site, and would be considered on their own merits, having regard to any constraints to development. Based on the information known on this site, there are no grounds to depart from the UDP policy allocation, which allocates this site in West Swansea for up to 30 houses under Policy HC1 (127).

### **Visual Impact**

As advocated by the overarching objectives of Planning Policy Wales, and related TANs, the visual appearance of the proposed development, its scale and relationship to its surroundings and context are material planning considerations. Moreover, new housing development should be well integrated with and connected to the existing pattern of settlements. The expansion of towns and villages should avoid creating ribbon development, coalescence of settlements or a fragmented development pattern. Sensitive infilling of small groups of houses or minor extensions to groups may be acceptable, though much will depend upon the character of the surrounding area and the number of such groups in the area.

With regard to the surrounding context of built form and countryside, this application site is located in a field site abutting the southern limits of Waunarlwydd. In terms of its natural appearance this 1.06 hectare site is relatively flat and low lying next to the main river, Gors Fawr, but the whole site is currently overgrown with mixed woodland and shrubs. It should be noted that a number of trees sited near the river and bridleway are protected by a Tree Preservation Order (TPO).

The bridleway runs adjacent to the eastern boundary of the site and therefore forms a physical buffer between the new development and existing houses at 84 and 86 Brithwen Road and No 12 Hillbrook Close. The site boundary is drawn up to and adjacent to the bridleway, but does not physically encroach onto it, apart from a very small area of dual use where the new highway would enter the site. As such there would be no direct impact on this bridleway. There are no current proposals being considered to divert this bridleway.

Whilst the PROW officer has indicated in his response that the route of the bridleway may be refined in future by diverting through the site, there are no current plans to divert this route and this will be considered in detail at reserved matters stage when further details of the design and layout are considered. As such there will be future control over this detail. In conclusion the outline proposal being considered does not affect the current route or continued use of the bridleway.



Whilst the red line of the proposed site extends just beyond the western boundary of the allocated UDP site up to the river banks, it is noted that the Environment Agency (now Natural Resources Wales) has notified the Council that there is a bye-law protecting a 7m wide berm along this river where no development can take place. As such there will be a restriction on how far any development extends up to the river and countryside boundary. It is considered that together with the protected trees along the river bank, this natural barrier will soften the interface of any new built development with the nearby countryside areas, as well as acting as an ecological barrier between this land and the river and designated Green Wedge to the west.

In terms of the character and appearance of surrounding residential development, this area of Waunarwydd appears to have developed incrementally over the years with a mix of housing that weaves in and out of the adjoining fields with no particular style or pattern. This site lies immediately adjacent to the current built up urban area of Waunarwydd, which wraps around the site along its northern, eastern and southern boundaries, with the western boundary defined by the river. The proposed residential development will have direct access off the highway which serves the neighbouring established houses and bungalows along Brithwen Road and Greenways. To the north and south the development will be screened by existing neighbouring houses, and to the east the site faces existing residential properties on the opposite side of Brithwen Road.

Whilst the illustrative layout indicates 24 housing units on site, the number of houses built will be governed by the natural constraints of the site including the protection of the TPO trees, the bridleway, and the 7m protected berm along the river. Details of the exact numbers and siting of houses, scale, design, and appearance will therefore be controlled at reserved matters stage. However, the illustrative layout indicates that it is possible to retain natural features such as mature trees on site, and further landscaping and planting could enhance any future layout. Currently there are no details of future land levels at this outline stage, but any change from the existing site and the impact on neighbouring properties will be properly considered at reserved matters stage, together with all landscaping and planting details.

In conclusion, it is considered that on the basis of the above considerations the proposed residential development of this site will satisfactorily “round off” the residential area of Waunarwydd at this location, up to a clear and defensible natural boundary. As such, it is considered that, subject to a sensitive layout and design at reserved matters stage, a satisfactory residential development can be accommodated on this site without having an adverse impact on the character and appearance of the surrounding built up or countryside areas, in line with prevailing policies EV1, EV2, EV22, EV23, and HC1 of the Unitary Development Plan.

### Residential Amenity

Turning to the impact on the residential amenity of neighbours, whilst this application is outline with all matters reserved apart from access, the illustrative layout submitted demonstrates that a sensitively designed layout can be accommodated in this site without harming the residential amenity of future or existing residents. Any scheme on this site would have to meet the standards of separation between residential properties normally applied by the Council, and meet the normal requirements for amenity space and car parking requirements.

Having regard to the above considerations, and subject to an appropriately designed scheme at reserved matters stage it is not considered that the residential development of

this site will result in any significant harm to the residential amenities enjoyed by future residents in line with the objectives of Policies EV1 and EV2 of the Unitary Development Plan.

### Highways Considerations

The highways response has been revised in the light of current considerations. An indicative layout has been submitted which indicates 24 dwellings on the site and whilst the application is in outline form the impact of up to 30 dwellings being erected has been assessed. This does not mean that 30 houses are proposed and the figure has merely been used as a worse case scenario for assessing traffic impact.

Access to the site is intended from the junction of Brithwen Road and Greenways. Greenways is a privately maintained highway and therefore is not fully surfaced. The applicant will be required to construct a speed table at the site access to accommodate movements from the site, Brithwen Road, Greenways and the lane access to the south. Some road widening on the bend is likely to be required which will need to be accommodated from the application site. The internal layout would be subject to detailed plans and if consented will have to conform to adopted standards.

Brithwen Road is above the standard width that is normally required for a residential estate road and currently varies in width between 6.8m and over 8m wide in parts. Normal estate road width is 5.5m. Waunarlwydd Primary School is accessed from Brithwen Road and therefore traffic movements and on-street parking increases at the start and end of the school day. The Highways Officer has estimated traffic movements associated with the proposal to be in the region of 22 vehicle movements in the peak hour (assuming 30 houses). This is not a high volume of movements and there is no technical reason why Brithwen Road could not support this number.

With regard to highway safety, the Highways Officer is satisfied that the improvements at the proposed junction will increase safety by controlling and slowing down traffic movements. The junction of Brithwen Road with Swansea Road is located near to the bend and whilst visibility is acceptable there is evidence of excessive speed in that vicinity. It would be prudent therefore for the development, if consented, to contribute towards the provision of road safety features in that vicinity. This would help to improve safety for the additional vehicle movements and also help to slow traffic down in that area.

Local concern has been raised with regard to the ability of Brithwen Road to accommodate the additional traffic and also the suitability of the access proposal. The Highways Officer is satisfied that the standard of Brithwen Road is sufficient to accommodate this relatively small increase in use and the proposed access layout will not prejudice highway safety. Also of concern is the Brithwen Road/Swansea Road junction and it is therefore recommended that a contribution to road safety enhancement is made here.

In conclusion there is no highway objection subject to the following;

1. Prior to beneficial use of the site commencing, the developer shall complete the installation of a raised table junction and associated works at the site access in accordance with details to be submitted and approved.
2. Prior to beneficial use of the site commencing, road safety enhancements shall be undertaken on Swansea Road. (This will necessitate a contribution from the developer and will need to be secured via a Section 106 Agreement.)

3. All internal roads shall be constructed in accordance with details to be submitted and approved.
4. Each dwelling shall be provided with on-site parking in accordance with adopted parking guidelines.
5. A Travel Plan shall be submitted for approval within 12 months of consent and the approved Travel Plan shall be implemented on first occupation of the dwellings.'

### Water Quality Issues

This application is one of a number of major planning applications that have been held in abeyance since 2009, due to ongoing concerns raised by Europe and Welsh Government regarding the water quality of the Loughor Estuary which is part of the following European protected sites: Carmarthen Bay and Estuaries Special Area of Conservation; Carmarthen Bay Special Protection Area; and Carmarthen Bay RAMSAR (CBEEMs). The City and County of Swansea as Local Planning Authority has followed the precautionary approach advised by its statutory advisor CCW towards all development that drains into CBEEMs, and carried out the following Habitat Regulations Assessment.

### 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 of 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 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 we 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 this is 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 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 Environment Agency (EA) undertook a detailed Habitats Regulations assessment in relation to the effects of their consented activities. Consent modifications were identified to

enable the Environment Agency to conclude no adverse effect on the integrity of the CBEEMS in respect of their consents operating at their maximum consented limits.

As the consents in question have already been subject to a full assessment (alone and in-combination) under the provisions of the Habitat Regulations, there is no need for the City and County of Swansea to undertake a further assessment where development can be accommodated within the post RoC discharge consent limits.

It is the opinion of the authority that this development can be accommodated within the post RoC discharge consent limits, and will not be likely to have a significant effect either alone or in-combination on the Carmarthen Bay and Estuaries SAC, the Carmarthen Bay SPA, or the Burry Inlet SPA and RAMSAR. Such effects can be excluded on the basis of the objective information available through the Environment Agency review.

#### Other Possible Effects on CBEEMS features

In addition, it is considered that there are no other potential adverse effects from this development proposal, either alone or in combination with other plans or projects on the above protected European sites.

On this basis there is no requirement to make an appropriate assessment of the implications of the proposed development in accordance with regulation 61(1).

The Countryside Council for Wales, as statutory advisor to the Council on the requirements of the Habitats Regulations, has recently 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 Habitat Regulations. This is in line with the requirements of National Planning Policy guidance and Policy EV25 of the Unitary Development Plan.

#### Hydraulic Capacity Issues in Gowerton WwTW drainage network

Last autumn the EAW (now NRW) raised further concern that there are outstanding Hydraulic Capacity issues in the Gowerton Waste Water Treatment Works catchment area. These are summarised above in their response dated 17<sup>th</sup> October, 2012, and appear to relate to wider concerns from Europe regarding the future water quality of the estuary. However, DCWW has not objected to the application, and there is no conclusive evidence that supports the NRW view that this development could harm the water environment. Moreover, the Local Planning Authority is satisfied that it has addressed the water quality issues relating to the Habitats Regulations on this site, and the EAW (now NRW) has since agreed to the Council's adopted Habitats Regulation Assessment that covers all development in the drainage network area up to the end of 2014. As explained above this HRA is based on objective information available from the Agency's own Review of Consents of Gowerton WwTW, 2010.

In the past few months officers have given further consideration to the above, and in particular have sought further clarification from DCWW whether there is currently sufficient capacity in the foul drainage network for this particular development. DCWW have clarified that they are not objecting to this development as there are no hydraulic problems in the network between the site and the Gowerton WwTW, but support the Agency in requesting that the development meets the objectives of the Memorandum of Understanding signed in 2011 are met.

The Council has been working with the Agencies of Welsh Government who are seeking to resolve this problem is seeking to 'enhance' this situation, by improving the current drainage problems in the Gowerton drainage network, before new foul connections can be made. Where possible landowners and developers are being encouraged to remove surface water from combined sewers where possible and where there is a need to facilitate new development. As part of this initiative in 2011, DCWW adopted the findings of a study commissioned to investigate the problems and solutions relating to foul drainage in this drainage catchment area. They have also prepared a Plan of Improvements works for Gowerton WwTW catchment 2020 (AMP 7), and are currently indicating that schemes will be brought forward where necessary to facilitate development.

In addition, the Council has kept a register of savings made on brownfield sites and some of these have been completed. This register is required by the Memorandum of Understanding 2011 agreed and signed by the City and County of Swansea, together with its partners Carmarthenshire County Council, Dwr Cymru Welsh Water, Environment Agency Wales and Countryside Council for Wales.

#### Drainage Arrangements for this site

The drainage output from this site has been considered with officers from Drainage and DCWW, but discussions have been complicated because this is an 'old' outline application with no definite number of proposed housing units. This planning application was submitted prior to the change in the Planning Regulations that now requires outline planning applications to be more specific in terms of the total number of units. Therefore whilst there is an indicative plan for 24 units, no weight can be given to this number which is not under consideration at this stage, only the principle of 'residential development'

This has complicated discussions on the capacity of the drainage network to take this extra development. However, whilst details of the drainage arrangements have not been formally submitted at this outline stage, the applicant accepts that foul and surface water will have to be separated with surface water draining to the natural watercourse of the river. In addition, any development of this site will be subject to conditions controlling drainage and sustainable drainage systems, such as rainwater harvesting, grey water harvesting, etc. This would satisfy the SUDs requirements of our drainage officers and NRW and DCWW, and would ensure sustainable management of surface water. The only new drainage impact on the existing combined sewerage system to Gowerton WwTW would therefore be the foul connections.

This is considered satisfactory in principle, but it will be necessary to require further details of the drainage arrangements at reserved matters stage (prior to determination of reserved matters) to ensure that the actual number of housing units can be adequately serviced by the sub catchment of Gowerton WwTW. This can be controlled by condition.

However, based on a maximum of 24 dwellings, and applying the agreed formula of 0.013 litres/ second per residential property (refer to Appendix A of MOU 2011), it is estimated that this development would result in a maximum estimated flow of 0.312 l/s from this proposed development. This is the equivalent of removing surface water from approximately two existing small houses with combined roof area of 108m<sup>2</sup> (i.e. 2 x roof area of 6m by 9m) that currently drain their surface water to the combined system. In overall hydraulic terms this is very small.

Notwithstanding the above, given the length of time this application has been held in abeyance, it is considered that sufficient compensatory surface water savings have been made on other brownfield sites in the area that more than compensate for this relatively small development, and there is sufficient justification to use a small part of these savings secured on the Council's register to facilitate the development of this UDP allocated housing site.

### Conclusions

In conclusion, DCWW has not objected to this scheme, and there is no factual information to support the EA's (now NRW) concerns that the residential development of this site will harm the water environment. The Council's HRA which has been adopted for all development in the Gowerton WwTW drainage network area runs up to 2014 when it is understood that DCWW has planned upgrading works to this WwTW. The HRA has been agreed with EAW and Countryside Council (now NRW) as well as DCWW and Carmarthenshire County Council, 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 will not be likely to have a significant effect either alone or in combination on the Carmarthen Bay and Estuaries SAC, the Carmarthen Bay SPA, or the Burry Inlet SPA and RAMSAR. Such effects can be excluded on the basis of the objective information available through the 2010 Environment Agency review.'*

In summary, there are no known hydraulic capacity or new water quality issues to address, and there is no justification to refuse this proposal for outline planning permission on these grounds. Subject to further control by conditions, it is considered that the drainage arrangements for this scheme are acceptable and can meet the overarching aims of sustainable development in this area, and satisfy the provisions of Policies EV33, EV34, and EV35.

### Ecological Considerations on Site

During the course of this application the applicant commissioned and submitted an ecological survey of the immediate site. The survey has been considered by the Countryside Council for Wales. The Council's Ecologist has revisited the site this spring and has reviewed the ecological information previously submitted, and is satisfied that this survey is still representative of the current ecological footprint of this river meadow site.

The survey revealed that the site is used by several foraging bat species and nesting birds, however, it is unlikely that otters or dormice are using the site. The most important aspect of this site is the riparian corridor that runs along the river, and it is considered that this should be protected by a strip approximately 7m wide by the Department's ecologist, as well as CCW and the EAW. However as noted above the EAW already has a bye law that serves to protect the 7m berm area from development. As such an informative will be added advising the applicant of this restriction and the need to ensure that any future layout proposed at reserved matters stage ensures that this protected area is kept free of any development.

Section 5 of the report contains a number of recommendations, these include restricting any artificial light falling on the stream corridor and providing compensatory planting. The corridor is used by feeding and commuting bats and it is important this is kept dark. It is suggested in the survey that this area is fenced off for the duration of any construction work to prevent any disturbance. This can be controlled by condition. CCW have asked that artificial lighting is aimed away from the riparian corridor, and this can be controlled by

condition. In addition, the developer will be advised by Informative that if any tree removal is considered in the riparian corridor the site should be checked for signs of dormice.

In addition, it is noted that there are mature trees on site of nature conservation value. Some of these are protected by Tree Preservation Order, but the applicant will be advised by condition of the need to assess the trees on site for bat roosts prior to any work being undertaken. An informative will also be added advising that scrub and tree clearance should be undertaken out of the bird breeding season.

Furthermore, a full tree survey and arboricultural impact assessment will be required to be submitted at reserved matters stage, with all tree survey plans accurate and tree and canopy spreads plotted. There will inevitably be some loss of habitat on site but a landscaping scheme will be submitted at reserved matters stage and this should detail any losses and how these are mitigated, e.g. by suitable replacement habitat using native species in hedges, etc. to maintain the local character of this site.

It is also considered necessary and reasonable to add a condition requiring the removal of any invasive 'alien' species of plant found on site prior to development.

The developer will be made aware by informative of their responsibilities regarding these ecological issues, however precise details of landscaping and planting matters as well as lighting will be the subject of further detailed consideration at reserved matters stage. In conclusion, it is considered that there are sufficient controls available to the Council and NRW to protect the most important habitats which is the riparian corridor and TPO trees.

### S106 Contributions

Policy HC17 allows the Local Planning Authority to enter into negotiations with developers to deliver planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), and these provisions should be fairly and reasonably related in scale and kind to the individual development. In addition the Council has adopted Supplementary Planning Guidance on S106 negotiations in March 2010, but it should be noted that the submission of this application pre dates this guidance. It should also be noted that the trigger points in Part 3 of the current S106 guidance are not prescriptive and form the basis for negotiation. When considering what contributions should be sought there has to be evidence of need, which is justified and relevant to the application being determined. Moreover, the guidance advises that an element of flexibility is required to ensure the viability of schemes is not prejudiced.

In this particular case, the following issues have been highlighted as particularly relevant to this site. The Housing Enabling Officer has confirmed that a figure of 30% affordable housing is required in this area. This provision should be a mix of social rent and intermediate low cost home ownership to be determined/negotiated. The Housing Service would expect the affordable units to be pepper potted throughout the site. The amplification to Policy HC3 explains that the need for affordable housing is a material planning consideration and an essential element in contributing to community regeneration and social inclusion. This site falls within the Swansea West Strategic Housing Zone which is identified in Policy HC3 as an area where smaller sites such as this are considered for affordable housing. On this basis there is demonstrable need in the area and it is considered necessary and reasonable to require the above affordable housing provision.

As referred to above in the highways response, and following further consideration of the proposed development, it is now considered necessary and reasonable to require the

provision of off site road safety enhancements to Swansea Road to be secured via a S106 agreement. These works will be required prior to the beneficial occupation of any housing units. As described above, the development will gain access off Brithwen Road that has a junction with Swansea Road. It is considered reasonable therefore for the development to contribute towards the provision of road safety features in that vicinity. This would help to improve safety for the additional vehicle movements and also help to slow traffic down in that area.

The above S106 planning obligations are considered fairly and reasonably related in scale and kind to the likely scale of the proposed development. Given the relatively small size of the site and its viability (due to likely high infrastructure overheads), no further consultation has taken place with other Departments.

Whilst it is noted that concerns have been raised in public consultation that the proposal will impact on local schools, the latest published figures on school capacity (September 2012) indicate that there is surplus capacity at Waunarlwydd Primary School has surplus capacity of 35 places (12.03%) and Ysgol Gynradd Gymraeg Login Fach has surplus capacity of 11 places (5.2%). There is also surplus capacity of 66 places at Gowerton Comprehensive (2.21%) and 198 places at Ysgol Gyfun Gwyr (21.4%).

In addition the numbers of reception class applications published for the local primary school appear to fall below the available places. The latest capacity school figures are only indicators of the pressure on the local schools, but given the relatively small size of the development site it is not considered that school provision is an overriding issue in this particular case. Similarly it is not considered necessary to require a contribution for open space provision given the edge of countryside site and the overriding EAW requirement for a development free berm of 7m depth along the river which will retain natural open space on the edge of the development.

In conclusion, it is known that the abnormal costs of delivering this 'allocated' site are high given the need for pre commencement ground investigations, etc. Moreover, the overriding need for 30% affordable housing in this area and the need for traffic calming on Swansea Road are still considered to meet the S106 tests as being 'necessary' and 'reasonable' on this relatively small site, and would still take precedence over any other contributions.

### Mine workings

The applicant has confirmed that the mining history of the site has been considered and has re submitted a coal authority report which raises no objection. The application was submitted with a supporting document, 'Geoenvironmental, Geotechnical & Mining Desk Study Report', which presents the findings of searches of the site and surrounds and investigated the risk to any proposed development from the former mining activity in the area. Due to the presence of the nearby conjectured coal seams and relatively shallow depths at which these reside a Coal Authority Report was sought by the applicants.

In summary, the response from the Coal Authority advises that the property is in the likely zone of influence from 1 seam of coal at 80m-130m depth last worked in 1903. There are no known coal mine entries within, or within 20m of the boundary of the property. No record of mine gas emission or coal mining subsidence or other hazards reported. No other concerns raised from the past, the present, or the future. Any development would need further drilling works to confirm extents and depths of thickness of seams.



In conclusion, the Coal Authority Report does not raise any issues or objection to this development.

### Other Material Considerations

The neighbour objections received during public consultation on this application include concerns regarding the UDP allocation of this site for housing, scale and impact on visual amenity, traffic, access, loss of habitat, environmental concerns, sewerage, pollution and flooding issues, and impact on local services and infrastructure, which are addressed above in the main body of the report.

### Conclusions

In conclusion, and having regard to all material considerations including the Human Rights Act, it is considered that the proposed residential development of this greenfield site with sole access off Brithwen Road represents a satisfactory form of development that complies with the provisions of the prevailing policies of the Unitary Development Plan. Approval is therefore recommended for outline planning permission, subject to appropriate conditions and the developer entering into a Section 106 Obligation in respect of the provision of 30% affordable housing and highway safety enhancements to Swansea Road.

### RECOMMENDATION

APPROVE, subject to the following conditions, and to the developer entering into a Section 106 Obligation in respect of:-

- iii) The provision of 30% Affordable Housing, which shall be “pepper potted” throughout the site and will include a range of house types and mix of affordable housing to include social rent and intermediate rent and sale such as low cost home ownership (to be determined/negotiated) and shall not be used other than for affordable housing in accordance with a phasing scheme to be agreed with the Local Planning Authority.
- ii) Prior to beneficial use of the site commencing, the provision of road safety enhancements shall be undertaken on Swansea Road.
- 1 Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.  
Reason: To ensure that the development is carried out in an orderly and satisfactory manner.
- 2 Detailed plans and drawings with respect to the matters reserved in condition (01) shall be submitted for approval by the Local Planning Authority not later than the expiration of three years from the date of this permission.  
Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that the development is determined within a reasonable period.
- 3 The development to which this permission relates shall be begun either before the

expiration of 5 years from the date of this outline permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act, 1990 and to ensure that development is begun within a reasonable period.

- 4 Prior to the beneficial use of the site commencing, the developer shall complete the installation of a raised table junction and associated works at the site access in accordance with details to be submitted to and approved in writing with the Local Planning Authority.

Reason: In the interests of highway safety.

- 5 Prior to the beneficial use of the residential properties, all internal roads shall be constructed in accordance with details to be submitted and approved by the Local Planning Authority.

Reason: In the interests of highway safety.

- 6 Each dwelling shall be provided with on-site parking in accordance with adopted parking guidelines.

Reason: To ensure that the proposed development does not prejudice the free flow of traffic or conditions of general safety along the neighbouring highway.

- 7 A Travel Plan shall be submitted for approval within 12 months of consent and the approved Travel Plan shall be implemented on first occupation of the dwellings.

Reason: In the interests of highway safety.

- 8 No development shall commence until the developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how foul water, surface water, and land drainage will be dealt with and this has been approved in writing by the Local Planning Authority. This scheme shall include details of a sustainable drainage system (SUDS) for surface water drainage and/or details of any connections to a surface water drainage network. The development shall not be brought into beneficial use until the works have been completed in accordance with the approved drainage scheme, and this scheme shall be retained and maintained as approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that a satisfactory comprehensive means of drainage is achieved and that no adverse impact occurs to the environment or the existing public sewerage system and to minimise surface water run-off.

- 9 Unless otherwise agreed in writing with the Local Planning Authority, foul water and surface water discharges must be drained separately from the site and no surface water or land drainage shall be allowed to connect (either directly or indirectly) to the public foul sewerage system.

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

- 10 A landscaping scheme for the site shall be submitted as part of the reserved matters and the approved scheme shall meet the following requirements:-
- (i) A detailed tree survey and arboricultural impact assessment to British Standard 5837:2012 Trees in relation to design, demolition and construction. Recommendations. The work must be carried out by an experienced and qualified Arboriculturalist. All tree survey plans must be accurate, scalable with tree positions and canopy spreads precisely plotted.
  - ii) Further details of the proposed planting and use of native species where possible;
  - (iii) Further details of the retention and planting in the protected 7m berm alongside the main river, Gors Fawr.
  - (iv) ) Further details of a programme for the clearing/removal of alien species such as Japanese Knotweed, etc.

No part of the trees or hedges shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of occupation of the first house, or the date of planting (whichever applies), other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority.

The approved scheme shall be carried out either as an integral part of the development and/or no later than the first planting season following completion.

Reason: To ensure that the site is satisfactorily landscaped having regard to its location and the nature of the proposed development, and to accord with Section 197 of the Town and Country Planning Act 1990.

- 11 Before the development hereby approved is brought into beneficial use, any external lighting shall be completed in accordance with details to be submitted to and approved in writing with the Local Planning Authority, and retained as such unless otherwise agreed in writing with the Local Planning Authority. The detailed scheme should ensure that artificial lighting is aimed away from the 7m protected berm adjacent to the river and this buffer zone is kept dark.

Reason: In the interests of nature conservation.

- 12 Prior to any development commencing on site, the applicant shall submit a Method Statement to the Local Planning Authority for written approval, detailing measures for preventing pollution of controlled waters during site/construction works.

Reason: To prevent the pollution of the water environment (surface and groundwaters).

- 13 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, a statement detailing how this unsuspected contamination shall be dealt with.

Reason: To prevent pollution of the water environment.

- 14 Before the development hereby approved is occupied the means of enclosing the

boundaries of the site shall be completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

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

- 15 The materials used for the external surfaces of the development shall be in accordance with details submitted to and approved in writing by the Local Planning Authority before the development is commenced.

Reason: In the interests of visual amenity.

- 16 On first occupation of each dwelling within the site, a resident Travel Pack shall be issued, the details of which will be agreed in writing the Local Planning Authority prior to the beneficial occupation of any property.

Reason: In order to promote more sustainable modes of transportation.

- 17 No development shall commence on site until a scheme for the retention and protection of trees to British Standard 5837:2012 - Trees in relation to design, demolition and construction has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include protection of trees in the 7m protected berm along the river bank. It shall include full details on all works that impact on the original ground conditions within the root protection areas, as detailed in BS5837:2012 and in particular details of protective fencing, ground protection & construction method, required tree surgery operations, service trenching position and any changes in ground level within the root protection areas of all retained trees. No development shall take place except in complete accordance with the approved scheme, and not before the works required by that scheme are in place. All protective fencing, ground protection etc shall be retained intact for the full duration of the development hereby approved, and shall only be removed, or altered in that time with the prior written approval of the Local Planning Authority.

Reason: To ensure the protection of retained trees and the 7m protected berm on site during construction works.

- 18 No development including demolition work shall commence until all tree protection measures as detailed in the approved scheme have been implemented, inspected and approved in writing by the Local Planning Authority.

Reason: To ensure the protection of retained trees on site during construction works.

## **INFORMATIVES**

- 1 Dormice may be present. Dormice 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 dormice is encountered e.g. live or dead animals or nests, work

must cease immediately and the advice of Natural Resources Wales sought before continuing with any work (01792 634960).

- 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(Design), EV2 (Siting and Location), EV3 (Accessibility), EV22 (Countryside), EV23 (Green Wedges), EV24 (Greenspace System), EV25 (Sites of International Importance), EV30 (Trees, Woodland and Hedgerow Protection), EV33 (Sewage Disposal), EV34 (Protection of Controlled Waters), EV35 (Surface Water Run-Off), EV36 (Development and Flood Risk), HC1 (Housing Sites), HC3 (Affordable Housing), HC17 (Planning Obligations), AS1 (New Development Proposals), AS2 (Design and Layout), AS3 (Public Rights of Way), and AS6 (Parking).
- 3 This consent is issued without prejudice to any other consents or easements that may be required in connection with the proposed development.
- 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 birdYou 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 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, work should cease immediately and the advice of Natural Resources Wales sought before continuing with any work (01792 634960).
- 6 The Developer must contact the Network Manager City and County of Swansea, Highways Division, Players Industrial Estate, Clydach, Swansea, SA6 5BJ. Tel 01792 841601 before carrying out any work.
- 7 The Travel Plan shall include details of car reduction initiatives and methods of monitoring, review and adjustment where necessary. Advice on Travel Plans can be obtained from Jayne Cornelius, SWWITCH Travel Plan Co-ordinator Tel 07796 275711.
- 8 As part of a sustainable drainage system the developer is advised to consider the use of sustainable drainage (SUDS) measures, such as permeable paving for the driveway access and car parking area, and rainwater or greywater harvesting from

the new buildings, etc.

- 9 The developer is advised to contact Dwr Cymru Welsh Water on Tel. No. 0800 917 2652, e-mail [developer.services@dwrwymru.com](mailto:developer.services@dwrwymru.com), regarding the adequacy of water supply, and the adequacy of the sewerage system serving this area, to be agreed independently with the Water Authority.
- 10 The developer is advised to contact the Natural Resources Wales at e-mail [planning@naturalresourceswales.gov.uk](mailto:planning@naturalresourceswales.gov.uk) regarding details of the intended pollution control measures required on site.
- 11 **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.
- 12 The proposed development lies within coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority.  
  
Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority.  
  
Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)
- 13 Natural Resources Wales and the Local Authority have permissive powers to maintain watercourses depending on the watercourse's definition as "Main River" or "Ordinary Watercourse". The responsibility for general maintenance of the river and its banks rests with the riparian owner. Any bankside trees or vegetation within 3 metres of the watercourse should be protected from development in order to promote conservation and preserve visual amenity.
- 14 Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or underground waters.
- 15 Any waste excavation material or building waste generated in the course of the development must be disposed of satisfactorily and in accordance with Section 34 of the Environmental Protection Act 1990. Carriers transporting waste must be licensed waste carriers.
- 16 The activity of importing waste into the site for use as, for example hardcore, must re-registered by the Environment Agency Wales as an exempt activity under the Management Licensing Regulations 1994.
- 17 Under the terms of the Water Resources Act 1991 and the Land Drainage Byelaws, the prior written consent of Natural Resources Wales is required for any proposed works or structures in, under over or within 7 metres of the top of a main river i.e. Gors Fawr.

18 It is an offence under the Town and Country Planning Act 1990 to:

Cut down, uproot, top, lop, wilfully destroy or wilfully damage a tree protected by a Tree Preservation Order.

Wilful damage to a protected tree includes damage to its surrounding rooting area by: excavation work, storage of materials or machinery, parking of vehicles, deposit of soil or rubble, disposal of liquids, or the mixing of cement.

19 The internal road layout being agreed with the Highway Authority under a section 38 agreement.

## **PLANS**

Site location plan, illustrative block plan received 20th March 2008, Amended block plan received 6th August 2009

# Agenda Item 8

## Report of the Head of Planning and City Regeneration

Planning Committee – 1 August 2017

### PLANNING COMMITTEE APPEAL DECISIONS

#### 1.0 Purpose of the Report

- 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 June 2017 there have been 3 such applications all of which have been allowed by the Planning Inspectorate, as listed below, on the respective dates:

2016/3406/FUL	57 Ysgol Street	Allowed 19 June 2017
2016/1249	26 Pinewood Road	Allowed 20 June 2017
2016/1511	Plot A1, Kings Road	Allowed 29 June 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 1-3.

**Appeal Reference APP/B6855/A/17/3170117, Application Reference 2016/3406/FUL, 57 Ysgol Street, Port Tennant – Change of use from residential dwelling (Class C3) to a HMO for 5 people (Class C4)**

The inspector considered the key issue to consider being the impact on the living conditions of neighbouring residents with particular regard to nuisance, noise and disturbance. The inspector noted that the reason for refusal related to criterion (i) of policy HC5 and commented that the UDP does not quantify what might constitute a significant adverse effect and there is currently no adopted Supplementary Planning Guidance on this matter and that it relates on a planning judgement.

The inspector considered that the occupation of the property by 5 unrelated individuals would be little different in intensity to the dwelling's potential use by a family under the existing C3 use. It was stated in the decision that any nuisance, noise or disturbance arising from the proposed use, such as conversations taking place in the rear garden or inside, noise from TVs or stereos, doors slamming, occupants arriving or leaving, etc., would be similar in nature to those which might be generated by the existing use. On this basis the inspector considered that any nuisance, noise or disturbance would not be unacceptable.

In response to concerns about the number of HMOs in the area the inspector noted that whilst significant concentrations of HMOs can alter the character of residential areas he noted little visual indication of HMOs harming the established residential character of Ysgol Street.



The final issue considered related to residents' concerns about the HMO proposal generating additional parking and that this would further restrict the ability of residents to park their cars on the street, exacerbating unsafe parking on corners or pavements, impeding traffic flow and posing a risk. The inspector noted ample parking opportunities during the site visit but also noted photographs supplied by a resident showing high demand over times. The inspector considered that taking into account the parking demands that could be generated by the existing dwelling, the specific effects of the appeal proposal on the street as a whole would not be significant. He also noted the site is sustainably located in walking or cycling distance of shops, public transport and the Swansea University Bay Campus. He noted that the proposed demolition of the rear garage would improve access to 1 off-street car parking space and considered subject to this the proposal would not result in harmful effects on parking or highway safety.

**Appeal Reference APP/B6855/A/17/3170653, Application Reference 2016/1249, 26 Pinewood Road, Uplands - Change of use from residential (Class C3) to HMO for 4 people (Class C4)**

In this appeal the inspector identified the main issue to consider being the effect of the proposal on the character and amenity of the area by reason of the level of use of the property, having regard to the number of HMOs in the locality.

In terms of its use the inspector did not consider that the conversion of the ground floor reception room to a fourth bedroom and the use of the property by 4 unrelated individuals would result in a substantial increase in the intensity of the building.

In terms of the anecdotal evidence raised by residents about nuisance, noise, antisocial behaviour, waste and litter the inspector said that such amenity issues would not arise exclusively from an HMO use, but could also be generated by a dwelling in C3 use. He saw little evidence of a proliferation of litter or unsightly waste storage on Pinewood Road.

Regarding cumulative impacts the inspector saw evidence of HMOs locally, particularly on Hawthorn Avenue. He did not dispute the submitted figures which sited 4 licensed HMOs in Pinewood Road and 31 within 100 metres, nor that significant concentration of HMOs may alter the character of an area and impact upon the viability of local services or access to family housing. In summary he considered that the submitted figures indicate the proportion of HMOs on Pinewood Road would remain modest.

In regard to concerns raised about parking the inspector noted existing demand but did not find that the proposal would materially harm the safety of highway users.

**Appeal Reference: APP/B6855/A/16/3164052, Application Reference: 2016/1511, Plot A1, Kings Road, SA1 8PH - The construction of purpose built student accommodation between 7 and 9 storeys (500 bedspaces) with ancillary community facilities/ services, 1No. Class A3 ground floor unit, car and cycle parking, servicing area, refuse store, associated engineering, drainage, infrastructure and landscaped public realm.**

Members may recall that planning permission for this proposal was refused at Planning Committee in November 2016 for the following reasons:

- 1) Scale, form and design was not considered to be a high quality design solution and would have an unacceptable impact on the character of the area
- 2) Insufficient car parking provision was made for the development to the detriment of the surrounding areas
- 3) The proposed use for student accommodation is contrary to the approved masterplan, fails to provide a high quality employment site and would not complement existing surrounding businesses.

## **Principle**

With regards to the principle of development (reason 3), the Inspector noted that the development represents a clear departure from the masterplan which was linked to a previous application but as this was a full application (rather than a reserved matters application), it needs to be determined on its own merits. He opined that providing the use would effectively integrate with the other uses within SA1 and not undermine the overarching vision for the area, it would not represent a fundamental departure from the policy position set out in the adopted UDP.

He stated that he had not seen any robust evidence that the proposed use would have an adverse effect on existing uses. Moreover, the proposed purpose built student accommodation would be entirely consistent with the recent shift in focus at wider parts of the SA1 area, including the University of Wales Trinity St. David (UWTSD) led development comprising the 'Innovation Quarter' and would complement these proposals, increasing activity and vibrancy.

The appeal site represents a sustainable location and is an appropriate location for student accommodation. It was notable that, despite active marketing, an employment use has not been forthcoming since the original grant of planning permission back in 2003. This raises questions over the viability of an employment use at the site and also supports the appellant's contention that demand for such uses in this location are relatively low. Such matters add further weight to the argument that the development is acceptable in principle. He concluded that the general principle of locating the proposed purpose built student accommodation at the appeal site was acceptable and in accordance with the general thrust of Policies EC1 and EC2 of the adopted UDP.

## **Character and Appearance**

It was noted that the footprint would not be entirely consistent with the approved masterplan, would be sited 10m further north and rather than narrowing to a point at the northern end of the development, as per the masterplan and the neighbouring Technium building, the proposed scheme would widen to form a 9 storey block aspect at the gateway into Swansea. Nevertheless, whilst it was recognised that the proposed development would introduce a significant mass of development at the northern end of the site, the Inspector did not consider that its scale or mass would be excessive in the street scene, particularly given the wider urban context. The waterfront location has capacity to accommodate such a building and the proposed scale and block aspect would serve to reinforce the sense of arrival into the City and represent an appropriate gateway development.

The Inspector noted that the 4 to 6 storeys referred to within the approved masterplan relate to an office use which would typically be higher than that of a residential development.

In terms of design detailing, the proposed building would occupy a linear footprint that would run north-south alongside the Tawe. However, by virtue of its form and siting, it would adequately respect the existing curve along Kings Road. The linear building would be 'bookended' by cross wings that would add visual interest when the building is viewed within the street scene, whilst its substantial length would be effectively broken up by an intermediate cross wing. The materials utilised would be consistent with the surrounding townscape and would be reflective of the site's cultural and historic relationship with the docks. The use of materials and recessed detailing would also serve to successfully break up the development and soften the perceived bulk and mass at street level.

He concluded that the proposed development would be appropriate to its local context in terms of its scale, height, massing, elevational treatment, materials and detailing, layout, form, mix and density. He also considered that it would integrate effectively with adjacent spaces, create a good quality townscape and represent a suitable design solution given the overall vision of creating a mixed use urban place through the SA1 regeneration, whilst also creating a 'gateway' building upon a key approach into the city centre.

### **Parking and Highway Safety**

The proposed development would make provision for 23 parking spaces and, in this respect, the development would make sufficient parking provision to meet the operational needs of the resident students. Nevertheless, there is no doubt that the levels of parking provided would fall short of the overall requirements of the adopted parking standards, having particular regard to the need arising from anticipated visitors to the development.

However, the Inspector stated that it is important to note that the approved parking standards represent 'maximum standards' and the SPG provides guidance only. It is also worth noting that car parking can be a major influence on people's choice of transport. Specifically, Planning Policy Wales (PPW) (Edition 9, 2016) states that "*local authorities should ensure that new developments provide lower levels of parking than have generally been achieved in the past*", before going on to clarify that "*minimum parking standards are no longer appropriate*".

Given the proposed levels of parking and the aforementioned sustainability credentials of the site, there would be very little incentive or need for students to utilise a private car. Moreover, the availability of convenient long term parking opportunities would be a key factor for students in deciding whether or not to choose the proposed development as their choice of residence. A significant proportion of visitor trips would comprise those made at the beginning and end of term for pick-up and drop-off purposes and the Inspector was satisfied that such trips could be adequately regulated through an effective Travel Plan and/ or Operational Management Plan.

He also noted that a covenant was proposed (via a Unilateral Undertaking) to prohibit residents to keep a motorized vehicle within 3 miles. However, he had concerns with this approach and gave this no weight in the determination of the appeal. Notwithstanding this, the Inspector concluded that he could see no reason why the proposed development would give rise to levels of indiscriminate parking that would represent a material threat to highway safety.

The appeal was therefore allowed.

**Costs:**

No costs were awarded as part of this appeal.

**2.0 Recommendation**

2.1 The appeal decisions be noted.

*Contact Officer: Liam Jones*

*Extension No: 5735*

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## **Penderfyniad ar yr Apêl**

Ymweliad â safle a wnaed ar 08/06/17

**gan Paul Selby BEng (Hons) MSc MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 19.06.2017**

## **Appeal Decision**

Site visit made on 08/06/17

**by Paul Selby BEng (Hons) MSc MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 19.06.2017**

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**Appeal Ref: APP/B6855/A/17/3170117**

**Site address: 57 Ysgol Street, Port Tennant, Swansea SA1 8LG**

**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 Mrs Helen Ryan against the decision of City and County of Swansea Council.
  - The application Ref 2016/3406/FUL, dated 11 November 2016, was refused by notice dated 10 February 2017.
  - The development proposed is Change of use from residential dwelling (Class C3) to a HMO for 5 people (Class C4).
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### **Decision**

1. The appeal is allowed and planning permission is granted for the Change of use from residential dwelling (Class C3) to a HMO for 5 people (Class C4), in accordance with the terms of the application, Ref 2016/3406/FUL, dated 11 November 2016, subject to the conditions set out in the schedule to this decision letter.

### **Procedural Matter**

2. Notwithstanding the description of development on the application form, I have used that contained on the Decision Notice, which more accurately describes the proposal.

### **Main Issue**

3. This is the effect of the proposal on the living conditions of neighbouring residents, with particular regard to nuisance, noise and disturbance.

### **Reasons**

4. The appeal relates to a two storey mid-terraced dwelling located on a street of properties of similar scale and other buildings converted to residential use. To the front, the dwelling is set back from the street by a modest yard area. A lane running parallel with Ysgol Street provides rear access to a pedestrian gate and steel garage.
  5. The Council contends that the proximity of the proposed HMO use to neighbouring dwellings would result in a significant adverse impact and would be contrary to criterion (i) of policy HC5 of the Swansea Unitary Development Plan (UDP). As the
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UDP does not quantify what might constitute a significant adverse effect and there is currently no adopted Supplementary Planning Guidance on this matter, whether or not a proposal is harmful depends on planning judgement.

6. Other than the demolition of the existing garage, physical alterations would be limited, but 2 connected ground floor reception rooms would be separated and converted into bedrooms, raising the total number in the property to 5. Whilst these internal alterations would facilitate the proposed C4 use, the occupation of the property by 5 unrelated individuals would be little different in intensity to the dwelling's potential use by a family under the existing C3 use. Any nuisance, noise or disturbance arising from the proposed use, such as conversations taking place in the rear garden or inside, noise from TVs or stereos, doors slamming, occupants arriving or leaving, etc., would be similar in nature to those which might be generated by the existing use. As a consequence any resulting nuisance, noise or disturbance would not be unacceptable.
7. Residents have objected to the proposal on the basis that the number of HMOs in the street, which is estimated to amount to 7 in total, is changing the character of the area and has led to increased litter and anti-social behaviour. I do not dispute that significant concentrations of HMOs can alter the character of residential areas, although I note that the Council has not refused permission on this basis. Whilst only larger properties in this part of the city are subject to mandatory licensing, there is little visual evidence of any significant concentration of HMOs in the vicinity of the site, even taking into account the 2 recent permissions for HMOs on Ysgol Street (Refs 2016/3388/FUL and 2016/3617/FUL). Nor, from what I saw on my site visit, is there any visual indication of HMOs harming the established residential character of Ysgol Street. There is also sufficient space within the site for waste and recycling storage.
8. For the reasons given above, I conclude that the proposal would accord with the amenity objectives of UDP policy HC5.

### **Other Matters**

9. Much of Ysgol Street is not subject to a residents parking scheme and the street is used by a local bus route. A significant number of representations have raised concerns that the proposal would generate additional parking, and that this would further restrict the ability of residents to park their cars on the street, exacerbating unsafe parking on corners or pavements, impeding traffic flow and posing a risk to pedestrians, including children walking to school and people having to walk to their houses after nightfall. Whilst I saw ample opportunities for parking during my site visit in the middle of a weekday, a resident has supplied photos which show high demand at other times.
10. It is evident that parking is a significant concern for residents of Ysgol Street. I accept that the occupation of the property by 5 adults would have the potential to increase the number of vehicles associated with No 57. Nonetheless, taking into account the level of parking which could be generated by the existing dwelling, the specific effects of the appeal proposal on the street as a whole would not be significant. Irrespective of the local bus route there is little evidence of substantial traffic flows or unsafe vehicle speeds on the street. The site is sustainably located, being in walking or cycling distance of shops, public transport and the Swansea University Bay Campus. The proposed demolition of the rear garage would improve access to 1 off-street car parking space and the provision of 5 cycle parking spaces would facilitate alternative modes of transport. Subject to such facilities being secured by condition I am satisfied that the proposal would not result in harmful effects on parking or highway safety.

11. A resident has drawn my attention to the base maps on the submitted plans not being up-to-date. Nonetheless, having visited the site I am content that I have sufficient accurate information upon which to base my decision. Concerns have also been raised regarding the original notification letters, but I am satisfied that local residents have been given sufficient opportunity to comment. Matters relating to fire safety impacts fall under the ambit of other legislation. I afford these matters limited weight.
12. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. This decision is in accordance with the Act's sustainable development principle though its contribution towards supporting safe, cohesive and resilient communities.

### **Conditions**

13. Other than the standard plans condition, which is necessary in the interests of proper planning, conditions requiring the submission and approval of details for the rear car parking area and secure storage of 5 bicycles are necessary in the interests of sustainability and highway safety.

### **Conclusion**

14. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Paul Selby*

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; Proposed ground and first floor plans.
- 3) The HMO shall not be occupied until facilities for the secure storage of five bicycles 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 for the lifetime of the use.
- 4) The HMO shall not be occupied until space has been laid out within the rear of the site for 1 car to be parked and that space shall thereafter be kept available for the parking of vehicles for the lifetime of the use.

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## **Penderfyniad ar yr Apêl**

Ymweliad â safle a wnaed ar 13/06/17

**gan Paul Selby BEng (Hons) MSc  
MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 20.06.2017**

## **Appeal Decision**

Site visit made on 13/06/17

**by Paul Selby BEng (Hons) MSc MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 20.06.2017**

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**Appeal Ref: APP/B6855/A/17/3170653**

**Site address: 26 Pinewood Road, Uplands, Swansea SA2 0LT**

**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 Mrs Sharon Davies against the decision of City and County of Swansea Council.
  - The application Ref 2016/1249, dated 19 June 2016, was refused by notice dated 10 November 2016.
  - The development proposed is Change of use from residential (Class C3) to HMO for 4 people (Class C4).
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for Change of use from residential (Class C3) to HMO for 4 people (Class C4) at 26 Pinewood Road, Uplands, Swansea SA2 0LT, in accordance with the terms of the application, Ref 2016/1249, dated 19 June 2016, subject to the following 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; Site Plan/Block Plan; Proposed Floor Plans.

### **Procedural Matter**

2. Notwithstanding the description of development on the application form, I have used that contained on the Decision Notice, which more accurately describes the proposal.

### **Main Issue**

3. The main issue is the effect of the proposal on the character and amenity of the area by reason of the level of use of the property, having regard to the number of houses in multiple occupation (HMOs) in the locality.

### **Reasons**

4. The appeal relates to a double fronted terraced property situated on Pinewood Road, a street of established residential character in the Uplands area of Swansea. Dwellings
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on the north side of the street feature modest front yard areas set up from street level, many of which have been planted or landscaped.

5. The Council contends that the proximity of the proposed HMO use to neighbouring dwellings would result in a significant adverse impact and would be contrary to criterion (i) of policy HC5 of the Swansea Unitary Development Plan (UDP). As the UDP does not quantify what might constitute a significant adverse effect and there is currently no adopted Supplementary Planning Guidance on this matter, whether or not a proposal is harmful depends on planning judgement.
6. The proposal would result in the conversion of a ground floor reception room to a fourth bedroom. Given that the existing dwelling features 3 bedrooms and could be occupied by a family, the use of the property by 4 unrelated individuals would not represent a substantial increase in the intensity of the use of the building. Whilst the conversion of the reception room to a bedroom may lead to curtains being regularly drawn within the bay window, the visual effect of this would be minor.
7. Citing anecdotal evidence of problems arising from the appeal property and HMOs nearby, residents have raised concerns that the lifestyle of future occupants would not only lead to an increase in nuisance, noise or disturbance, but also antisocial behaviour, waste and litter. Such amenity issues would not, however, arise exclusively from an HMO use, but could also be generated by a dwelling in C3 use. Further, I saw little evidence of a proliferation of litter or unsightly waste storage on Pinewood Road during my site visit. Consequently I find that the proposal would not result in unacceptable amenity impacts, including from nuisance, noise or disturbance.
8. Residents contend that a local increase in HMOs has resulted in cumulative impacts that have altered the nature of the area and risk the integrity of the community. It is submitted that there are 4 licensed HMOs in Pinewood Road and 31 within 100 metres of the appeal site, excluding the Beck House university residence. On my site visit I saw evidence of HMOs locally, particularly on Hawthorne Avenue. I do not dispute the submitted figures, nor that a significant concentration of HMOs may alter the character of an area and impact on the viability of local services or access to family housing. Nonetheless, the submitted figures indicate that the proportion of HMOs on Pinewood Road would remain modest. Little convincing evidence has been provided to substantiate the view that the concentration of the HMOs in the wider area has materially harmed the sustainability of the community.
9. A number of representations raise concerns that the proposal would further reduce the ability to park cars on the street. Although on-street parking was available during my site visit, photographic evidence has been supplied which shows high demand after work hours. Spill-over from a nearby day nursery has also been cited as contributing to parking pressures. Nonetheless, whilst occupants of the proposed HMO may be more likely to own cars than all residents of the property in C3 use, given that the building would accommodate only 4 individuals any increase in vehicles would not be significant in the context of the street as a whole. Pinewood Road appears lightly trafficked, with relatively low vehicle speeds, and there is little evidence that the parking of vehicles on the street by future occupants would demonstrably affect the safety of highway users. Although streets in the vicinity are steep, the site is sustainably located, being close to bus stops and, for most future occupants, within walking distance of the nearby district centre. Irrespective of the absence of a legal agreement restricting car ownership for future residents, I find that the proposal would not materially harm the safety of highway users.

10. I recognise the strength of feeling amongst local residents. But whilst I understand these concerns, there is a need to ensure that communities are balanced and that lower cost and flexible housing needs are met. I conclude that the appeal proposal would provide accommodation suitable for people studying or working nearby and, for the reasons given above, would accord with the amenity and highway safety objectives of UDP policy HC5.

### **Other Matters**

11. Representations have questioned the need for the proposal. Whilst I saw that some nearby HMOs appear unoccupied this does not substantiate a lack of demand for similar accommodation. Purpose built student accommodation in the city centre may well fulfil a particular need or demand, but I must determine the appeal based on its own merits, which is what I have proceeded to do.
12. Various comments have been made about the motivations of the appellant and how the HMO might be managed in the future. Concerns have also been raised about the effect of the proposal on house prices. These matters have little or no relevance to planning merits and I afford them very limited weight.
13. In reaching my decision, I have taken into account 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 the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

### **Conditions**

14. Other than the standard plans and time limit conditions, which are necessary in the interests of proper planning, other conditions have been suggested to which I have had regard.
15. A condition to secure on-site cycle parking would theoretically facilitate the use of sustainable transport, but as one resident has noted, there is no rear access to the property and little opportunity to provide cycle parking at the front. Bikes would thus need to be taken through, or kept inside, the building, requiring their transport up 10 steps via a narrow path. The practicalities of this would, in my view, negate any potential benefits. In any case, due to the specific circumstances of this proposal I have found that no harmful effects on highway safety would arise and the location would facilitate other sustainable travel options.

### **Conclusion**

16. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Paul Selby*

INSPECTOR

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## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 11/05/17  
Ymweliad â safle a wnaed ar 10/05/17

**gan Richard E. Jenkins BA (Hons) MSc  
MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 29.06.2017**

## Appeal Decision

Hearing held on 11/05/17  
Site visit made on 10/05/17

**by Richard E. Jenkins BA (Hons) MSc  
MRTPI**

**an Inspector appointed by the Welsh Ministers**  
**Date: 29.06.2017**

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**Appeal Ref: APP/B6855/A/16/3164052**

**Site address: Plot A1, Kings Road, SA1 8PH**

**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 NMJ Property Developments Limited against the decision of City and County of Swansea Council.
  - The application Ref 2016/1511, dated 27 July 2016, was refused by notice dated 11 November 2016.
  - The development proposed is the construction of purpose built student accommodation between 7 and 9 storeys (500 bedspaces) with ancillary community facilities/ services, 1No. Class A3 ground floor unit, car and cycle parking, servicing area, refuse store, associated engineering, drainage, infrastructure and landscaped public realm.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of purpose built student accommodation between 7 and 9 storeys (500 bedspaces) with ancillary community facilities/ services, 1No. Class A3 ground floor unit, car and cycle parking, servicing area, refuse store, associated engineering, drainage, infrastructure and landscaped public realm at Plot A1, Kings Road, SA1 8PH in accordance with the terms of the application, Ref 2016/1511, dated 27 July 2016, and the plans submitted with it, subject to the conditions set out in the attached schedule.

### Procedural Matters

2. During the processing of the planning application, amended plans were submitted. The Council determined the application based on the amended plans and I shall consider the appeal on the same basis. I have also taken the description of development from the Council's Notice of Decision as it reflects the changes made through the planning application process and, therefore, provides a more accurate description of the development proposed.

### Main Issues

3. These are: the principle of the development proposed having specific regard to the adopted development plan and masterplanning framework for the Swansea Waterfront area; the effect of the proposed development on the character and appearance of the area; and the effect of the proposed parking arrangements on highway safety.
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## Reasons

4. The appeal relates to a site known as Plot A1 which is located within the Swansea Waterfront area. The site is currently utilised as a temporary surface level car park and forms part of the wider SA1 regeneration area. The site sits within a heavily urbanised context with a number of large scale buildings within the wider vicinity. The appeal proposal seeks planning permission to construct a substantial building for use as purpose built student accommodation. The building would incorporate between 7 and 9 storeys and would accommodate some 500 student bedspaces. Ancillary community facilities, including a Class A3 unit, would be located on the ground floor, whilst car and cycle parking, a servicing area and refuse store would also be provided. Associated engineering, drainage and infrastructure works would also form part of the development, as would a landscaped public realm.

### ***Principle of Development***

5. Policy EC1 and Policy EC2 of the adopted City and County of Swansea Unitary Development Plan (UDP) (2008) are relevant to the appeal proposal. Specifically, they allocate the Swansea Waterfront area for a mix of employment and residential development together with supporting leisure, tourism, community and ancillary uses. Policy EC2 states that the development of the area should be comprehensive, integrate with the Maritime Quarter, complement and not compete with the City Centre, be of a high standard of design, embrace principles of sustainable development, provide high quality employment opportunities, increase the range of housing choice, make appropriate provision for a network of pedestrian and cycle routes and safeguard the potential canal route corridor.
6. The Council objects to the proposed development on the basis that it would not make provision for high quality employment opportunities and that it would fail to complement the existing business uses that are located within the area. In this respect, it refers to the masterplan approved as part of the outline planning permission granted under Ref: 2002/1000 and that subsequently approved under application Ref: 2008/0996 (SA1 Swansea Waterfront Design and Development Framework August 2004 Version 5). Specifically, the approved masterplan indicates that the appeal site should be brought forward as a high quality employment site.
7. Within this context, it is clear that the proposed development would represent a clear departure from the masterplan work approved under the aforementioned planning applications. Nevertheless, it is notable that the application to which this appeal relates comprises a full planning application, rather than an application submitted pursuant to a previous outline. As such, whilst the approved masterplan is clearly an important material consideration, the current proposal needs to be considered on its particular merits and is not, therefore, bound by the parameters and conditions imposed therein.
8. Policy EC2 requires the development of the Swansea Waterfront area to be, amongst other things, comprehensive and integrated and I acknowledge that the failure to comply with the approved masterplan causes a degree of tension with the policy framework in this respect. However, as set out above, the general thrust of Policies EC1 and EC2 is to reserve the SA1 area for a mix of employment and residential uses, together with supporting leisure, tourism, community and ancillary uses. For this reason, providing the use would effectively integrate with the other uses within SA1 and not undermine the overarching vision for the area, I do not consider that it would represent a fundamental departure from the policy position set

out in the adopted UDP, or indeed the forthcoming Local Development Plan (LDP) which also allocates SA1 as an area of mixed use development.

9. A number of concerns have been raised in relation to the compatibility of the proposed use with existing employment uses within the vicinity. However, I have not seen anything in terms of robust evidence to support the assertions that the proposed use would have an adverse effect on existing uses. Moreover, the proposed purpose built student accommodation would be entirely consistent with the recent shift in focus at wider parts of the SA1 area, including the University of Wales Trinity St. David (UWTSD) led development comprising the 'Innovation Quarter'. In fact, there is little doubt that the proposed development would complement such proposals and serve to increase the activity and vibrancy of the area. On this basis, I find the use to be compatible with the existing uses and the overall vision for the area.
10. It is clear that the appeal site represents a sustainable location, within walking distance of a number of facilities and services as well as being relatively well served by sustainable modes of transport. Indeed, the relative proximity and ease of access to the city centre serves to support the appellant's contention that the site represents an appropriate location for student accommodation. Moreover it is notable that, despite active marketing, an employment use has not been forthcoming since the original grant of planning permission back in 2003. This raises questions over the viability of an employment use at the site and also supports the appellant's contention that demand for such uses in this location is relatively low. Such matters add further weight to the argument that the development is acceptable in principle.
11. Therefore, whilst I acknowledge that the development would represent a clear departure from the approved masterplan, I consider the general principle of locating the proposed purpose built student accommodation at the appeal site to be acceptable and in accordance with the general thrust of Policies EC1 and EC2 of the adopted UDP.

### ***Character and Appearance***

12. The Council considers that, by virtue of its scale, form and design the proposed development would impact to an unacceptable degree upon the character and appearance of the area. It also states that it would fail to integrate effectively with adjacent spaces and that it would not represent an appropriate high quality design solution given its context as a prominent gateway to Swansea. Accordingly, it is submitted that the development is contrary to the illustrative masterplan for the area and Policies EV1, EV2 and EC2 of the adopted UDP. In contrast, the appellant considers that the design of the proposed building is appropriate to its context and that it accords with the Council's overarching vision of creating a 'gateway' building on a key approach into the City.
13. Despite concluding above that the development should not necessarily be bound by the approved masterplan, it is notable that the footprint of the proposed building would be not be entirely consistent with that of the illustrative masterplan, with the principal difference being the fact that the proposed development would be sited some 10 metres north of that previously approved. Moreover, rather than narrowing to a point at the northern end of the development, as per the masterplan and the neighbouring Technium building, the proposed scheme would widen to form a 9 storey block aspect at the gateway into Swansea. Nevertheless, whilst I recognise the fact that the proposed development would introduce a significant mass of development at the northern end of the site, I do not consider that its scale or mass would be excessive in the street scene, particularly given the wider urban context. Indeed, I

consider the waterfront location to have capacity to accommodate such a building and I have no doubt that the proposed scale and block aspect would serve to reinforce the sense of arrival into the City and represent an appropriate gateway development.

14. A number of objections have been submitted in relation to the proposed height and slab like proportions of the building relative to that identified within the approved masterplan. In terms of height, the SA1 masterplan illustrates a 6 storey building at the northern end of the plot and a 4 storey structure at its lower southern end. In contrast, the proposed building varies between 9 storeys to its north and 7 storeys to the south. Nevertheless, it is important to note that the 4 to 6 storeys referred within the approved masterplan relate to an office use which would typically be higher than that of a residential development. Indeed, the approved masterplan provides clarity in this respect, confirming that the proposed floor to floor heights would vary depending on the proposed use.
15. Within this context, the appellant has advocated an approach that extrapolates the site's potential for office use using a storey height of 4.5m and compares it against a typical residential use incorporating a storey height of 2.8m. Whilst objections have been submitted to this approach, I do not consider it to represent an unreasonable starting point in the design process and neither do I consider it to be disingenuous. Indeed, whilst I acknowledge the fact that the Council has calculated the average floor to floor height of the office buildings referred in the appellant's evidence to be closer to 4 metres high, two of the listed developments include heights in excess of that assumed by the appellant. More importantly, I have not seen anything within the local policy framework, or from the particular characteristics of the area, that would necessitate an office use at the appeal site incorporating floor to floor heights below that assumed by the appellant.
16. On this basis, the 6 storeys referred within the approved masterplan would equate to approximately 27 metres and that can be compared and contrasted to the northern end of the proposed development which is approximately 26 metres high. The 4 storey office development referred within the masterplan would equate to approximately 18 metres, with the same section of the proposed building incorporating a height of approximately 21.85 metres. A number of specific concerns have been expressed regarding the increase in height at the southern end of the proposed development relative to the approved masterplan. However, the masterplan should not be treated as determinative and, in this respect, I consider that it should be the overall impact on the street scene that is decisive.
17. I have fully considered the local context, including the scale and siting of the existing buildings, and I consider the modest increase in height relative to the masterplan to represent an acceptable variation. More critically, I consider the increase in scale relative to the adjacent Ethos building, which I am informed is approximately 17.2 metres in height, to represent a gradual step increase that would be acceptable. I recognise the fact that the proposed building would be significantly higher than the existing Technium building. I also acknowledge that there would be an inevitable change to the character of the immediate environs. However, I consider the design details set out below, as well as the visual separation between the proposed site and the Technium building created by Kings Road, to sufficiently mitigate against any material harm.
18. In terms of design detailing, the proposed building would occupy a linear footprint that would run north-south alongside the Tawe. However, by virtue of its form and siting, it would adequately respect the existing curve along Kings Road. The linear building

would be 'bookended' by cross wings that would add visual interest when the building is viewed within the street scene, whilst its substantial length would be effectively broken up by an intermediate cross wing. The materials utilised would be consistent with the surrounding townscape and would be reflective of the site's cultural and historic relationship with the docks. The use of materials and recessed detailing would also serve to successfully break up the development and soften the perceived bulk and mass at street level.

19. The proposed development would also incorporate a significant amount of high quality and landscaped public realm that would serve to further reduce the visual impact, with important new spaces provided along the river frontage. Such measures, alongside the proposed transparent ground floor elements of the design, would ensure that the building would effectively integrate with the immediate and wider environs, providing an overall improvement to the character and appearance of the area relative to its existing context. Indeed, despite the Council's submissions, I agree with the appellant that the existing site is largely seen as a cluttered space comprising scrub, street signage and both parked and moving vehicles.
20. Based on the foregoing, and having considered all matters raised, I conclude that the proposed development would be appropriate to its local context in terms of its scale, height, massing, elevational treatment, materials and detailing, layout, form, mix and density. I also consider that it would integrate effectively with adjacent spaces, create a good quality townscape and represent a suitable design solution given the overall vision of creating a mixed use urban place through the SA1 regeneration, whilst also creating a 'gateway' building upon a key approach into the city centre. Accordingly, I find no conflict with Policy EV1 which seeks to ensure that new developments accord with the principles of good design. For the same reasons, I also find no conflict with Policy EC2 which, amongst other things, seeks to ensure that developments within SA1 Swansea Waterfront area integrate with existing areas and are of a high standard of design. As agreed in the submitted Statement of Common Ground (SoCG), there would be no conflict with Policy EV2.

### ***Parking and Highway Safety***

21. The Council objects to the proposed development on the basis that the extent of the parking provision proposed would result in increased pressure for on-street parking to the detriment of highway safety, including in St Thomas and Port Tennant which currently experience the effects of parking pressures. As such, the Council considers that the development would be contrary to the requirements of Policy AS6 of the adopted UDP and the adopted Supplementary Planning Guidance (SPG) entitled '*Parking Standards*' (2012).
22. Despite some uncertainty over the exact requirements of the parking standards, the Council clarified at the hearing that, in order to be SPG compliant, 20 parking spaces would be necessary to meet the needs of future residents and an additional 50 parking spaces would be needed to meet the needs arising from visitors to the development. The proposed development would make provision for 23 parking spaces and, in this respect, the development would make sufficient parking provision to meet the operational needs of the resident students. Nevertheless, there is no doubt that the levels of parking provided would fall short of the overall requirements of the adopted parking standards, having particular regard to the need arising from anticipated visitors to the development.

23. It is however important to note that the approved parking standards represent maximum standards, as set out in Policy AS6. It is also important to recognise that the SPG document containing the exact standards comprises guidance only and should not, therefore, be treated as determinative. Indeed, such standards should be applied to the specific circumstances of the case, with the overall issue of highway safety in mind. In considering such matters, it is also worth noting the fact that car parking can be a major influence on people's choice of transport. Specifically, Planning Policy Wales (PPW) (Edition 9, 2016)<sup>1</sup> states that "*local authorities should ensure that new developments provide lower levels of parking than have generally been achieved in the past*", before going on to clarify that "*minimum parking standards are no longer appropriate*". The same document also advises that new developments should be consistent with the overall objective of "*minimising the need to travel and increasing accessibility by modes other than the private car*"<sup>2</sup>.
24. There is no doubt in my mind that the site occupies both a sustainable and accessible location, with the SoCG setting out agreement that the site is well located in terms of proximity to a wide range shops and services within the locality. There are also frequent public transport options in the vicinity of the site and the topography of the local area and the dedicated network of footpaths and cycleways are conducive to walking and cycling meaning that sustainable methods of transport represent a viable alternative to the use of the private car, including for trips to the respective higher education institutions. A financial contribution executed through a unilateral undertaking under section 106 of the Town and Country Planning Act (1990) would make provision for financial contributions towards highway infrastructure, including improvements to both pedestrian and public transport options. The works funded by such a contribution and the undertaking of a Travel Plan would further improve the offer of sustainable modes of transport. Moreover, the relative sustainability of the site will no doubt further increase with the delivery of the aforementioned UWTSD proposals.
25. There is clearly potential for the development to result in an increase in indiscriminate parking within the immediate and surrounding areas. However, I have already clarified above that the operational requirements of the residents would be adequately covered by the proposed provision of 23 parking spaces and I do not, therefore, consider that demand arising from such means represents a justifiable reason for refusal. Indeed, given the proposed levels of parking and the aforementioned sustainability credentials of the site, there would be very little incentive or need for students to utilise a private car. Moreover, the availability of convenient long term parking opportunities would be a key factor for students in deciding whether or not to choose the proposed development as their choice of residence.
26. I recognise the fact that the proposed parking arrangements fall short of the standards in respect of parking provision for visitors. However, it is clear from the SoCG that there are a wide range of existing and proposed car parks within relative close proximity to the site which could be utilised by those visitors wishing to use a private car. Indeed, whilst reliance on such facilities would not represent an appropriate long term solution for residents, I see no reason why such facilities could not meet the needs arising from anticipated visitors, particularly given the fact that sustainable modes of transport represent a realistic alternative. Notwithstanding this,

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<sup>1</sup> Paragraph 8.4.2

<sup>2</sup> Paragraph 4.7.4



a significant proportion of visitor trips would comprise those made at the beginning and end of term for pick-up and drop-off purposes and I am satisfied that such trips could be adequately regulated through an effective Travel Plan and/ or Operational Management Plan. Specifically, the appellant has referred to the fact that the proposed basement parking facility could function on a controlled time slot basis over a number of days to prevent overspill to the public highway on such occasions.

27. On the basis that the arrival and departure of students, as well as on-going traffic, cycle and pedestrian matters could be adequately regulated by an approved Travel Plan, and that issues of indiscriminate parking could be effectively enforced through civil enforcement processes, I see no reason why the proposed development would give rise to levels of indiscriminate parking that would represent a material threat to highway safety. Consequently, I find that the proposed development would accord with the general thrust of Policy AS6 of the adopted UDP which is framed within the context of preventing developments that would give rise to vehicle congestion and/ or highway safety concerns. I note the conflict with the adopted parking standards. However, for the reasons set out above, I consider the departure from such standards to be wholly justified in this case.
28. In considering the effects of the development upon highway safety, I have given weight to the financial contributions sought through the executed unilateral undertaking. Indeed, I am satisfied that such requirements meet the statutory and policy tests required of planning obligations.
29. The same unilateral undertaking also incorporates a covenant that seeks to restrict the occupancy of the student accommodation. Amongst other things, it states that no student accommodation shall be occupied other than by persons who have entered into a tenancy licence or similar requiring that the occupier shall not keep a motorized vehicle of which they have use as a driver within three miles of the boundary of the property save where: (a) the vehicle is parked within a public car park; and/or (b) where the vehicle is parked within such three mile zone solely for the purposes of loading and unloading the vehicle when moving in or out of the accommodation. Concerns have been raised as to whether such a covenant is reasonable and enforceable and I share such concerns. However, no firm evidence has been provided to demonstrate that such covenants have failed to provide an adequate solution in other cases where they have been used. Indeed, there is no objection from the Council in this respect. Nevertheless, given that I have already concluded that the effect of the proposed development upon highway safety is acceptable in its own right, I do not consider this particular element of the covenant to meet the statutory and policy tests. As such, I have not attributed it any weight in determining the appeal.

### ***Other Matters***

30. The need for the proposed student accommodation has been questioned by some parties, although I have not seen any robust evidence to support such assertions. Indeed, on the balance of the evidence available, it would appear that there is a clear need for student accommodation within the City and this is supported by the fact that there is on-going pressure for Houses in Multiple Occupation (HMO). It is also supported by the fact that the appeal proposal is being progressed as a market led development.
31. Concerns have been raised in relation to the impact of the proposed building on neighbouring properties, including the occupants of the Ethos and Technium buildings. However, given the siting, orientation and overall design, as well as the heavily

urbanised context, I am satisfied that matters of privacy, outlook and overshadowing would not be so substantial as to justify the dismissal of the appeal. Indeed, given the uses of the adjacent buildings I do not consider that the development would cause material harm to the amenity of the occupiers of neighbouring buildings. The living conditions of the future occupiers of the proposed building could be adequately safeguarded through the imposition of suitably worded planning conditions.

32. Concerns have been submitted regarding extant legal covenants that could act as an obstacle to the development of the site. However, I have not been provided with full details of such legal covenants and, in any event, I have not seen anything to indicate that such matters cannot be adequately addressed outside of the planning system. Similarly, whilst I acknowledge the concerns regarding the health and safety of students, I have not seen any cogent evidence to render such concerns justified. All other matters can be adequately addressed through the imposition of suitably worded planning conditions.

### ***Overall Conclusions***

33. Based on the foregoing, and having considered all matters raised, including those raised by interested parties, I conclude that the appeal should be allowed subject to the conditions set out below.
34. In coming to this conclusion, 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 ("the WBFG Act"). 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.

*Richard E. Jenkins*

INSPECTOR

## Schedule of Conditions

35. I have considered the suggested conditions and, having had regard to the advice in Welsh Government Circular 016/2014: *The Use of Planning Conditions for Development Management* (October 2014), have adjusted their wording in the interest of clarity and precision. In addition to the statutory time commencement condition, I have imposed a condition listing the approved plans and documents for the avoidance of any doubt. Conditions Nos. 3, 4, 5, 13, 22, 23 and 24 are necessary in the interests of visual amenity, with particular reference to ensuring that there would not be any harm to the character or appearance of the area. Similarly, Condition No. 25 is necessary to ensure an active, attractive and transparent frontage that will maintain and enhance the vitality of the area at street level. Condition No. 6 is necessary in the interest of ensuring that necessary wind mitigation measures are appropriate and that they do not have an unacceptable impact on visual amenity.
36. Condition No. 7 would ensure that a coherent plan for the provision of waste management is implemented. Condition Nos. 8, 9 and 10 are necessary due to the high environmental sensitivity of the site and its adjacent waters having particular regard to the fact that contamination strongly suspected at the site due to its previous industrial uses. Condition No. 11 is necessary in order to protect residential amenity and to prevent pollution of controlled waters from inappropriate methods of piling. Condition No. 12 would ensure that the site is adequately drained, whilst Condition No. 14 would ensure that features of archaeological interest are protected.
37. Condition No. 15 requires a Construction Pollution Management Plan to be prepared and implemented and is necessary to manage environmental pollution issues. Condition Nos. 16, 17 and 18 are necessary having regard to air quality objectives and the living conditions of future occupiers of the building. Conditions No. 19, 20 and 21 would ensure that the development would provide acceptable living conditions for the proposed occupiers, having particular regard to levels of noise. Condition Nos. 26, 27 and 28 are necessary in the interests of ensuring a sustainable development and maintaining highway safety. Finally, Condition No. 29 requires an Operational Management Plan to be submitted and agreed to ensure that the operational implications of the development are acceptable.
38. The Council has suggested conditions requiring the developer to notify the Local Planning Authority and display a site notice indicating the initiation of the development, as required under Section 71ZB (2) of the Town and Country Planning Act 1990 (as amended). However, given that this is a requirement of legislation, I do not consider that it is necessary to duplicate the requirement as part of the planning permission. Similarly, No. 13 of the Council's suggested conditions has not been imposed given that it is adequately covered by Condition No.12 below.
- 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:
 

*Site Location Plan AP100/A, Existing Site Plan AP101/A, Existing Block Plan AP102/A, Proposed Site Plan AP103/B, Proposed Lower Ground Floor Plan AP104/F, Proposed Ground Floor Plan AP105/H, Proposed First Floor Plan AP106/F, Proposed Second Floor Plan AP107/F, Proposed Third Floor Plan AP108/D, Proposed Fourth Floor Plan AP109/D, Proposed Fifth Floor Plan*

*AP110/D, Proposed Sixth Floor Plan AP111/D, Proposed Seventh Floor Plan AP112/D, Proposed Eight Floor Plan AP113/D, Proposed Roof Plan AP114/C, Proposed Roof Plan AP114/C, Elevation A including Context AP115/C, Elevation B including Context AP116/C, Elevation C including Context AP117/C, Elevation D including Context AP118/D, Sectional Elevation AP120B, Sectional Elevation C AP121B, Sectional Elevation D AP122/C, Proposed Block Plan AP123/B, Elevation Sectional Detail AP132, Landscape Section AA EDP3244-09B, Landscape Masterplan EDP3244-07c, Landscape Section BB EDP3244-10A, Landscape Section CC EDP3244-11A.*

- 3) Prior to the development of any superstructure works, samples of all external finishes together with their precise pattern and distribution on the development shall be submitted to and approved in writing by the Local Planning Authority. Composite sample panels shall be erected on site for the duration of the works and the development shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of any superstructure works, details of the following at a scale of 1:10 or other appropriate large scale shall be submitted to and approved in writing by the Local Planning Authority:
  - *Typical window in its opening, including vent and spandrel panel;*
  - *Colonnade, including soffit;*
  - *Parapet;*
  - *Inset top floor including cap;*
  - *Typical external door opening.*

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

- 5) Prior to the commencement of any superstructure works, details of all public realm works, including details of the parking for a refuse truck, shall be submitted to and approved in writing by the Local Planning Authority. Development shall thereafter take place in accordance with the approved details.
- 6) Notwithstanding the details shown on the approved plans, details of all wind mitigation measures shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The proposed mitigation measures shall be referenced to a revised wind analysis and shall be implemented in accordance with the approved scheme prior to the first beneficial occupation of the building hereby permitted and retained thereafter for the lifetime of the approved development.
- 7) Prior to the occupation of the development, a Refuse and Recycling Strategy (including the provision of storage facilities within the site) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented and operated in accordance with the approved Refuse and Recycling Strategy for the lifetime of the development.
- 8) Prior to the commencement of development approved by this planning permission or such other date or stage in development as may be agreed in writing with the Local Planning Authority, the following components of a scheme to deal with the risks associated with contamination of the site shall

each be submitted to and approved, in writing, by the Local Planning Authority:

1. A preliminary risk assessment which has identified:
  - all previous uses;
  - potential contaminants associated with those uses;
  - a conceptual model of the site indicating sources, pathways and receptors;
  - potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

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

- 9) Prior to occupation of any part of the approved 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.
- 10) Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.
- 11) Prior to the commencement of construction works on the application site detailed plans of any piling operations to be carried out shall be submitted to and approved in writing by the Local Planning Authority. The submitted plans shall contain an assessment of vibration with regard to the neighbouring premises. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority which may be given for those parts of the site where

it has been demonstrated that there is no resultant unacceptable risk to groundwater.

- 12) No development shall commence until the developer has prepared a strategy 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 thereafter to serve the development.
- 13) Notwithstanding the submitted information provided in the DAS Addendum that confirms that PV panels will be concealed on the areas of roof behind the parapets full, or the provisions of Part 43 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended for Wales), full details of all PV panels and their siting shall be submitted to and approved in writing by the Local Planning Authority. The panels shall be retained thereafter in their approved position.
- 14) No development shall take place until the developer has secured agreement for a written scheme of historic environment mitigation which has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the programme of work will be fully carried out in accordance with the requirements and standards of the written scheme.
- 15) Prior to the commencement of construction works a Construction Pollution Management Plan (CPMP), as referred to in the Air Quality Assessment, shall be submitted to and approved in writing by the LPA. The CPMP shall include the following:
  - a. Construction programme and timetable;
  - b. Detailed site plans to include indications of temporary site offices/ compounds, materials storage areas, proposed compounds, delivery and parking areas;
  - c. Traffic scheme (access and egress) in respect of all demolition/ construction related vehicles;
  - d. An assessment of construction traffic generation and management in so far as public roads are affected, including provisions to keep all public roads free from mud and silt;
  - e. Proposed working hours;
  - f. Principal Contractor details, which will include a nominated contact for complaints;
  - g. Details of on-site lighting (including mitigation measures) having regard to best practicable means (BPM);
  - h. Details of on-site dust mitigation measures having regard to BPM;
  - i. Details of on-site noise mitigation measures having regard to BPM;

- j. Details of on-site vibration mitigation measures having regard to BPM;
- k. Details of waste management arrangements (including any proposed crushing/screening operations);
- l. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; and
- m. wheel washing facilities.

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

- 16) Prior to the beneficial use of the development, a quantitative assessment of NO<sub>2</sub> pollutant concentrations at the façade of the proposed development shall be undertaken (in line with National Air Quality Objectives) in parallel with the assessment of the on-site combustion plant to ensure that the combined effects of both pollution sources on future residents are fully assessed and mitigated if required. The assessment shall be submitted to and approved in writing by the Local Planning Authority prior to the first beneficial occupation of the building hereby approved.
- 17) Prior to the beneficial use of the development, a scheme which specifies the provisions to be made for the control of ventilation and fume extraction shall be submitted to and approved in writing by the Local Planning Authority. Such works that form part of the approved scheme shall be completed before the premises are occupied and retained thereafter to serve the development.
- 18) Prior to the beneficial use of the development, a scheme which specifies the provisions to be made for any condensing units relating to refrigeration and freezing of products shall be submitted to and approved in writing by the Local Planning Authority. Such works that form part of the approved scheme shall be completed before the premises are occupied.
- 19) 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 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 and the approved scheme shall be retained for the lifetime of the development hereby approved.
- 20) Prior to the beneficial use of the development a scheme shall be submitted to and approved in writing by the Local Planning Authority that 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.

- 21) 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) in accordance with BS4142:2014: Methods for rating and assessing industrial and commercial sound. The building services plant shall thereafter be installed and maintained in accordance with the approved scheme.
- 22) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking or amending that Order), Part 24 of Schedule 2 shall not apply to the development hereby permitted.
- 23) Notwithstanding the details submitted as part of the application, no superstructure works 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.
- 24) 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.
- 25) No vinyls or other obscure glazing shall be applied at any time to the ground floor A3 unit glazing or space listed as Ancillary Space on the approved plans.
- 26) The development shall be carried out in accordance with a Travel Plan to be submitted to and approved in writing by the Local Planning Authority prior to any beneficial use of the development.
- 27) Notwithstanding the submitted details, the development shall not be occupied until facilities for the secure storage of cycles have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority and they shall thereafter be retained in perpetuity.
- 28) Prior to the first beneficial occupation of the development, car parking arrangements shall be clearly demarcated within the site in accordance with the approved Plan Ref. AP104/F: *Proposed Lower Ground Floor Plan*. The parking spaces shall remain available for the designated use in perpetuity.
- 29) Prior to the first beneficial occupation of the development, an Operational Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Operational Management Plan shall specify:



- a) The arrangements for the general maintenance and management of the site, including external amenity/ landscape space;
- b) The arrangements for servicing deliveries;
- c) The parking and traffic management incentives and arrangements, with particular reference to the beginning and end of term pick-up and drop-off arrangements;
- d) Measures proposed in relation to site safety and security; and
- e) The Procedures in place for minimising and managing community complaints, a point of contact for each academic year and full details of the community complaint procedures.

The development hereby permitted shall thereafter be implemented in accordance with the approved Operational Management Plan for the lifetime of the development.

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Geraint John	Agent – Geraint John Planning
Mr Joe Ayoubkhani	Geraint John Planning
Mr Jeremy Osbourne	
Mr James	NMJ Property Developments Limited
Ms Melanie James	NMJ Property Developments Limited
Mr Matt Thomas	Vectos
Mr Andrew Cook	Inspire Design
Mr Dai Lewis	EDP - Landscape

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Amanda Pugh	Highways Authority
Ms Ann Williams	Planning Technician
Mr Huw Jenkins	Urban Design
Mr Andrew Ferguson	Local Planning Authority

### INTERESTED PERSONS:

Mr Richard Banks	JCR Planning
Mr Meirion Howells	Ethos
Mr Nick Parkes	Ethos
Ms Carola Parkes	Ethos
Mr Jon Rance	Ethos
Mr Henry Anderson	Ethos
Mr Henry Evans	Ethos
Ms Chrissy Evans	Ethos
Mr Rowland Jones	Ethos
Mr Clive Lloyd	Ward Member
Mr Kevin Thomas	

## **DOCUMENTS**

- 1 Appellant's 3-D Computer Generated Images of the Proposed Development
- 2 Appellant and LPA – Proposed Operational Management Plan Condition  
*(submitted via email dated 12 May 2017)*
- 3 WG Dear Chief Planning Officer Letter (1 February 2016)  
*(submitted via email dated 12 May 2017)*
- 4 Unilateral Undertaking under Section 106 (dated 15 May 2017)  
*(submitted to Planning Inspectorate, Cathays Park Cardiff)*

# Agenda Item 9

## Report of the Head of Legal, Democratic Services & Business Intelligence

Planning Committee – 1 August 2017

### EXCLUSION OF THE PUBLIC

<b>Purpose:</b>	To consider whether the Public should be excluded from the following items of business.	
<b>Policy Framework:</b>	None.	
<b>Consultation:</b>	Legal.	
<b>Recommendation(s):</b>	It is recommended that:	
<b>1)</b>	The public be excluded from the meeting during consideration of the following item(s) of business on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Paragraphs listed below of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 subject to the Public Interest Test (where appropriate) being applied.	
	<b>Item No.</b>	<b>Relevant Paragraphs in Schedule 12A</b>
	10	17
<b>Report Author:</b>	Democratic Services	
<b>Finance Officer:</b>	Not Applicable	
<b>Legal Officer:</b>	Tracey Meredith – Head of Legal, Democratic Services & Business Intelligence(Monitoring Officer)	

#### 1. Introduction

- 1.1 Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, allows a Principal Council to pass a resolution excluding the public from a meeting during an item of business.
- 1.2 Such a resolution is dependant on whether it is likely, in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I of the Local Government Act 1972.

#### 2. Exclusion of the Public / Public Interest Test

- 2.1 In order to comply with the above mentioned legislation, Cabinet will be requested to exclude the public from the meeting during consideration of the item(s) of business identified in the recommendation(s) to the report on the grounds that it / they involve(s) the likely disclosure of exempt information as set out in the Exclusion Paragraphs of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.

- 2.2 Information which falls within paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.3 The specific Exclusion Paragraphs and the Public Interest Tests to be applied are listed in **Appendix A**.
- 2.4 Where paragraph 16 of the Schedule 12A applies there is no public interest test. Councillors are able to consider whether they wish to waive their legal privilege in the information, however, given that this may place the Council in a position of risk, it is not something that should be done as a matter of routine.

### **3. Financial Implications**

- 3.1 There are no financial implications associated with this report.

### **4. Legal Implications**

- 4.1 The legislative provisions are set out in the report.
- 4.2 Councillors must consider with regard to each item of business set out in paragraph 2 of this report the following matters:
- 4.2.1 Whether in relation to that item of business the information is capable of being exempt information, because it falls into one of the paragraphs set out in Schedule 12A of the Local Government Act 1972 as amended and reproduced in Appendix A to this report.
- 4.2.2 If the information does fall within one or more of paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended, the public interest test as set out in paragraph 2.2 of this report.
- 4.2.3 If the information falls within paragraph 16 of Schedule 12A of the Local Government Act 1972 in considering whether to exclude the public members are not required to apply the public interest test but must consider whether they wish to waive their privilege in relation to that item for any reason.

**Background Papers:** None.

**Appendices:** Appendix A – Public Interest Test.

## Public Interest Test

No.	Relevant Paragraphs in Schedule 12A
<b>12</b>	<b>Information relating to a particular individual.</b>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 12 should apply. Their view on the public interest test was that to make this information public would disclose personal data relating to an individual in contravention of the principles of the Data Protection Act. Because of this and since there did not appear to be an overwhelming public interest in requiring the disclosure of personal data they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
<b>13</b>	<b>Information which is likely to reveal the identity of an individual.</b>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 13 should apply. Their view on the public interest test was that the individual involved was entitled to privacy and that there was no overriding public interest which required the disclosure of the individual's identity. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
<b>14</b>	<b>Information relating to the financial or business affairs of any particular person (including the authority holding that information).</b>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 14 should apply. Their view on the public interest test was that:</p> <ul style="list-style-type: none"> <li>a) Whilst they were mindful of the need to ensure the transparency and accountability of public authority for decisions taken by them in relation to the spending of public money, the right of a third party to the privacy of their financial / business affairs outweighed the need for that information to be made public; or</li> <li>b) Disclosure of the information would give an unfair advantage to tenderers for commercial contracts.</li> </ul> <p>This information is not affected by any other statutory provision which requires the information to be publicly registered.</p> <p>On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>

No.	Relevant Paragraphs in Schedule 12A
15	<p><b>Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 15 should apply. Their view on the public interest test was that whilst they are mindful of the need to ensure that transparency and accountability of public authority for decisions taken by them they were satisfied that in this case disclosure of the information would prejudice the discussion in relation to labour relations to the disadvantage of the authority and inhabitants of its area. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
16	<p><b>Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</b></p>
	<p>No public interest test.</p>
17	<p><b>Information which reveals that the authority proposes:</b>  <b>(a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</b>  <b>(b) To make an order or direction under any enactment.</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 17 should apply. Their view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by the public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
18	<p><b>Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</b></p>
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 18 should apply. Their view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis they felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>

# Agenda Item 10

By virtue of paragraph(s) 17 of Schedule 12A  
of the Local Government Act 1972  
as amended by the Local Government (Access to  
Information) (Variation) (Wales) Order 2007.

Document is Restricted