

Meeting of:	Cabinet
Date of Meeting:	Monday, 22 March 2021
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	Objections Report to the Appropriation of General Fund Land to the Housing Revenue Account for the Purposes of Housing Development
Purpose of Report:	To advise Cabinet of objections to the proposal to appropriate land adjacent to Pencoedtre High School, Barry to the Housing Revenue Account for the purposes of delivering mixed tenure housing development.
Report Owner:	Cabinet Member for Housing and Building Services
Responsible Officer:	Miles Punter - Director of Environment and Housing
Elected Member and Officer Consultation:	Legal Services
Policy Framework:	This report is within the policy framework and budget and is a matter for Executive decision by Cabinet.
<p>Executive Summary:</p> <ul style="list-style-type: none"> This report is subsequent to Cabinet resolution C218 dated 3rd February 2020, where Cabinet resolved to advertise the proposed loss of the open space adjacent to Pencoedtre Highschool and currently in the remit of the Environment and Housing Services, in accordance with Section 122 (2A) of the Local Government Act 1972 in order to appropriate the land to the Housing Revenue Account. The resolution above included the requirement to report back to Cabinet any objections received to the appropriation. Following the advertisement for the loss of public open spaced adjacent to Pencoedtre Highschool, shown edged blue on the Plan at APPENDIX B ("the Land") which together with other land in the vicinity is required for the purposes of the delivering a mixed tenure housing development, 5 no. objections were received. Where an objection is received Cabinet are required to consider the objection before deciding whether to proceed with the appropriation of land to the Housing Revenue Account. Having considered the objections, Officers consider that there is little veracity to the objections received and, therefore, the appropriation of the Land to the Housing Revenue Account may be completed. It is therefore recommended that the objections be noted and that the appropriation of the Land be completed. 	

Recommendations

1. That Cabinet note the objections to the appropriation of the Land, but having considered the objections, for the reasons contained in this report, approve the appropriation of the Land to the Housing Revenue Account.
2. That the objectors be advised of this decision.

Reasons for Recommendations

1. That for the reasons set out in this report, the Council has sufficiently complied with requirements of s.122(2A) of the Local Government Act 1972 (“the Act”) and, having considered the objections, the appropriation of the Land can be progressed.
2. To inform the objectors of the decision.

1. Background

- 1.1 Cabinet at its meeting on the 3rd February 2020, approved the appropriation the Education land at Pencoedtre High school, Barry and adjacent Environment and Housing Services land at Pencoedtre Lane to the Housing Revenue Account, for the purposes of delivering a mixed tenure housing development.
- 1.2 In relation to the land, Cabinet further recommended that notice be given of the proposed loss of the open space currently in the remit of the Environment and Housing Services (which includes Parks and Grounds) adjacent to Pencoedtre Highschool, in accordance with the s.122(2A) of the Act and required that any objections be further reported to Cabinet for consideration.
- 1.3 A notice advertising the loss of open space was publicised in the Barry and District News and was intended to run for two consecutive weeks between 12th March 2020 and 26th March 2020 in accordance with s.122(2A) of the Act. However, on the 23rd March 2020 the Civic Offices were closed to the public because of the effects of the COVID-19 pandemic and it was decided that original notice be withdrawn, because it prevented the public from having appropriate access to examine documentation held in the Civic Offices, relating to the Notice. It was further decided that the Notice be re-advertised at later date when the Civic Offices could re-open and the pandemic had subsided or, if the process of public consultation and access to documentation could be held effectively on the Council’s website. The Notice for the loss of public open space was re-advertised in the Barry and District News on 11th and 18th February 2021 allowing for objections to be received until the 4th March 2021, in accordance with s.122(2A) of the Act, with supporting documentation being published to the Council’s website.

2. Key Issues for Consideration

2.1 Five objections have been received in total over the two advertising periods (although two are from the same objector) in relation to the appropriation of the Land. All objections have been considered. The objections are attached at APPENDIX A with the names of objectors removed and referred to as Objections 1-5.

2.2 Officers responses to the points contained within the objections can be summarised as follows:

Loss of Public Open Space

2.2.1 The land in question is not formal accessible maintained open space. It is not used regularly by the public for walking dogs for example, but it is nevertheless appropriated to Environment and Housing Services (which includes Parks and Grounds) and it was therefore the appropriate procedure to advertise its appropriation to the HRA.

2.2.2 Any future housing development will include Public Open Space in accordance with the Council's Supplementary Planning Guidance.

Impact on Wildlife

2.2.3 The Land is not designated as a Site of Special Scientific Interest, Ancient Woodland or have any Tree Preservation Orders in effect.

Drainage

2.2.4 Any new development on the Land will have a drainage scheme that will require agreement from the Sustainable Drainage (SuDS) Approval Body, to mitigate and alleviate the potential for any surface water flooding.

Traffic

2.2.5 Any new development will have to satisfy the requirements of the Council's Highways department in terms of traffic management.

The Notice

2.2.6 Under section 122(2A) of the Act the Council is required to advertise the appropriation of land forming part of an open space, specifying the land in question, for two consecutive weeks in a newspaper circulating in an area which the land is situated and consider objections to the proposed appropriation. The notice does not have to mention the 'delivery of new improved recreational facilities.'

- 2.2.7** The notice was first dated 12th March 2020 and published just before the Country went into lockdown and it did not provide for the receipt of electronic correspondence or the plan to be made available online. Due to the Council offices being closed, the decision was therefore made the delay the matter and readvertise. The second notice dated 11th February 2021 dealt with these issues and a plan was published on the Council Website and an email address was provided for objections. The notice still allowed for objections to be received in writing for those who do not have access to the internet. The Council has received no requests from members of the public for a plan to be made available by other means e.g. by post or otherwise.
- 2.2.8** The notice dated 11th February 2021 provided for 21 days for objections to be received.
- 2.2.9** The notice dated 12th March 2020 was published in the Barry Gem, as the Barry Gem is no longer in existence the notice dated 11th February 2021 (APPENDIX C) was published in the Barry and District News.
- 2.2.10** The notice confirms the land will be appropriated from Open Space to Housing purposes.

The Land

- 2.2.11** In accordance with the Ordnance Survey database which is used by the Council on the Geographic Information System (GIS) it accesses, the address of this land is Pencoedre Lane as it is on Land Registry MapInfo which also uses the Ordnance Survey database. The plan used in conjunction with the Cabinet report of 03 February 2020 and made available on-line was based on the GIS system and clearly identified the land. The LDP also refers to land at Pencoedre Lane.
- 2.2.12** There are no anomalies regarding the ownership of the land, the Vale of Glamorgan Council is the registered proprietor of the land at the Land registry registered with title number CYM279395. The land was acquired in 1958 by the Borough of Barry from HCRF Jenner and it was acquired for £21,700.00. The conveyance does not contain any restrictive covenants relating to actual use of the land and many parts of the land have been developed e.g. the Gibbonsdown Estates. There is nothing further that could be obtained from the Glamorgan Archive that would change this position as the Council holds its own landownership records.
- 2.2.13** The land was registered on the 21 March 2006. In order to register the land, the Council would have submitted all relevant deeds and documents it held relating to ownership to the Land Registry on the application for first registration. Unless a conveyance contained restrictive covenants that needed noting in the charges register on the title, Land Registry would not refer to a conveyance and it is therefore a matter for the Land Registry how a title is registered.

2.2.14 Field number 223 is not land that is within the land advertised to be appropriated or subject to the appropriation process and therefore, reference to it is not relevant for the purposes of this exercise.

2.2.15 It is confirmed that the land together with the adjacent site was consulted on as part of the LDP process, as result of which 4.55ha of land (including this land) were then allocated for housing.

2.2.16 The land subject to the Section 122(2A) notice is distinct from the land at Pencoedtre High School which was under Education's remit. It will be assembled with this land for the purposes of this development. Please see the LDP 2011-2026 Written Statement and plan and minutes C216 AND C218 of Cabinet on the 3rd February 2020.

Specification of the land in question

2.2.17 Under section 122(2A) LGA 1972 the Council must specify the land in question this is so that the public can establish the area of land to which the proposed appropriation applies. This does not require an investigation into the conveyance history of the land. The description in the notice together with the plan available on the Council website identifies the land in question.

Rights of Way

2.2.18 There are no recorded public rights of way across the land in question. Title CYM279395 notes that the roadways, footpaths and accessways included in the title are subject to rights of way but this because some of the land included in this title has been developed for housing and subsequently sold under the 'Right to Buy' scheme. The Housing Act 1985 stipulated that all easements and quasi easements were to pass on transfer of a property, and this is how the Land Registry records these matters against the retained title.

Highways and Accessways

2.2.19 Both Port Road and Pencoedtre Lane is an adopted highway.

2.2.20 The sign should not make any difference to the steps the Council is taking in terms of publicising its intentions as it owns the land in question and it is land to which the public could have had access.

2.2.21 The other accessway referred to on Port Road is an access to the former Bryn Hafren School fields. This is land within the remit of Education and is not land included in the notice under section 122 (2A) of the Act in respect of which objections were invited.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** Looking to the long term - The Housing Business Plan allocates significant resource, some £270 million, towards the development of new Council homes over the next thirty years. The Council plans to complete a minimum of 500 new Council homes by 2025. Further homes will be considered for development where development could be made viable by including other tenure models to cross-subsidise the development of homes at social rent. In this way the Council could further add to the overall numbers of affordable homes in the borough without adversely impacting on the Housing Business Plan.
- 3.2** Taking an integrated approach - In April 2018, Welsh Government announced an independent review of affordable housing supply in Wales. The purpose of which was to examine whether more can be done to increase the supply of affordable housing in Wales, maximising the resources available in order to meet the clear commitment to deliver 20,000 affordable homes during this term of Government. The Council is committed to working with Welsh Government, its housing partners, communities and the private sector in maximising the delivery of affordable housing in the Vale.
- 3.3** Involving the population in decisions - In arriving at a decision to provide new affordable housing, the Council will fully consult with its tenants and residents on development proposals and consider their responses, from the feasibility stage through to the determination of the planning application and when the scheme is being delivered.
- 3.4** Working in a collaborative way- The Council has strong established links with a number of Housing Associations which make a significant contribution to housing supply in the Vale. It is important this continues, and it is not the Council's intention to compete with Housing Associations. Therefore, the Council intends to work alongside our partners and envisages a complimentary approach to the delivery of affordable homes.
- 3.5** Understanding the root causes of issues and preventing them - The Local Housing Market Assessment (LMHA) 2019 highlighted the chronic shortage of affordable housing in the Vale of Glamorgan. In assessing the housing market as a whole, the LMHA calculates the net need for affordable housing, including social rented housing, intermediate rented housing and low-cost home ownership housing products, over the coming years. This assessment projects the headline annual need for affordable housing in the Vale of Glamorgan to be 890 units per annum between the years 2019 to 2024. The LMHA identified an overwhelming need for all types and tenures of affordable housing in the Vale. The Council has recognised this and is acting to invest significantly in new council homes and enable housing association development.

- 3.6** This proposal:
Meets the relevant Strategic Objective 3 of the Corporate Plan 2020-2025
Meets the Objectives 1-5 of the Well Being Plan 2018-23
Meets all the Strategic Aims 1-4 of the Local Housing Strategy 2015-20
Meets Strategic Objectives 1-4 of the Housing Development Strategy 2019-24

4. Resources and Legal Considerations

Financial

- 4.1** There are no further Financial implications arising from this report.

Employment

- 4.2** There are no employment implications

Legal (Including Equalities)

- 4.1** The Council is authorised under Section 122 of the Local Government Act 1972 to appropriate land to any purpose for which they are authorised to acquire land by agreement and which is no longer required for the purpose for which it was used immediately prior to the appropriation.
- 4.2** However, where that land is open space the Council is required by Section 122(2A) of the 1972 Act to publicise the appropriation and consider any objections to the appropriation.

5. Background Papers

None.

27 March 2020

To: Legal Services Division (Reference JSH/CO1-0661)

From: [REDACTED]

Introduction:

1. I **OBJECT** to the intended appropriation of land described as being **LAND AT PENCOEDTRE LANE, BARRY** of an area of approximately 1.25 hectares currently designated open space for the purpose of delivering a mixed tenure housing development on the land as advertised by Notice dated 12 March 2020 in the *Barry Gem* ('the Press Notice'). The grounds for objecting are as follows:

- (i) COVID -19 has interfered with due process of the advertising of the land in accordance with section 122(2A) of the LGA 1972; and
- (ii) Whereas section 122(2A) of the LGA 1972 does not dictate a minimum time-frame to submit objections even absent any pandemic a 14-day time frame does not follow the spirit of the law; and
- (iii) COVID -19 has interfered with the public's ability to examine the plan at the Civic Offices due to the closure of the Civic Offices to the public with effect from 1 pm on 24 March 2020; and [TR1]
- (iv) There is genuine confusion in the public identifying the land not assisted when there is inconsistency by the Council in how it identifies the land in the LDP vis a vis the recent Cabinet Report dated 03 February 2020. Also, the land is described as adjacent to Pencoedtre Lane or adjacent to Pencoedtre Road depending on what document you are looking at.
- (v) There are anomalies about land ownership and how and when the land was conveyed not assisted by COVID -19 preventing public access to historical conveyance material held by the Council and Glamorgan Archives being closed.

[TR2]

2. I have been corresponding with Jocelyn Ham – Senior Lawyer Legal Services – who has conduct of the matter on behalf of her client Housing and Building Services ('the Client'). Ms Ham will hold a record in her file of our correspondences.
3. The Council is not responsible for COVID -19 but as a local authority it does have a duty to adapt its services to deal with its effects. It is my position this would include putting on hold any further action on the proposed land appropriation until such time as the public can be afforded a fair opportunity to engage in the objection process which will not be until the pandemic is under control. [TR3]

Local Government Act 1972 Section 122(2A):

4. The **Gem** Editor Liz Davies acknowledged in this week's edition that due to the current crisis people have found it harder and harder to pick up their copy of the **Gem**. I therefore cannot accept Ms Ham's argument on behalf of her Client that section 122(2A) of the LGA 1972 has been complied with because by the admission of its own Editor the **Barry Gem** has not been '*circulated the area in which the land is situated for two consecutive weeks*'.
5. The Press Notice indicates objections must be submitted no later than 4.30 pm on 27 March 2020 so I welcome Ms Ham's new instruction that objections received after the 27 March 2020 deadline will now be considered. However, her Client's instruction that the Notice will not be re-advertised has no merit. COVID -19 has interfered with due process so the matter must be re-advertised once the pandemic is under control or over.
6. Ms Ham originally had no instructions to make the Notice available on the Council's website. The fact that during the original 14 day period to submit objections the Notice was placed on the website late afternoon on 17 March 2020 and the Closure Notice on the entrance to the Civic Offices erected on 24 March 2020 directs the public to the Council's website does not remedy the non-compliance with section 122(2A). In addition, the press Notice makes clear the plan identifying the land may be viewed during '*normal office hours*' when COVID -19 put paid to this. Her argument the public could telephone

C1V for a copy of the plan again has not merit for the simple reason the Notice does not advertise this option to the public. [TR4]

Specification of the land in question – section 122(2A) LGA 1972:

7. Under this head it is necessary to look into the conveyance history of the land. This is problematical because until Wales and indeed the World recovers from the pandemic access to the document wallets held by the Council would be denied – likewise Glamorgan Archives is closed. [TR5]

8. Notwithstanding paragraph 7 above I have had limited success in possibly identifying the land the Council proposes appropriating for housing. Responses from Ms Ham combined with documents I have managed to source online suggest the land was originally conveyed to The Mayor Aldermen and Burgesses of the Borough of Barry by the Rev. Hugh Cecil Robert Francis Jenner on 9 August 1958 together with other land for the sum of £21,700. Barry Borough Council was abolished in 1974 and assets in its ownership transferred to VOG District Council on 01 April 1974 by virtue of article 16 of the Local Authorities (Wales) (Property etc) Order 1973. Land held by the VOG District Council was in turn transferred to the VOG Unitary Authority on 01 April 1996 by virtue of section 16 of the Local Government Reorganisation (Wales) (Property etc) Order 1996.

9. The Jenner family were great benefactors to the people of Barry for example Jenner Park Stadium was built on land gifted by the family. So, if the land in question was indeed part of the land conveyed in 1958 were there any covenants as to its future use for example being restricted to use as open space? I did speak with an elderly gent with intimate knowledge of the land who advised me ownership was called into question in the late 1990s the owner eventually being tracked to Sheffield. I intended to visit this gent again along with other elderly neighbours of mine from when I lived in Pencoedtre Road between 1986 and 2000 - but COVID -19 interfered. Only by examining the 1958 conveyance held in a document wallet and associated legal documents can there be any certainty. [TR6]

10. As to *'specification of the land in question'* there has been public confusion identifying it. Online mapping tools and historical documents connected with planning permissions granted in the vicinity of Pencoedtre Farm refer to Pencoedtre Lane as Pencoedtre Road. Ms Ham has argued the Council cannot be held responsible for online mapping tool descriptions – I agree with her. Ms Ham further states the Council is not responsible for how developers describe their sites – I don't agree. The Council is the LPA and correct site descriptions and features are fundamental to the planning process. Setting these arguments aside LR Title Number CYM279395 has been sourced from the Land Registry website. The register extract of the title describes land adjoining Pencoedtre Farm, **PENCOEDTRE ROAD**, Barry as being registered on 21 March 2006 to the VOG Council, Civic Offices, Holton Road, Barry, CF63 4RU. The title plan is more or less identical to the plan Appendix C presented to Cabinet on 03 February 2020 – incidentally incorrectly shown as Appendix B on the Legal Notices website. All 3 plans do describe the land adjoining Pencoedtre Farm at **PENCOEDTRE LANE**. The question being is the title wrong or the title plan? I strongly suspect the title but either way the deeds require correction if for no other reason should the Council succeed with the appropriation despite objections that it does not end up transferring part of Pencoedtre Fields that abut **PENCOEDTRE ROAD** to any developer. I state this with no sarcasm because there is real public confusion – indeed I initially was myself - that the Council's ^[TR7]proposal was to eventually sell off part of the Fields for housing development.
11. The land in question falls within the LDP under Policy MG2(11) Housing Allocations – described as 'Land to the West of Pencoedtre Lane'. It is shown in the LDP Interactive Proposals Map 2017 as incorporated within a 4.45 hectares Greenfield site that includes land surplus to the requirements of Bryn Hafren Comprehensive School – now the site of Pencoedtre High School. I calculate the land referred to as 'surplus to requirement' must be a land parcel measuring 3.2 hectares (4.45 less 1.25) within the curtilage of what is now Pencoedtre High School. The LDP refers to the 4.45 hectares site being developed to facilitate the delivery of new improved recreational facilities for the school and wider community plus affordable housing in accordance with Policy MG4 - the total number of houses being at least 137. The Notice refers to the 1.25 hectares being appropriated for housing purposes – when proper scrutiny of historical conveyances etc may restrict use

of this land for open space recreational purposes in which case the Council's planners will need to have a re-think and allocate this land as 'new improved recreational facilities for the school and wider community'. [TR8]

12. I refer to the Cabinet Member for Housing and Building Services (Cllr Margaret Wilkinson) Report to Cabinet dated 03 February 2020. One aspect of her Report concerned land at the Pencoedre High School as illustrated in Appendix B to be appropriated for the purposes of mixed tenure housing development. In 'Recommendations' paragraph 2 Appendix B land is separated from land described as 'Parks Land adjacent to Pencoedre High School' as illustrated in Appendix C. In 'Background' paragraph 1.6 refers to the Appendix C land as being 'managed by Parks and Open Spaces' but deemed surplus to requirement'. I would argue that the Council sign on the locked gated access to the land - that appears to have been in situ for decades - stating 'Private Land No Public Access' would have discouraged public recreational use resulting in Parks and Open Spaces being able to now deem the land 'surplus to requirement' as open space. As to management of the land by Parks and Open Spaces I for one would like to see the maintenance records - if any. In 'Background' paragraph 1.8 reference is made to the land being '.....in the ownership of Parks and Open Spaces' when CYM279395 (see paragraph 10 above) shows title is held by the Council. In 'Background' paragraph 1.9 implies only the Pencoedre High School site falls within MG2(11) and has been allocated for residential use providing at least 137 dwellings when the narrative in the LDP page 170 clearly relates to Appendix B + Appendix C land allocated for at least 137 dwellings + recreational facilities. [TR9]

Conclusion:

13. There are many other reasons to object including the impact on flora and fauna; water supply; drainage; infrastructure - not least the impact on the already busy traffic light junction on Port Road; and the loss of open space. Whereas Ms Ham has advised 'late' objections will be considered and has kindly permitted me to email my objections to her I nevertheless thought it best to submit them within the 14-day time frame on the Notice. However I reserve the right to submit further objections should time and circumstances permit. [TR10]

Thank you

Keep Safe and Keep Healthy – STAY AT HOME

04 March 2021

To: CIV@valeofglamorgan.gov.uk (Reference JSH/CO1-0661)

cc: Ms Jocelyn Ham

From: [REDACTED]

Note: My original objection (copy attached) in response to the legal notice dated 12 March 2020 should be read in conjunction with my following objection.

Introduction:

1. I **OBJECT** to the intended appropriation of land described as being **LAND AT PENCOEDTRE LANE, BARRY** of an area of approximately 1.25 hectares currently designated open space for the purpose of delivering a mixed tenure housing development on the land as advertised by Notice dated 11 February 2021 in the *Barry and District* ('the Press Notice'). The grounds for objecting are as follows:

- (i) COVID -19 has interfered with the public's ability to examine the plan at the Civic Offices due to the closure of the Civic Offices to the public with effect from 1 pm on 24 March 2020; and
- (ii) The Council's assumption that all members of the interested public have access to the internet and/or internet skills to access relevant information is unacceptable; and [TR1]
- (iii) There is genuine confusion in the public identifying the land not assisted when there is inconsistency by the Council in how it identifies the land in the LDP vis a vis the recent Cabinet Report dated 03 February 2020. Also, the land is described as adjacent to Pencoedtre Lane or adjacent to Pencoedtre Road depending on what document you are looking at.
- (iv) There are anomalies about land ownership and how and when the land was conveyed not assisted by COVID -19 preventing public access to historical conveyance material held by the Council and Glamorgan Archives being closed [TR2].

2. The Council is not responsible for COVID -19 but as a local authority it does have a duty to adapt its services to deal with its effects. It is my position this would include putting on hold any further action on the proposed land appropriation until such time as the public can be afforded a fair opportunity to engage in the objection process which will not be until the pandemic is over. [TR3]

Specification of the land in question – section 122(2A) LGA 1972:

3. Under this head it is necessary to look into the conveyance history of the land. I have been corresponding with Ms Jocelyn Ham – Senior Lawyer Legal Services – who has conduct of the matter on behalf of her client Housing and Building Services ('the Client'). Ms Ham will hold a record in her file of our correspondences. Ms Ham recently provided me with the 09 August 1958 conveyance between Hugh Cecil Robert Francis Jenner the Mayor Aldermen and Burgesses of the Borough of Barry and an extract of the associated plan. My request dated 26 February 2021 for an extract of the plan showing field 223 and the existence of a gate is yet to be satisfied. Once satisfied I reserve the right to submit an addendum to this objection. To assist I attach a copy of the 1958 conveyance and plan extract. [TR4]
4. I find it curious that whereas the Council registered the land on 21 March 2006 under title CYM279395 that no reference is made in the register extract to the 1958 conveyance. This omission should be explored by the Council and an explanation sought. I would suggest the relevant officer would be Ms Lorna Cross, Operational Manager (Property) because she is responsible for and has ready access to the Council's terrier. Ms Ham may also be able to assist as the lawyer with conduct.[TR5]
5. Title CYM279395 refers to roadways, footpaths and accessways included in the title being subject to rights of way. Insofar as footpaths are concerned none are recorded on the Definitive Map and Statement as crossing the land in question – but that does not mean none exist. Where the land bounds Port Road there is a very distinctive wear line of a footpath – see photograph attached. I have not followed the route into the woods because I walk alone but nevertheless the Council is under a statutory duty under the Wildlife and Countryside Act 1981 to maintain a Definitive Map and Statement of the

highest attainable accuracy. This being so then the Council's PROW section should be tasked with investigating the route that commences from Port Road and the potential that an unrecorded footpath may subsist over the land. [TR6]

6. Insofar as roads are concerned the land abuts Port Road – inarguably a highway maintainable at public expense. The land also abuts Pencoedtre Lane that according to the Council's mapping link is an 'adopted' highway. However, I am not convinced this is fact so the Council should seek confirmation of the status of Pencoedtre Lane and establish if a final certificate under s38 of the Highways Act 1980 has been issued. What I do know is that on 22 January 2002 Ms Marles made a temporary closure order under s14 (1) of the Road Traffic Regulations 1984 (as amended) that affected Pencoedtre Lane. Unfortunately, I do not have precise details of the order and have been time constricted in obtaining them but this order should be retrieved and examined for its impact (if any) on the proposed appropriation. [TR7]
7. I am particularly concerned about the creation of the access to the land and the locked gate across it. See photograph attached. There is no evidence of an historical gateway in this location which is opposite *Cartref*. I have found no approved planning consent for the creation of this accessway but know it 'appeared' when the land east of Pencoedtre Lane was being developed – see applications 2008/01531/OUT and 2010/01225/RES. This development was completed in 2014. As with Pencoedtre Lane this accessway is shown as adopted highway including where it enters inside the site boundary. Again, I find this curious and an explanation needs to be sought – not least to establish that the accessway was created lawfully or not as the case may be. The land is currently held by the Council as open space. The sign combined with the locked gate have inarguably deterred public user. The sign may well have been erected by the Council in breach of s14 Countryside and Rights of Way Act 2000 – again a matter that need investigated. Either way the sign has mislead the public into believing they are not entitled to use land alleged to be held by the Council's Parks and Open Spaces section.
8. Another accessway issue is the galvanised gate on the Port Road that abuts Pencoedtre School fields. See photograph. It is on my walking route and until recently was always

kept locked. The last couple of weeks or so it has been unlocked. As with the accessway on Pencoedtre Lane was this accessway lawfully constructed? [TR8]

Conclusion:

9. There is a lot more to this land appropriation than meets the eye – and I am probably just scratching the surface. What I do know is that time and time again officers of the Council only include in their reports to committee what they want the elected members to have knowledge of. For example, if not for my objections would the elected members know anything about the 1958 conveyance; the possibility of an unrecorded footpath crossing the site; or the issues surrounding the 2 accessways? I think not. It is now for Cabinet as elected members to comply with the Members Code of Conduct, refresh themselves on the Protocol on Members/Officer Relations, and ensure they have before them ALL relevant information on which to base its decision on the future use of this land that is made in the interests of the electorate and not what officers desire. As a tax paying member of the electorate it is my position the land be actually used as per its current allocation as a park and open space and the fact the public have been misled about its true use should be rigorously and robustly investigated.

Thank you

I write to object to the Council's proposal to appropriate the open space land at Pencoedtre West.

Barry Town has become a dense housing estate with the Council and developers constantly wanting to build more and more houses without the infrastructure to support our living environment. This much needed open space land is on Port Road, one of the two strategic routes connecting Barry with Cardiff and the motorway network, a principal highway that is being **overwhelmed with traffic**. The Council has at least two significant transport reports (Waterfront Barry, Environmental Statement Chapter D 2009 and Highway Impact Assessment 2013) with evidence that this **highway is over-capacity**. And that was before the construction of a rarely used cycle lane narrowing the road.

Open space has been lost and threatened over the past years largely because the Council seem to value other priorities, objectives, and potential income. Public open space is a critical part of daily urban life: it is where children play; where we appreciate nature and wildlife; parks where we can take part in sport or games and leisure time; walking the dog, or somewhere quiet away from the pressures of our daily lives. 'Affordable' housing often comes with reduced space, sometimes without gardens large enough for kids to kick a ball or parents to grow some shrubs. Open space has a direct impact on our lives, it needs to be **valued, protected, and preserved** as a cornerstone of a pleasant environment for people to enjoy in their various ways.[TR1]

There are plenty of other spaces within the Vale of Glamorgan for house building, **where people may prefer to live** in 'affordable' housing, without the need for the further destruction of valuable open space and established wooded areas.

The open space at Pencoedtre that the council now wish to appropriate for yet more housing **supports a variety of wildlife, mature trees, and greenery**. The Council's Local Development Plan describes how **Natural Resources Wales** are aware that a European protected species has been recorded in the vicinity of the site and has advised that the site is within close proximity to the Barry Woodland Site of Special Scientific Interest (SSSI) which lies roughly 200 metres to the east and that the **designated site should be protected at all times**. They have also encouraged the **retention of mature trees and hedgerows** on the proposed site for their conservation and aesthetic value. [TR2]

Politicians often express fine words in support of the environment and **reducing carbon emissions**, and then enable the destruction of mature trees and ancient hedgerows that hold carbon for a long time. We have recently witnessed this destruction at Pencoedtre East, White Farm and Hayes Road. Retaining the open space at Pencoedtre West would demonstrate that this Council is serious about tackling climate change and determined to comply with their much signalled "Well-being objectives" policy: in particular **"To respect, enhance and enjoy our environment"** an element of the policy which was not addressed in the Cabinet report.

The proposal to use school playing fields and open space for housebuilding is extremely disappointing and the background build-up to this proposal leaves a lot to be desired in terms of **clarity and timing**.

The land to the West of Pencoedre Lane is described in the Feb 2020 committee report as open space but in the legal notice as 'open space to housing for the purposes of delivering mixed tenure housing development'. The sentence is **contradictory**: how can it possibly be open space for housing? [TR3]

Council documentation and action is **misleading and confusing** for the public's understanding of the status of this land and that is likely to hinder the public in deciding whether to object.

The **Open Spaces Act 1906**, Section 20, defines open space: "The expression "open space" means any land, whether enclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied"

In addition, **the LDP refers** to 'the delivery of new improved recreational facilities' at this location which is not mentioned in the legal notice or Cabinet report. [TR4]

The notice that was on the gated entrance to the land for many years "**Private Land No Public Access**" will also discourage the community objecting to the loss of open space. It will have also prevented law abiding citizens from using the open space over the years.

Finally, it is **impossible to research** at the records office during the pandemic.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I prefer correspondence by email

Debbie Marles

Monitoring Officer/Head of Legal Democratic Services

Dear Monitoring Officer,

We are perturbed that you are continuing with determination of this case, despite the over-short time for the public to comment before the VoG Offices closed to the public.

We hear that the Housing Section refused a delay, yet this decision is for you to take as Monitoring Officer. Your independent monitoring role was compromised once Joselyn Ham decided to consult them on suspending the decision.

We object to proceeding also because

Failure of the Legal Notice to provide an email address to submit objections or an electronic link to the plan?

We know of the LDP proposal to divert this 'open space' to 'housing purposes', but this is an old reviewable decision in the 2011-2026 Plan that is overdue for review, in the light of the Future Generations Act and the WG declaration on Climate Emergency, with requirement to cut back transport CO2. [FA1]

We see the Legal Notice describes the land as 'Open Space', even though its Pencoedtre Lane gateway has a misleading VoG notice saying 'Private Land'.

We ask for suspension any decision on the legal order pending public consultation on the best use under present laws and circumstances for the future of this Open Space. We point out that it contains "ancient woodland", for which the Welsh PPW requires special consideration.[FA2]

The LDP 2011-2026 tells us the site had permission for business use, with other Pencoedtre woodland. However, permit 2000/00860/FUL did not proceed, Welsh Government decided that ancient woodland should be protected from development and CCW gave the woodland SSSI status. [FA3]

The 2011 LDP allocated the 1.21 acre-site for residential use. However, the LDP over-allocated housing land for very high increase in population, which has not happened. Traffic congestion on the Port Road and at the Culverhouse junction has worsened with no solution proposed. The bus service along the Port Road is caught in the jams, with no effective bus-priority measure in prospect. Every housing site in the LDP is therefore due for review.[FA4]

There are good reasons for deleting this housing allocation, in light of the over-supply of housing land in the LDP (the Darren Farm development in Cowbridge has stalled, but is far better located to the local service centre). This one is far from services, car-dependent and having a low 'sustainability' score. Also, Natural Resources Wales reserved their position, given the site's "location next to the Barry Woodlands SSSI and mature trees and hedgerows which are likely to host protected species such as Bats". The site is not just "next to" the Barry Woodlands SSSI, but contains trees and hedgerows which properly are part of the ancient woodland with the ancient sunken Pencoedre Lane through it.[FA5]

A priority use for this "Open Space" – previously part of the ancient Barry Great Wood - could be to reinforce the continuity of Barry Woodlands SSSI. Continuous green corridors are important for wildlife and required under the CCW plans, taken on if in a weak fashion by NRW.

We therefore argue that this legal order to change its Open Space status should await a full review with NRW on its potential use to secure the continuity of the Barry Woodlands SSSI.[FA6]

Regards,

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: 19 February 2021 12:44

To: Contact OneVale <contactonevale@valeofglamorgan.gov.uk>

Subject: Ref JSH/CO1-0661 pencoedre

I wish to object to land at pencoedre lane to be allocated for housing purposes.

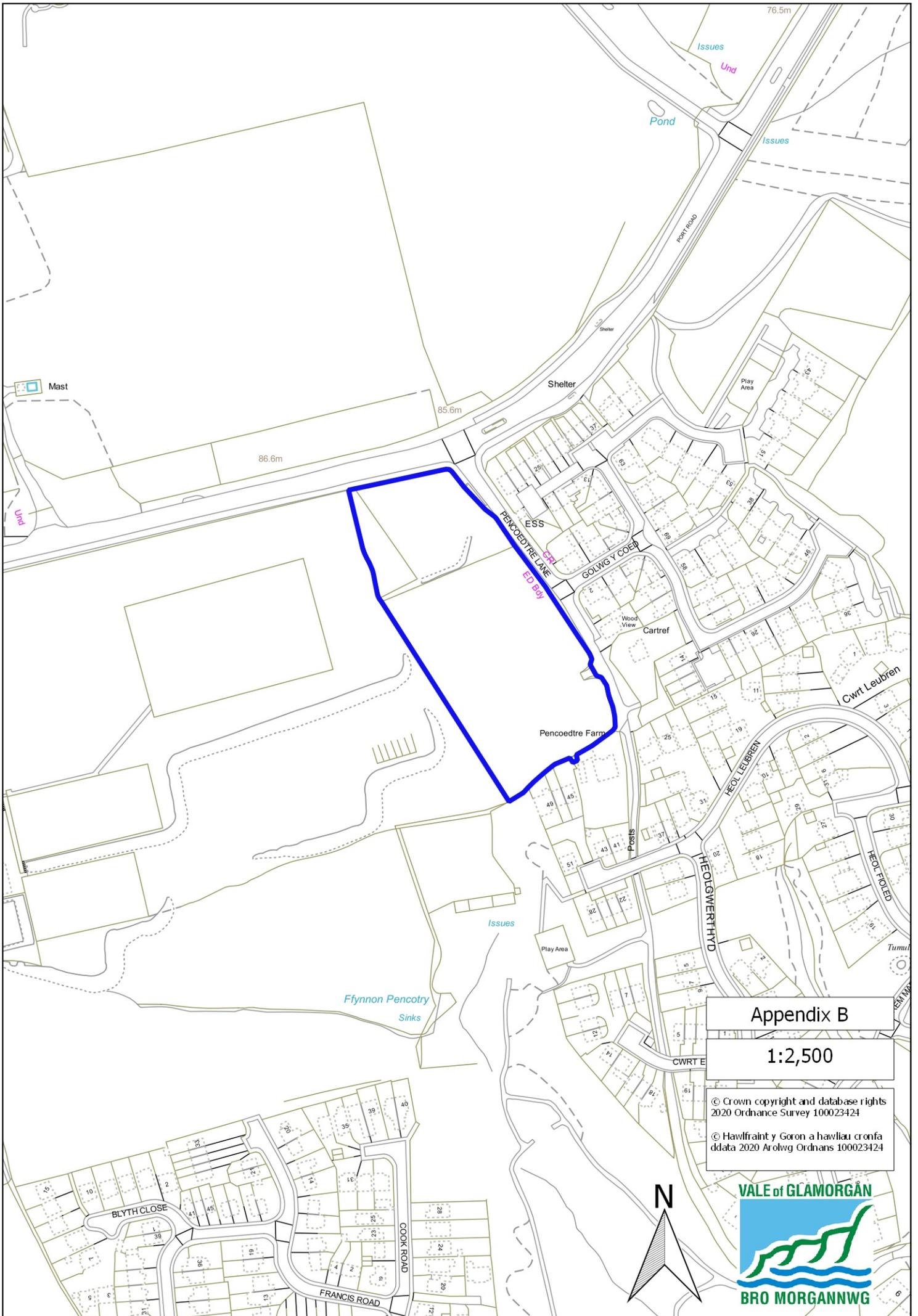
By reasons of the land currently being designated much needed valuable open space for the town and should be kept as such.[FA1]

The area is also designated an area of special scientific interest, a rich part of woodland which once cloaked much of wales with plants animals and insects that must be saved and can never be replaced.[FA2]

Besides more flooding issues down the catchment and added traffic to an already congested main road.[FA3]

[REDACTED]

[REDACTED]



Appendix B
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