

2021/01405/FUL Received on 22 September 2021

APPLICANT: Mr Michael Murphy c/o Agent

AGENT: Mr Jeremy Peter 21, Britten Road, Penarth, CF64 3QJ

Sefton Quarry (former Scrapyard), Penmark, Rhoose

Change of use of land for the siting of storage containers

REASON FOR COMMITTEE DETERMINATION

The application is required to be determined by Planning Committee under the Council's approved scheme of delegation because the application is recommended for refusal, with a dual recommendation for enforcement action. The enforcement action is not covered by the scheme of delegation.

EXECUTIVE SUMMARY

The application site is located on the site of the historic Sefton Quarry, nr. Penmark. It equates to approx. 0.15. ha area within a wider parcel of approx. 0.6.ha. The site is within the Nant Llancarfan Special Landscape Area (SLA), is identified as a Site of Importance for Nature Conservation (SINC).

This is a retrospective planning application for the retention of the change of use of the site for siting storage containers. The extent of works has included site clearance, deposit of hardcore/ rubble to provide a hard surface, and the siting of 19 storage (shipping) containers and a portacabin on the site. The containers are used for storage by a household clearance company.

14.no representations have been received and the principal reason for objections relate to traffic, highway and pedestrian safety concerns, security, pollution, contamination, flood risk, visual impact, and harm to ecology and biodiversity.

The principal matters considered in this report relate to the principle of the development and location, character of the countryside, highway safety, ecology and biodiversity, and the environmental impacts, including upon neighbouring amenity.

It is recommended that the planning application be REFUSED and that PLANNING ENFORCEMENT ACTION BE AUTHORISED so that an Enforcement Notice may be issued to remedy the breach of planning control. In addition, authorisation is also sought to initiate legal proceedings in the event of non-compliance with the Enforcement Notice.

SITE AND CONTEXT

The application site is approx. 0.15 ha of land located on the site of the historic Sefton Quarry, nr. Penmark. No extraction or quarrying activity has likely taken place here for decades and the site is understood to have been last actively used for the unauthorised deposit of waste. This followed a period of use as a scrapyard c. the 1980's to early 90's, albeit the lawfulness of the scrapyard use was never established (1993/00453/LAW refers) and has long ceased.

There appears to have been no meaningful activity on the site thereafter, until 2021, when part of it was cleared and storage containers were moved on to the site. The aerial photograph below shows the condition of the site prior to its clearance.



The site location (edged red) is shown on the plan extract below:



The land edged red is open to the wider land parcel (edged blue) and defined only by the presence of a bund. The wider site is approx. 0.6ha in size.

The site is within the Nant Llancarfan Special Landscape Area (SLA) and has been locally designated as a Site of Importance for Nature Conservation (SINC) (Land South of Penmark, No. 322) for its potential as invertebrate/ reptile habitat. The site is also within a Category 2 Limestone Mineral Safeguarding Area. There is a public footpath to the west of the site, which is also part of the promoted Millennium Heritage Trail and Vale of Glamorgan circular walks.

DESCRIPTION OF DEVELOPMENT

This is a retrospective planning application for the retention of the change of use of the site for siting storage containers. The extent of works has included site clearance, deposit of hardcore/ rubble to provide a hard surface, and the siting of 19 storage (shipping) containers and a portacabin on the site. There is no layout plan provided, however the arrangement of the containers and cabin can be seen in the aerial photograph below, as well as the associated site photographs.



The precise nature of the use has been subsequently expanded upon by the agent as being to store items recovered from house clearances, with any waste items taken direct to registered waste sites. However, as well as storage of furniture, electrical and other possibly reusable items, the observations of Officers include on-site sorting and storage of other items such as plastics, wood, some rubble and building materials, as well as items such as vehicles, caravans, trailers, a telephone kiosk, and a boat.

There has also been rubble deposited in areas outside (southwest) of the site edged red on the location plan. It appears to have been laid out to provide a level surface and, beyond this, there is no evidence of systematic waste disposal occurring at the site.

PLANNING HISTORY

1988/01088/OUT, Address: Sefton Quarry, Penmark, Proposal: Executive Housing Development, Decision: Refused

1989/00538/OUT, Address: Sefton Quarry, Penmark, Proposal: Executive Housing Development, Decision: Refused

1990/01080/OUT, Address: Sefton Quarry, Penmark, Proposal: Executive housing development 5 no., Decision: Refused

1993/00453/LAW, Address: Sefton Quarry, Penmark, Proposal: Continuation of established use, Decision: Refused

1998/00437/FUL, Address: Sefton Quarry, Penmark, Proposal: Four bedroom traditional two storey stone built country cottage with double garage, Decision: Refused

1999/00809/FUL, Address: Sefton Quarry, Penmark, Proposal: Erection of a cottage and domestic garage, Decision: Refused

CONSULTATIONS

(VoGC) Highway Development made a holding objection, stating it was not clear how many and how often vehicles would access the site, the lane leading to the site is narrow and cannot accommodate two-way vehicular movement, the access arrangement for the proposed site is not suitable for large vehicles, and that they had concerns regarding the intensification of vehicular movements along this rural lane.

Visibility splays in both directions along the adjacent highway and track runs were requested to evidence that a large vehicle could enter the site and leave in forward gear. It was also stated that the access (gate) be set back by a minimum distance of 10m from the highway boundary, and open inwards.

VoGC Councils Drainage Section - no response received to date.

Shared Regulatory Services (Pollution) - no response received to date.

Gwent Glamorgan Archaeological Trust stated no objection.

VoGC Ecology Officer stated that whilst several habitats such as hedgerow, woodland, scrub, and unimproved grassland are in the SINC citation, the continued scrubbing over of the site since 2009 suggested it would be rendered as not qualifying as a SINC unless there were a population of slow worm, or another priority species found. They also stated it was impossible to approve a biodiversity improvement without knowing what was there, but suggested hibernacula for hedgehog, slow worm, and reptiles, if a survey was unlikely to happen.

Shared Regulatory Services (Environment) stated that the site is identified as former scrapyards and landfill and recommended conditions relating to unforeseen contamination and landfill gas protection.

Rhose Ward Councillors – no comments have been received in a formal capacity, however Cllr S Campbell & Cllr W Hennessy have passed on concerns of residents and sought updates on behalf of the local community.

REPRESENTATIONS

The neighbouring properties were consulted on 12 October 2021.

A site notice was also displayed on 21 October 2021.

14.no representations have been received and of these 13.no objected to the proposals, with the other commenting that any approval should place a limit on the number of containers allowed on the site. The grounds of objection are summarised below:

- Development inaccurately described
- Burning of materials on site
- Excavation works have taken place
- Development could intensify if approved
- No pre-application consultation
- There is no lawful fallback use as a quarry/ scrapyard
- The site is believed to be contaminated following previous tipping
- Pollution to local waterways
- Surface water flooding
- No foul drainage provisions
- Detriment to highway and pedestrian safety
- Traffic congestion
- Site security concerns
- Detrimental visual impact and to the character of the countryside
- Noise, air pollution and disturbance to neighbours
- Site is not in a sustainable location
- Harm to ecological and biodiversity interests

REPORT

Planning Policies and Guidance

Local Development Plan:

Section 38 of The Planning and Compulsory Purchase Act 2004 requires that in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Vale of Glamorgan Adopted Local Development Plan 2011-2026 forms the local authority level tier of the development plan framework. The LDP was formally adopted by the Council on 28 June 2017, and within which the following policies are of relevance:

Strategic Policies:

POLICY SP1 – Delivering the Strategy
POLICY SP8 – Sustainable Waste Management
POLICY SP9 – Minerals
POLICY SP10 – Built and Natural Environment

Managing Growth Policies:

POLICY MG17 – Special Landscape Areas
POLICY MG21 – Sites of Importance for Nature Conservation, Regionally Important Geological and Geomorphological Sites and Priority Habitats and Species
POLICY MG22 – Development in Minerals Safeguarding Areas

Managing Development Policies:

POLICY MD1 - Location of New Development

POLICY MD2 - Design of New Development
POLICY MD7 - Environmental Protection
POLICY MD8 - Historic Environment
POLICY MD9 - Promoting Biodiversity
POLICY MD14 - New Employment Proposals
POLICY MD20 - Assessment of Waste Management Proposals

In addition to the Adopted LDP the following policy, guidance and documentation supports the relevant LDP policies.

Future Wales: The National Plan 2040:

Future Wales – the National Plan 2040 is the national development plan and is of relevance to the determination of this planning application. Future Wales provides a strategic direction for all scales of planning and sets out policies and key issues to be considered in the planning decision making process. The following chapters and policies are of relevance in the assessment of this planning application:

Chapter 3: Setting and achieving our ambitions

- 11 Future Wales' outcomes are overarching ambitions based on the national planning principles and national sustainable placemaking outcomes set out in Planning Policy Wales.

Chapter 5 – The Regions

- The Vale of Glamorgan falls within the South East region.
- In the absence of SDPs, development management process needs to demonstrate how Future Wales' regional policies have been taken into account.

Policy 1 – Where Wales will grow

- Supports sustainable growth in all parts of Wales.
- Development in towns and villages in rural areas should be of an appropriate scale and support local aspirations and need.

Policy 2 – Shaping Urban Growth and Regeneration – Strategic Placemaking

- Based on strategic placemaking principles.

Policy 4 – Supporting Rural Communities

- Supports sustainable and vibrant rural communities.

Policy 5 – Supporting the Rural Economy

- Supports sustainable, appropriate and proportionate economic growth in rural towns.

Policy 9 – Resilient Ecological Networks and Green Infrastructure

- Action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated as part of development proposals through innovative, nature-based approaches to site planning and the design of the built environment.

Planning Policy Wales:

National planning policy in the form of Planning Policy Wales (Edition 11, 2021) (PPW) is of relevance to the determination of this application.

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental, and cultural well-being of Wales,

Chapter 2 - People and Places: Achieving Well-being Through Placemaking,

- Maximising well-being and sustainable places through placemaking (key Planning Principles, national sustainable placemaking outcomes, Planning Policy Wales and placemaking)

Chapter 3 - Strategic and Spatial Choices

- Good Design Making Better Places
- Promoting Healthier Places
- Sustainable Management of Natural Resources
- Placemaking in Rural Areas
- Accessibility
- Previously Developed Land
- Development in the Countryside
- Supporting Infrastructure

Paragraph 3.55 provides the following advice in relation to previously developed land:

3.55 “Previously developed (also referred to as brownfield) land (see definition overleaf) should, wherever possible, be used in preference to greenfield sites where it is suitable for development. In settlements, such land should generally be considered suitable for appropriate development where its re-use will promote sustainability principles and any constraints can be overcome. It is recognised, however, that not all previously developed land is suitable for development. This may be, for example, because of its unsustainable location, the presence of protected species or valuable habitats or industrial heritage, or because it is highly contaminated.”

3.9 “The special characteristics of an area should be central to the design of a development. The layout, form, scale and visual appearance of a proposed development and its relationship to its surroundings are important planning considerations.”

3.14 “Site and context analysis should be used to determine the appropriateness of a development proposal in responding to its surroundings. This process will ensure that a development is well integrated into the fabric of the existing built environment.”

3.16 “Planning authorities should through a process of negotiation seek to improve poor or average developments which are not well designed, do not take account of their context and consider their place, or do not meet the objectives of good design. Where this cannot be achieved proposals should be rejected.”

3.38: *“The countryside is a dynamic and multi-purpose resource. In line with sustainable development and the national planning principles and in contributing towards placemaking outcomes, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological, cultural and agricultural value and for its landscape and natural resources”.*

Chapter 5 - Productive and Enterprising Places

- Economic Infrastructure (electronic communications, transportation Infrastructure, economic development, tourism and the Rural Economy)
- Making Best Use of Material Resources and Promoting the Circular Economy (design choices to prevent waste, sustainable Waste Management Facilities and Minerals)

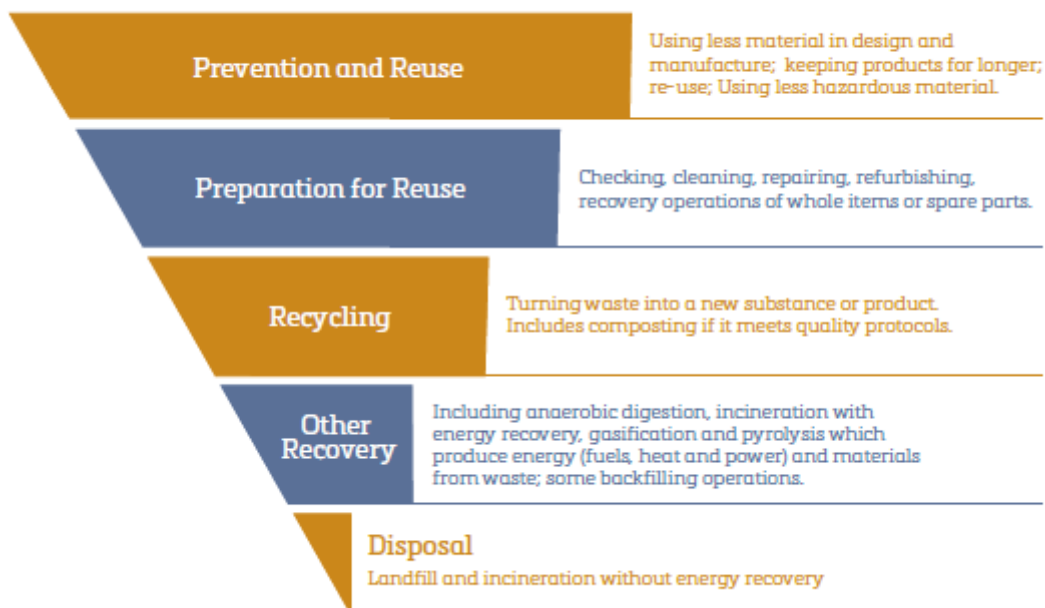
In delivering productive and enterprising places, the importance of implementing the proximity principle for waste, minerals and district scale energy to minimise the need for road transport and its impacts and additional pressure on energy networks is emphasised.

Section 5.11 highlights the environmental, social, and economic benefits of sustainable resource management in respect of waste, including making best use of resources and promoting the circular economy.

It is stated at paragraph 5.13.4:

5.13.4 *“The Welsh Government’s policy for waste management is contained in Towards Zero Waste and associated sector plans. Planning authorities should, in principle, be supportive of facilities which fit with the aspirations of these documents and in doing so reflect the priority order of the waste hierarchy (see Figure 11) as far as possible.”*

Figure 11: Waste Hierarchy



Paragraph 5.13.11 & 5.13.12 go on to state:

5.13.11 *“The ‘Nearest Appropriate Installation’ concept and the principle of self-sufficiency will only be applicable in relation to wastes covered by Article 16 of the revised Waste Framework Directive and should guide the provision of an integrated and adequate network for the treatment of such wastes. The network should include all necessary supporting facilities such as waste transfer stations and processing facilities.”*

5.13.12 *“For all wastes, suitable locations for sustainable waste management development should be identified in development plans as well as criteria by which applications for such developments will be determined, recognising that the most appropriate locations will be those with the least adverse impact on the local population and the environment and with the best potential to contribute to a broad infrastructure framework...”*

Chapter 6 - Distinctive and Natural Places

- Recognising the Special Characteristics of Places (The Historic Environment, Green Infrastructure, Landscape, Biodiversity and Ecological Networks, Coastal Areas)
- Recognising the Environmental Qualities of Places (water and flood risk, air quality and soundscape, lighting, unlocking potential by taking a de-risking approach)

The following advice is provided in relation to non-statutory sites designated for nature conservation, including SINC:

6.4.20 *“Although non-statutory designations carry less weight than statutory designations, they can make a vital contribution to delivering an ecological network for biodiversity and resilient ecosystems, and they should be given adequate protection in development plans and the development management process. Before authorising development likely to damage a local wildlife designation, planning authorities should give notice of the proposed operation to the County Ecologist and third sector environmental organisations. Where a Green Infrastructure Assessment has identified that certain features or characteristics of the site need to be conserved or enhanced, planning authorities should state in their development plans what features or characteristics require this extra protection and why, and explain how the policies will achieve this protection. Assessments should similarly consider the presence of protected and priority species including those on the Section 7 list and appropriate weight attached to their protection. Policies for non-statutory sites should make it clear that such designations do not preclude appropriate developments, where there are no adverse impacts on the features for which a site is designated.”*

Technical Advice Notes:

The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:

- Technical Advice Note 5 – Nature Conservation and Planning (2009)

5.5.3 *“The conservation and enhancement of locally designated sites is an important contribution to the implementation of Biodiversity Action Plans and to the management of features of the landscape of major importance for wild flora and fauna (see paragraph 3.2.2 above). Developers should avoid harm to those interests where possible. Where harm is unavoidable it should be minimised by mitigation measures and offset as far as*

possible by compensation measures designed to ensure there is no reduction in the overall nature conservation value of the area or feature. Where locally designated sites may be affected, developers should consult the local planning authority and Wildlife Trust and/or Local Record Centre to agree the information that will be required to assess the implications of the development and mitigation and compensatory measures.”

- Technical Advice Note 6 – Planning for Sustainable Rural Communities (2010)
- Technical Advice Note 12 – Design (2016)

2.6 “Design which is inappropriate in its context, or which fails to grasp opportunities to enhance the character, quality and function of an area, should not be accepted, as these have detrimental effects on existing communities.”

4.5 “In many cases an appraisal of the local context will highlight distinctive patterns of development or landscape where the intention will be to sustain character. Appraisal is equally important in areas where patterns of development have failed to respond to context in the past. In these areas appraisal should point towards solution which reverse the trend.”

4.8 “Appraising “character” involves attention to topography; historic street patterns, archaeological features, waterways, hierarchy of development and spaces, prevalent materials in buildings or floorscape, architecture and historic quality, landscape character, field patterns and land use patterns, distinctive views (in and out of the site), skylines and vistas, prevailing uses and plan forms, boundary treatments, local biodiversity, natural and cultural resources and locally distinctive features and traditions (also known as vernacular elements).”

5.5 “The way in which development relates to its urban or rural landscape or seascape context is critical to its success. Because of this, an understanding of landscape quality, including its historic character is fundamental to the design process.’

5.8.1 “The special qualities of the rural landscape and coastline of Wales should be recognised. The qualities should be enhanced through conservation of the character of the countryside and by achieving quality in new development.”

6.16 “The appearance and function of proposed development, its scale and its relationship to its surroundings are material considerations in determining planning applications and appeals. Developments that do not address the objectives of good design should not be accepted.”

- Technical Advice Note 18 – Transport (2007)
- Technical Advice Note 21 – Waste (2014)

TAN 21 is of relevance to this development. It reinforces the PPW approach towards ‘zero waste’ and the ‘circular economy’ and includes the concept of the Waste Hierarchy – as shown by the diagram at Figure 11 (above) of Planning Policy Wales (Ed.11 2021).

TAN 21 sets the framework for facilitating the delivery of sustainable waste management infrastructure through the planning process. Paragraph 1.10 of TAN 21 explains:

1.10: *“Sustainable development is a key functioning principle of the Welsh Government and its policies. The movement towards sustainability in relation to planning for waste should be guided first by the wider principles of sustainability contained in Planning Policy Wales, however, with specific reference to waste management land use planning should help to:*

- *Drive the management of waste up the waste hierarchy and facilitate the provision of an adequate network of appropriate facilities;*
- *Minimise the impact of waste management on the environment (natural and man-made) and human health through the appropriate location and type of facilities;*
- *Recognise and support the economic and social benefits that can be realised from the management of waste as a resource within Wales.”*

Paragraph 3.27 relates to the location of waste facilities and states:

3.27: *“New sites might be located, if appropriate, within or adjacent to:*

- *industrial areas, especially those containing heavy or specialised industrial uses;*
- *active or worked out quarries - landfill is commonly used in quarry restoration but there may be opportunities for other types of waste management facilities at some quarried sites. It should be noted that quarry depth and the nature of the local water table will affect the feasibility of using such sites;*
- *degraded, contaminated or derelict land - well-located, planned, designed and operated waste management facilities may provide good opportunities for remediating and enhancing sites which are damaged or otherwise of poor quality, or bringing derelict or degraded land back into productive use;*
- *existing or redundant sites or buildings - which could be used, or adapted, to house materials recycling facilities, or composting operations;*
- *sites previously or currently occupied by other types of waste management facilities;*
- *sites where the nature of existing and proposed neighbouring land uses facilitates the location of waste management infrastructure and there are opportunities for co-locating waste management/resource recovery/reprocessing/re-manufacturing facilities to form environmental technology clusters;*
- *on farms where the output will be used on the farm.*

And/or where:-

- *site infrastructure (including electricity grid connections for energy from waste facilities) is present;*
- *there are existing or proposed transport infrastructure links – including opportunities for integrated multi-modal road, train, canal and sea connections;*
- *there is a need for sites for smaller-scale community based reuse and recycling activities;*
- *there are existing planning permissions/environmental permits;*

- *the cumulative effect of waste management facilities and other development on sensitive environmental receptors is acceptable;*
- *the cumulative effect of waste management facilities and other development on the wellbeing of the local community, including any significant adverse impacts on environmental quality, social cohesion and inclusion or economic potential is acceptable.*
- Technical Advice Note 23 – Economic Development (2014)

Welsh National Marine Plan:

National marine planning policy in the form of the Welsh National Marine Plan (2019) (WNMP) is of relevance to the determination of this application. The primary objective of WNMP is to ensure that the planning system contributes towards the delivery of sustainable development and contributes to the Wales well-being goals within the Marine Plan Area for Wales.

Supplementary Planning Guidance:

In addition to the adopted Local Development Plan, the Council has approved Supplementary Planning Guidance (SPG). The following SPG are of relevance:

- Biodiversity and Development (2018)
- Design in the Landscape
- Minerals Safeguarding (2018)
- Parking Standards (2019)

Other relevant evidence or policy guidance:

- Manual for Streets (Welsh Assembly Government, DCLG and DfT - March 2007)
- Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management
- Section 58 (1) of the Marine and Coastal Access Act places a requirement on the Council to take authorisation decisions in accordance with the appropriate marine policy documents, unless relevant consideration indicates otherwise.
- Towards Zero Waste – One Wales: One Planet. The Overarching Waste Strategy Document for Wales (June 2010)
- The Collections, Infrastructure and Markets (CIM) Sector Plan (July 2012)
- South East Wales Regional Waste Plan (March 2004)
- Review of the South East Regional Waste Plan (September 2008)
- Waste Framework Directive 2008/98/EC (as amended)

Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Issues

Background / procedural note

The site planning history and nature of the development are described in detail within the site context and description of development sections of this report. The application is described as for the siting of storage containers, and whilst this only implies a land use for storage, the planning statement describes them being used to "*store household items by a household removal company based in Barry.*" It is commonly understood that permission is being sought to retain the unauthorised use currently taking place.

The applicant's agent has contended the use should not be considered as waste development, as items to be discarded as waste are taken directly to registered disposal sites, with only items to be sold on or reclaimed by relatives being stored on the site. TAN21 defines waste as "*any substance or object which the holder discards or intends or is required to discard*" (taken from Article 3(1) of the Waste Framework Directive). There is no evidence of the site being used for systematic disposal of waste. However, the definition of waste material clearly refers to disposal as per the position of the holder, and not the recipient. It also includes items that retain core value, such as scrap metals, as well as items that require recycling, repair, or reprocessing. Reusable items (second hand goods) would not typically be considered waste, however, when collected with waste material, the whole mixture will typically form waste.

It is understood the company hold a waste carriers' licence and undertake general house clearances. It is considered very unlikely that the extent of processing or testing required to sort the whole collection (to exclude all waste items as defined above), is reasonably and economically possible. Moreover, as well as storage of furniture, electrical and other theoretically reusable items, the observations of Officers include on-site sorting and storage of other items such as plastics, wood, some rubble and building materials, as well as items such as vehicles, caravans, trailers, and a boat.

It is therefore considered that the development falls under the definition of waste development (*sui generis*) and should be considered under the waste guidance and associated policies of the LDP, however, as this interpretation is not agreed by the applicant commentary on the principle of a storage use (class B8) is also provided below for context. Waste development typically requires pre-application consultations to be undertaken by the applicant, however, this requirement is not applicable to retrospective development. The application itself is therefore considered valid, as submitted.

Principle of the development

At national level, Planning Policy Wales (PPW), TAN 21- Waste and documents such as 'Towards Zero Waste' set out the Welsh Government waste strategy and policy framework, which is geared toward reducing the amount of waste being taken to landfill, through means such as waste prevention, reuse, recycling, and energy recovery. The guidance and context provided by Planning Policy Wales in this area is detailed within the Planning Policies and Guidance section above. Facilities which support reuse, recycling, or recovery of items otherwise destined for landfill are typically favoured in principle, subject to being appropriately sustainably located and compliant with the terms of Policy SP8 (Sustainable Waste Management) and MD20 (Assessment of Waste Management Proposals).

Policy SP8 permits waste management facilities on some existing B2/B8 employment sites, operational mineral sites, or on farm complexes where they do not conflict with existing or proposed neighbouring uses. The application site is neither of those things, being a historic quarry with no known mineral reserves and where its subsequent use as a scrapyards ceased approx. 20 years ago following unauthorised tipping activity. There is no known lawful use or fallback position and, while waste material may remain on site, it had been left to naturally regenerate until its part clearance and occupation by the removal company in 2021. Whilst the PPW definition of 'previously developed' (brownfield) land includes former quarry sites without planned restoration schemes (as this appears to be), it excludes sites which have been left to regenerate and sites of nature conservation value. This land has been identified as a Site of Importance for Nature Conservation (SINC) and so does not fall within the PPW definition of being 'previously developed'. The site is therefore not in a location favoured for waste development under Policy SP8 of the LDP, or under paragraph 3.27 of TAN21.

Policy MD20 sets out the detailed assessment criteria for waste development, which (among other criteria) require the application be supported by a Waste Planning Assessment (WPA, criterion 1) and the proposal has regard to the waste hierarchy, proximity principle and the requirements of the waste framework directive (criterion 2). Policy MD1 (Location of New Development) also requires that new development have no unacceptable impact on the countryside; reinforce the role and function of settlements as key providers of commercial facilities; have access to or promote the use of sustainable modes of transport.

There is no WPA provided, but the removal company is understood to be based in Barry area, provide services in the wider region, and have moved to this site from Barry following the loss of their previous premises. However, the detailed operations are not known, compliance with criterion 1 of Policy MD20 has not been achieved, and compliance with criterion 2 has not been demonstrated. The proximity principle seeks to ensure that waste facilities are in the communities they serve, to improve efficiency and reduce the detrimental environmental impacts associated with waste transportation.

The applicant's agent has contended the site is sustainably located, noting sustainability must be considered in context of the use and site circumstances, and that it intrinsically requires access by private transport. This is true of the clearance service, operated by a van fleet, but not necessarily so of employees commuting trips or other trips by third parties such as members of the public, or service vehicles. Moreover, the site is divorced from local settlements, from where the items will predominantly be sourced and sold on, away from other waste facilities (accepting waste for disposal, recycling etc.), and is

located off the primary road network with road access being via a single carriageway lane. The site is also not known to have existing service infrastructure such as foul drainage, water, and electricity as may be required by employees whilst on site and for establishing a permanent storage use. There is no apparent benefit or requirement to operate the business from a rural base, and it is a use that appears far more suited to an industrial area or edge of settlement location, which in turn is more likely to be closer to existing communities and better connected to both the primary road network and sustainable transport infrastructure.

The reasons for assessing the development under Policies SP8 and MD20 are explained above. However, even if considered as an application for storage of containers, it should also be noted that Policy MD14 (New Employment Proposals) has similar requirements relating to employment (inc. B8 storage) uses. These criteria are it is located within or adjacent to an existing settlement boundary; or the proposal is for an agriculture, forestry, or rural enterprise where a need for a rural location is justified; or where it is clearly demonstrated that the nature of the business necessitates a location away from existing settlements and/or employment areas to mitigate impact on amenity. The development would not accord with criterion 1 or criterion 2. Regarding criterion 3, storage uses are commonplace within or near settlements and are not as detrimental to amenity as to require an isolated rural location.

In conclusion, the development is in an inappropriate location, having regard to the sustainability and location requirements for waste management (and employment) facilities, and is therefore contrary to LDP Policies SP8, criterion 1 & 2 of MD20 and criterion 2 & 5 of MD1, as well as national guidance contained within 5.13.11 & 5.13.12 of PPW and paragraphs 1.10 and 3.27 of TAN21.

Visual/ landscape impact and character of the countryside

The site is in the countryside south of Penmark and is in the Nant Llancarfan Special Landscape Area (SLA). Criterion 1 of Policy MD1 requires development have “*no unacceptable impact on the countryside*” among other criteria. Policy MD2 (Design of New Development) requires new development achieve a high standard of design, respond to the local context, and incorporate sensitive landscaping, among other criteria. Policy MG17 (Special Landscape Areas) requires development “*cause no unacceptable harm to the important landscape character of the area*”.

The site is well-screened from wide ranging views in the local landscape by the trees that surround the site perimeter and border the northern side of the B4265. The development therefore has a limited landscape impact and does not cause any intrinsic harm to the important landscape character of the SLA. The site is nonetheless prominent from the adjacent lane and be seen from the footpath to the west. The site is understood to have been subject to past tipping, but importantly had been left to naturally regenerate and is colonised by vegetation. The site had blended into the verdant character of the surrounding countryside by at least 2009, with vegetation continuing to establish by 2020, with the extractive/ industrial past nature of the site only readily discernible by the block wall enclosure and tall gates.

The below street view images show its previous condition:



(c.2009)



(c. 2020)

The development of the site, through intrusive vegetation clearance, deposit of rubble and siting of containers/ mobile structures, has fundamentally and harmfully altered the character of the site to the extent it now sits very at odds with its rural surroundings. The development has resulted in a detrimental visual impact and renewed scarring of the land, for which there is no rational justification through a need for this development to be sited in a rural location. There has also been rubble deposited outside of the application site boundary, beyond what is likely necessary to facilitate the siting of the current containers and to provide for circulation space. These alterations are plainly visible from the adjoining lane and the public footpath, the latter of which is part of the Millennium Heritage Trail and other promoted circular walks.

In addition to the visual impact from the operational development and siting of the containers and portacabin, there is also a visual impact occurring from items being stored in the open. Whilst the applicant's agent has contended there is no intention to undertake open storage, precise control over the minutiae this sort of activity would be very difficult to achieve via planning condition. There is not sprawling open air storage taking place at present, but it has been and is very likely to continue to occur to some extent given the

nature of the use. A condition which wholly prohibited exterior storage would be difficult to enforce and monitor, as items would need to be stored in the open before transfer to the containers and it would not meet the circular test of reasonableness for a storage related land use. As has been witnessed by officers, exterior storage is taking place on the site, including sorting and storage of other items such as plastics, wood, some rubble and building materials, as well as items such as vehicles, caravans, trailers, a telephone kiosk, and a boat. This activity exacerbates the visual harm that has occurred from the clearance and development of the site.

The proposal does not respond appropriately to the rural context and character of the immediate site and its countryside surroundings. The visual impact and the urbanising effect on the countryside are demonstrably harmful to the appearance and character of the immediate surroundings and the countryside setting. The proposal therefore conflicts with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1, 2, and 10) of the LDP, and paragraphs 5.5 and 5.8.1 of TAN12 and having regard to the advice in paragraph 3.9, 3.14, 3.16, 3.38, of Planning Policy Wales (Edition 11), as outlined above.

Ecology and biodiversity

The site has been locally designated as a Site of Importance for Nature Conservation (SINC) (Land South of Penmark, No. 322) for its potential as invertebrate/ reptile habitat. Policy MG21 (Sites of Importance for Nature Conservation, Regionally Important Geological and Geomorphological Sites and Priority Habitats and Species) applies and the criteria require that *“(1) the need for the development clearly outweighs the nature conservation value of the site; (2) adverse impacts on nature conservation and geological features can be avoided; (3) appropriate and proportionate mitigation and compensation measures can be provided; and (4) the development conserves and where possible enhances biodiversity interests.”*

In the first instance, it must be acknowledged that relatively little is known of the exact present day habitat value of the site and species that may be, or have been, present on the site prior to its unauthorised development in 2021. The Council’s Ecologist has acknowledged that the continued scrubbing over of the site may have reduced potential to support reptile and/or invertebrate populations, for which the site was first locally designated - unless a population of slow worm or other priority species was found during surveying.

The application has not been supported by any ecological survey of the site or other supporting information. The applicant’s agent has suggested a biodiversity mitigation and enhancement plan could be provided by condition should the application be approved. However, in the absence of any survey work within the undeveloped SINC area it is not possible to fully assess the true nature conservation value of the site, and whether adverse impacts have occurred already as part of the development, and whether proportionate mitigation and appropriate enhancement can be provided.

The development to date has resulted in no apparent biodiversity enhancement to the site and it cannot be established whether a harm, and to what extent, the works may have had upon populations of reptiles if these were present. Where reptiles are present, typically measures such as pre-commencement surveys, with reptiles relocated to appropriate habitat off site and prevented from returning by reptile fencing before site clearance occurred. The prior presence of nesting birds on the site was also raised in representations, albeit their presence cannot be evidenced. Whilst an up-to-date survey

might reveal the site to have relatively low habitat value, and criteria 2, 3, and 4 are potentially resolvable with appropriate mitigation and enhancement, compliance with these criteria of Policy MG21 and MD9 (Promoting Biodiversity) of the LDP has not been demonstrated.

Moreover, criterion 1 of Policy MG21 requires the need for the development outweigh the nature conservation value of the site. The justification for this location has been discussed in detail within the 'principle of the development' section of this report, above. The development is in an illogical and inappropriate location, and therefore no significant weight can be attributed to *need for the development* in relation to this policy. The development is therefore considered contrary to Policy MG21 and MD9 of the LDP.

Highway and pedestrian safety

The suitability of the site in terms of sustainability and access to transport infrastructure has been considered in more detail in the principle of development section of this report above. This section relates to the safety of highway users.

In the first instance, the containers have already been transported on to the site in summer 2021. This process is likely to have involved transport by a large, perhaps articulated vehicle. There are no known instances of any collisions or incidents because of this process and clearly the vehicles concerned were somehow able to navigate the lane and turn within the site area. The site is served by a c.5m wide access to the highway and so problems with access and egress to the site are unlikely. There have been reports of damage to verges, but these cannot be reliably attributed to operations at this site. Large vehicles may have some difficulty in traversing country lanes such as this, noting there are limited passing opportunities between the site and Penmark. However, the movement of containers would be very infrequent, noting they have remained in situ and container numbers could theoretically be controlled by condition.

The day-to-day use of the site involves comings and goings by employees using the fleet of removal vans, classed as light goods vehicles. It is understood that these vehicles will attend site on a handful of occasions between jobs, resulting in up to 12 vehicle movements per day.

It is noted that the Highways Authority have requested further information including track runs to demonstrate suitability of the access. However, as noted above the site has an existing access suitable for the use, ample room within the site for vehicles to turn and the development has not resulted in a significant increase in traffic or congestion. As a consequence, there does not appear to be any material increase in the risk to highway safety and to that of other highway users such as cyclists and pedestrians, and the development is considered acceptable in this respect.

Environmental impact upon the adjoining land uses and residential amenity

The development principally involves storage, with no evidence of anything other than either manual sorting of items taking place or use of small-scale machinery such as a mechanical grabber/ mini digger. There is a potential for some noise to occur because of activities such as loading or unloading, however, no activities have been observed causing serious harm to amenity. It is also considered unlikely that significant harm to residential amenity would occur given the site context, distance to neighbouring properties and the scale of development. It is considered that, with planning controls in place to control the

working hours, scale and nature of the development (such as number of containers and the site area), the development would be acceptable in relation to residential amenity.

Contamination

In consultation with Shared Regulatory Services, conditions relating to contamination and ground gas protection were recommended, noting that the development does not involve excavation. The development would be considered acceptable in relation to the risk to site users subject to the implementation of these conditions and their requirements.

Drainage

There is no known foul drainage provision, albeit a portaloos has been observed on the site. The suitability of the site location in terms of its proximity to local services has been assessed in the principle of development section of the report, above. Had there been compelling justification for the siting of this use in the countryside, it is likely that services such as water, electricity and foul drainage infrastructure could be provided for to accommodate staff facilities.

There are no details of surface water provision at the site. Given the extent of the development area, it may also require separate approval from the SAB authority for a SuDS scheme. There has however been no response from the Council's Drainage Engineer at the time of writing this report. The containers and compacted rubble may have increased the impermeable area of the site, albeit any impact would be dependent on the pre-existing land condition. However, there has been no evidence of a perceptible impact or increased risk of flooding or additional run-off since the development occurred. It is therefore considered acceptable in relation to surface water drainage and treatment, subject to compliance with SAB regulations.

Other matters

There is no evidence of excavations having taken place.

Whilst there is evidence to suggest the burning of materials has occurred here, this does not appear to be on-going or happening routinely. Notwithstanding this, separate controls exist regarding the burning of materials where this constitutes a nuisance (VoGC) or as waste disposal (NRW).

ENFORCEMENT ACTION

In view of the above assessment, it is recommended that an enforcement notice be issued under Section 172 of the Town and Country Planning Act 1990 in respect of the of the unauthorised use of the land, which is known to have commenced in summer 2021, i.e. within the last 10 years. The only way for the identified harm to the character of the countryside to be remedied would be to require the cessation of the use of the land identified and removal of the containers, portacabin, and deposited rubble.

RESOURCE IMPLICATIONS (FINANCIAL AND EMPLOYMENT)

Any costs involved in drafting and issuing Notices, attending enquiries, and undertaking monitoring work can be met within the departmental budget. There are no employment issues.

LEGAL IMPLICATIONS (TO INCLUDE HUMAN RIGHTS IMPLICATIONS)

If an Enforcement Notice is served, the recipient has a right of appeal under Section 174 of the Town and Country Planning Act 1990 (as amended). The Action is founded in law and would not be considered to breach any of the rights referred to in the Human Rights Act.

EQUAL OPPORTUNITIES IMPLICATIONS (TO INCLUDE WELSH LANGUAGE ISSUES)

None.

REASON FOR RECOMMENDATION

The decision to recommend refusal planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026 and Future Wales – the National Plan 2040.

It is considered that the decision complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well-being of Future Generations (Wales) Act 2015.

The appropriate marine policy documents have been considered in the determination of this application in accordance with Section 59 of the Marine and Coastal Access Act 2009.

DUAL RECOMMENDATION

REFUSE AND AUTHORISE ENFORCEMENT ACTION

It is recommended that:

- (1) The application for planning permission for the change of use of the land be refused for the following reasons:
 - i) The site is in a divorced, inefficient, and unsustainable rural location without benefit of good access to local transport infrastructure, existing services, and without justification for or necessity to be in the countryside. The development is therefore considered to be inappropriately located, having regard to the sustainability and location requirements for waste management (and employment) facilities, and is therefore contrary to LDP Policies SP8, criterion 1 & 2 of MD20 and criterion 2 & 5 of MD1, as well as national guidance contained within 5.13.11 & 5.13.12 of PPW and paragraphs 1.10 and 3.27 of TAN21.
 - ii) By reason of its urban appearance in contrast with the rural, verdant and open character of the previously regenerated application site and the surrounding land, the change of use has resulted in a demonstrably harmful and unacceptable impact on the character of the countryside, which is in conflict with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1, 2, and 10) of the LDP, paragraphs 5.5 and 5.8.1 of TAN12 and

having regard to the advice in paragraph 3.9, 3.14, 3.16, 3.38 of PPW (Edition 11).

- iii) The site has been locally designated a Site of Importance for Nature Conservation for its potential as invertebrate and reptile habitat. In the absence of ecological surveys or measures of biodiversity mitigation and enhancement, and the lack of justification for the rural location, the need for the development does not outweigh the likely nature conservation value of the site. The development is therefore contrary to Policies MG21 and MD9 of the LDP.
- (2) The Head of Legal Services be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended) in respect of the land shown edged blue on the site location plan, to require:
- (i) The cessation of the unauthorised use of the land for storage,
 - (ii) The removal from the land of the shipping containers, portacabin, portaloos, and any other structures, machinery or chattels associated with the storage use.
 - (iii) The removal from the land of all items being stored on the land including, but not limited to, any motor vehicles, caravans, trailers, boats, the telephone kiosk, all building materials, other items such as furniture, electrical goods, plastics, glass, metals, and all items of waste on the site, including piles of rubble, and all rubble deposited on the ground to form the new hardstanding,
 - (iv) The reinstatement of the land to its former condition prior to the unauthorised change of use taking place.
- (3) In the event of non-compliance with the Notice, authorisation is also sought to take such legal proceedings as may be required.

REASONS FOR TAKING ENFORCEMENT ACTION

- (1) It appears to the Council that the above breach of planning control constituting the change of use of the land has occurred within the last 10 years.
- (2) The site is in a divorced, inefficient, and unsustainable rural location without benefit of good access to local transport infrastructure, existing services, and without justification for or necessity to be in the countryside. The development is therefore considered to be inappropriately located, having regard to the sustainability and location requirements for waste management (and employment) facilities, and is therefore contrary to LDP Policies SP8, criterion 1 & 2 of MD20 and criterion 2 & 5 of MD1, as well as national guidance contained within 5.13.11 & 5.13.12 of PPW and paragraphs 1.10 and 3.27 of TAN21.
- (3) By reason of its urban appearance in contrast with the rural, verdant and open character of the previously regenerated application site and the surrounding land, the change of use has resulted in a demonstrably harmful and unacceptable impact on the character of the countryside, which is in conflict with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1, 2, and 10) of the LDP, paragraphs 5.5 and 5.8.1 of TAN12 and having regard to the advice in paragraph 3.9, 3.14, 3.16, 3.38 of PPW (Edition 11).

- (4) The site has been locally designated a Site of Importance for Nature Conservation for its potential as invertebrate and reptile habitat. In the absence of ecological surveys or measures of biodiversity mitigation and enhancement, and the lack of justification for the rural location, the need for the development does not outweigh the likely nature conservation value of the site. The development is therefore contrary to Policies MG21 and MD9 of the LDP.
- (5) It is considered that the decision complies with the Council's well-being objectives and the sustainable development principle in accordance with the requirements of the Well Being of Future Generations (Wales) Act 2015.

RECOMMENDATION

REFUSE

1. The site is in a divorced, inefficient, and unsustainable rural location without benefit of good access to local transport infrastructure, existing services, and without justification for or necessity to be in the countryside. The development is therefore considered to be inappropriately located, having regard to the sustainability and location requirements for waste management (and employment) facilities, and is therefore contrary to LDP Policies SP8, criterion 1 & 2 of MD20 and criterion 2 & 5 of MD1, as well as national guidance contained within 5.13.11 & 5.13.12 of PPW and paragraphs 1.10 and 3.27 of TAN21.
2. By reason of its urban appearance in contrast with the rural, verdant and open character of the previously regenerated application site and the surrounding land, the change of use has resulted in a demonstrably harmful and unacceptable impact on the character of the countryside, which is in conflict with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1, 2, and 10) of the LDP, paragraphs 5.5 and 5.8.1 of TAN12 and having regard to the advice in paragraph 3.9, 3.14, 3.16, 3.38 of PPW (Edition 11).
3. The site has been locally designated a Site of Importance for Nature Conservation for its potential as invertebrate and reptile habitat. In the absence of ecological surveys or measures of biodiversity mitigation and enhancement, and the lack of justification for the rural location, the need for the development does not outweigh the likely nature conservation value of the site. The development is therefore contrary to Policies MG21 and MD9 of the LDP.