

**2022/00440/FUL** Received on 25 August 2022

**APPLICANT:** Mr Bill O'Donoghue, Orchard Bungalow, Treguff, St. Mary Church. CF71 7FS

**AGENT:** Mr Bill O'Donoghue, Orchard Bungalow, Treguff, St. Mary Church. CF71 7FS

### **Orchard Bungalow, St. Mary Church**

Orchard Bungalow extended garden. Land acquired is currently agricultural. Use required is residential to match that of existing property. Note we do not intend to use the Land for commercial logging / metal fabrication / commercial usage or anything associated/deemed industrial

### **'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 so committee authorisation is required.

### **EXECUTIVE SUMMARY**

It became apparent following submission of this application that part of the site west and south of Orchard Bungalow was already in residential use and the proposal is to retain part of this land for residential use. The land in question was previously used for agriculture.

The principal issue to consider is the impact of the development upon visual amenity and the character of the countryside. One representation was received which objected to the proposals on grounds that the application was retrospective, the impact to the character of and encroachment into the countryside, and that other similar proposals have been refused.

The report outlines that Policies MD1 and MD2 of the Local Development Plan and national guidance seek to ensure proposals respond appropriately to their surroundings and protect the countryside from unacceptable development. It concludes that the change of use fails to respond appropriately to the rural context and is harmful to the appearance and character of the immediate surroundings and the countryside setting, so is contrary to local and national planning policy.

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.

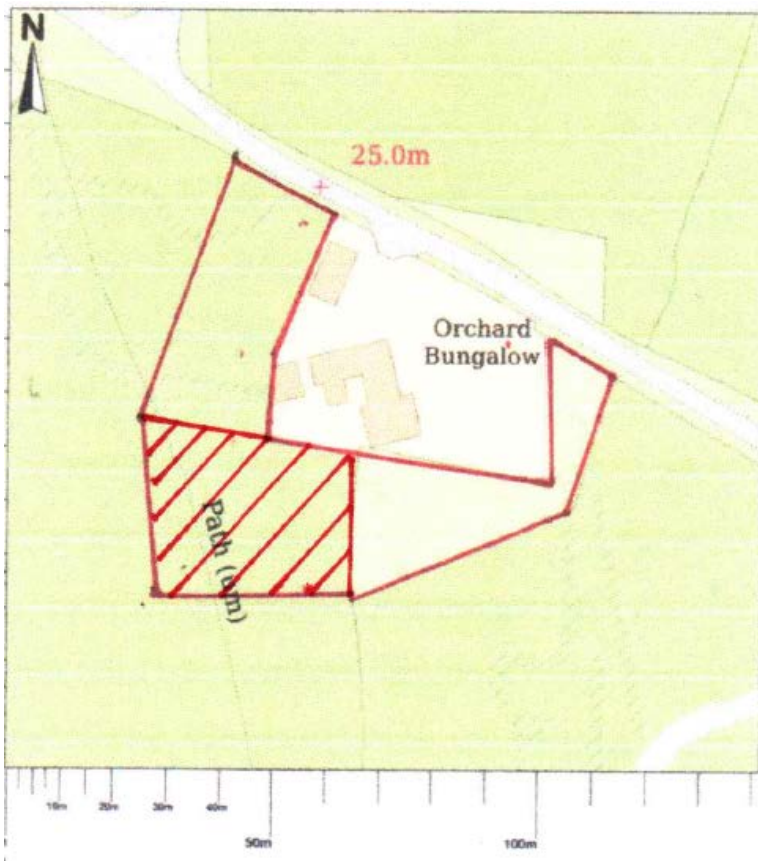
### **SITE AND CONTEXT**

The application site is land adjoining Orchard Bungalow, St Mary Church. The land relates to an existing detached dwelling located in the hamlet of Treguff, which is a loose knit cluster of farmsteads, dwellings and buildings in the rural vale. It is outside of any defined settlement in the Local Development Plan and also within the Upper and Thaw Valley Special Landscape Area (SLA). It is also within Category 2 Sandstone, Limestone and

Sand and Gravel Safeguarding Areas. The land also has a predicted Agricultural Land Classification (ALC) of Grade 4.

The planning application site ("the application site") is approx. 1200sq.m in size and previously comprised part of an agricultural field. The land is now separated from the wider field parcel having been enclosed by a post and wire fence.

The application site (annotated 'new area proposed') is outlined in red on the plan extract below:



 = NEW AREA PROPOSED.

### DESCRIPTION OF DEVELOPMENT

The proposed development is a change of use of the land to provide Orchard Bungalow with an extended garden area. The land in question was previously used for agriculture. The planning application site is confined to the area annotated as 'new area proposed'. The application formerly proposed the change of use of the entire area outlined in red.

It was apparent that this part of the site and the land the north of it (the section west and south of Orchard Bungalow) was already in residential use at the time of the Officers site visit. There is also a polytunnel and metal shed erected on the land west of Orchard Bungalow and north of the application site, albeit these structures are not included as part of the planning application proposal and are outside of the application site. There were goals and nets on the application site, indicating a residential use.

The planning application proposal is therefore to retain the 'new area proposed' as residential land.

To provide clarity, within this report the area identified as being in residential use is highlighted in purple on the image below. The area highlighted blue is a copse of trees and is separately enclosed, but does not appear to be in residential use.



## PLANNING HISTORY

1993/01309/FUL, Address: Orchard Bungalow, Treguff, Llantrithyd, Proposal: 2 storey extension to bungalow, garage & workshop, Decision: Refused

1994/00332/FUL, Address: Orchard Cottage, Treguff, Proposal: Two storey extension to bungalow, garage & workshop, Decision: Approved

1998/00384/OUT, Address: Treguff Farm, Treguff, St. Mary Church, Proposal: Agricultural Workers dwelling, Decision: Refused

2000/00962/FUL, Address: Orchard Cottage, Treguff, Proposal: Garage, Decision: Approved

2004/00065/FUL, Address: Orchard Cottage, Treguff, Proposal: Single storey extension to match existing with conservatory, Decision: Approved

## CONSULTATIONS

1. Llancarfan Community Council – no response received to date.
2. St Nicholas and Llancarfan Ward Councillors – no comments on the merits of the application have been received.

## REPRESENTATIONS

The neighbouring properties were consulted on 10 May 2022.

A site notice was also displayed on 18 May 2022.

One representation was received on behalf of several respondents, which contained objections for the following summarised reasons:

1. Loss of agricultural land
2. Countryside encroachment that is out of character with existing development, the local character and would harm visual amenity.
3. Applications for similar development have been refused, namely: planning application numbers 2021/01422/FUL 2018/01180/FUL 2018/01327/FUL 2018/01214/FUL 2018/00574/FUL & 2017/01055/FUL.
4. The change of use has already commenced.

## 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 SP9 – Minerals

#### **Managing Growth Policies:**

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

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.

## **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.

The following chapters and sections are of particular relevance in the assessment of this planning application:

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
- The Best and Most Versatile Agricultural Land
- Development in the Countryside

*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 4 - Active and Social Places

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)

### **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 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."*

## **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:

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

## **Other relevant evidence or policy guidance:**

- 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.

## **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

The main issues to consider are the principle of the change of use, the impact on visual amenity and character of the countryside, as well as residential amenity.

### Loss of agricultural land

Policy MD1 (Location of New Development) Local Development Plan (LDP) emphasises the importance of protecting the countryside from unacceptable and unjustified new development. It states, specifically, that development must have no *unacceptable impact* on the countryside and the *best and most versatile* agricultural land. Policy MD7 (Environmental Protection) echoes the latter requirement.

The site and the areas around it are predicted to be Grade 4 as defined on Welsh Government Agricultural Land Classification (ALC) maps. This grading is not amongst the *best and most versatile* as defined by Policies MD1 and MD7 and the proposed change of use therefore does not conflict with policy in this respect.

#### Amenity space requirement

The extent of the lawful residential curtilage is approx. 1800sq.m, with approx. 1000sq.m of that providing dedicated outdoor amenity space which is split between a smaller area of garden to the south west and a larger lawn area to the east. The extended garden adds to this in area approx. another 1200sq.m.

The Residential and Householder SPG contains minimum standards which equate to 20sq.m amenity space per occupier for dwellings. These standards aim to ensure adequate amenity provision in new development (and so should not be interpreted as any form of maximum in this context). Nevertheless, these demonstrate that the dwelling is already served by a large amenity space and so the amenity needs of the occupiers do not weigh significantly in favour of extending it.

#### Visual impact, landscape and character of the countryside

Policy MD1 (Development in the Countryside) of the LDP states that new development should *"have no unacceptable impact on the countryside"*. In addition, policy MD2 (Design of New Development) states that development proposals should positively contribute to the context and character of the surrounding environment. Policy MG17 is also applicable within Special Landscape Areas and states development should *"cause no unacceptable harm to the important landscape character of the area"*.

This is supported by paragraph 5.5 of TAN12 (Design) and is emphasised for rural settings in paragraph 5.8.1. The latter states that *"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."*

Policy DG13 of the 'Design in the Landscape' SPG also provides design aims for rural settlements stating *'to reduce, and wherever feasible, reverse the erosion of locally distinct rural character which results in suburbanisation.'*

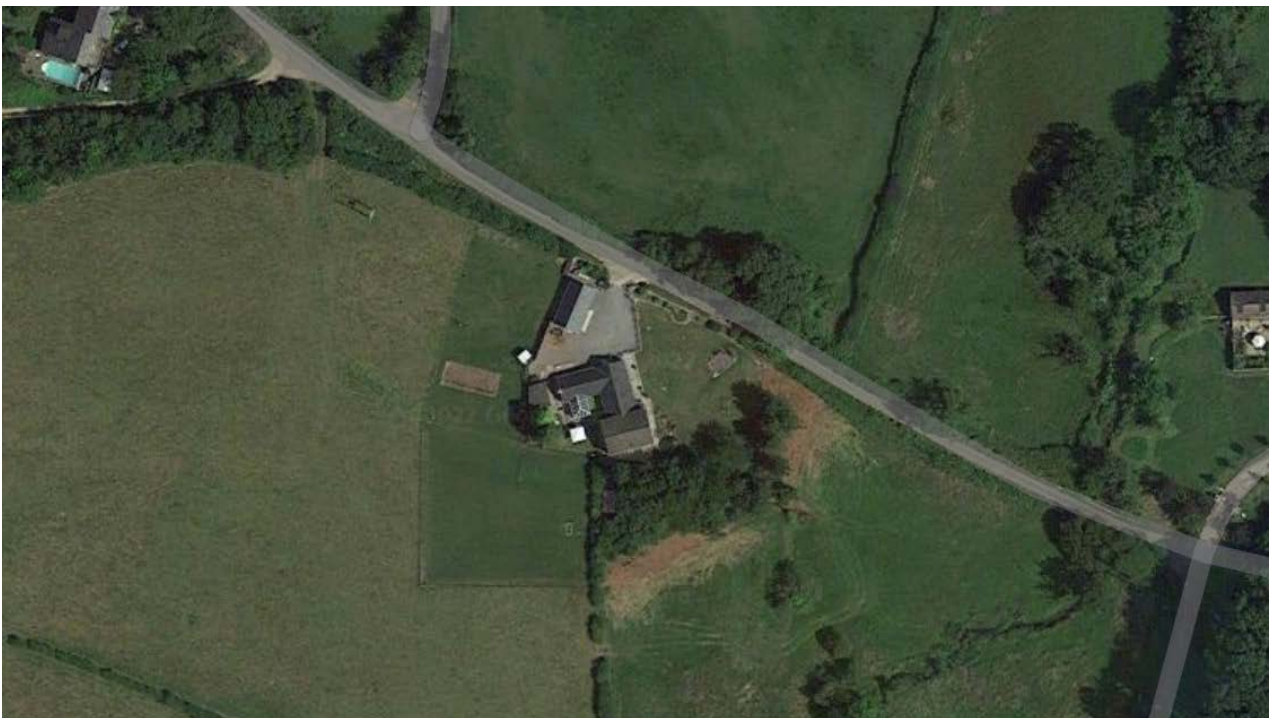
There are no public footpaths crossing or in the immediate vicinity of the site and close public viewpoints are limited to those available at certain junctures on the main highway through Treguff, where these are not screened by the roadside hedgerow. The site is not significantly prominent from public viewpoints, but is nonetheless visible from the highway to the north-west and the south-eastern section is visible from the south-east.



The extent of the site is shown in the aerial photographs below:



(c. 2017 aerial photo – extent of adopted highway marked pink)



(latest aerial photo – showing extent of enclosed land and possibly the polytunnel base)

At present, the curtilage and area of lawful residential use remains defined by enclosures and, beyond that, the application site land has been enclosed by an additional a post and wire fence. The latter is a commonplace feature in the countryside, is not visually intrusive in its own right, and is considered to be 'permitted development'. Nonetheless, a residential use appears to have commenced on the land west and south, with a polytunnel and shed having been erected west of Orchard Bungalow, and items such as goal posts and nets were also present on the application site.

The application site represents an approx. 1200sq.m extension to the existing garden and protrudes substantially beyond the clearly defined lawful curtilage into large agricultural fields. Taken together with the land to the west where the polytunnel and shed are sited, it is approx. 2200sqm in total area. It is considered that this appears as an arbitrary incursion into the countryside, resulting in both a materially greater visual impact and an unacceptable urbanising impact on the local countryside. While the proposal is to retain only the application site as residential, this area remains of a very large size and also extends arbitrarily into the open field.

No additional operational development appears to have taken place apart from the erection of the metal shed and polytunnel. The application nevertheless seeks a permanent residential use that could serve to extend the curtilage of the dwelling house. It is noted that the garden could be made to have a relatively natural appearance, also that some control exists through the planning system for future development such as enclosures and buildings. There will inevitably, however, be a difference between the appearance and character of residential gardens, which may also evolve over time. The consideration over whether a permanent change to the use of the land is acceptable is principally a land use matter, and limited weight is afforded to personal circumstances or intentions, beyond those which can be reasonably controlled through the planning system. The exact character of the land would not be controllable, and considerable change can occur over time and by change in occupancy, from additional buildings, surfacing/ornamental landscaping and other chattels and paraphernalia, for example, which would be beyond the scope of planning control. The approval of a residential land use would be permanent and likely to result in a gradual urbanisation that would prove detrimental to the character of the countryside. A difference in character is already apparent and it is considered that approval of the reduced area of the application site would still result in an unacceptable creeping urbanisation of the countryside.

Operational development on the land can be controlled by the removal of permitted development rights. However, even if such rights were removed, there would likely be increased development pressure for, and increased difficulty in resisting, development relating to a residential use on residential land. Furthermore, approval would understandably result in residential activities which do not amount to operational development taking place on this land. The use of this land, in this setting, and arbitrarily in part of a formerly open field in the open countryside, would be detrimental to the Council's ability to resist uncharacteristic development which would be detrimental to and prejudice the open nature of the land. Therefore, these proposals are contrary to criterion 1 of Policy MD1 of the LDP.

It is noted that the application site is not overly visually prominent and so the change of use is unlikely to be seen prominently or fully appreciated from wider views in the landscape. It is therefore unlikely to adversely affect special environmental qualities of the wider Upper and Lower Thaw Valley SLA. However, garden extensions, especially of this size, can still incrementally undermine the character of the local countryside. Moreover, the screening provided by vegetation and the roadside hedgerow would be significantly reduced in winter and cannot be relied upon to remain, in perpetuity, as they are natural, living things. The Hedgerow Regulations 1997 provides regulatory control over the removal or destruction of rural hedgerows, however this control would be lost if a residential use became established, because hedgerows bordering residential gardens are exempt from the regulations.

In summary, the development 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 considered to be demonstrably harmful to the appearance and character of the immediate surroundings and the wider countryside setting. The development therefore conflicts with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1 and 2) of the LDP, and Policy DG13 of the Design in Landscape SPG, 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.

### Impact on neighbours

The extended garden would not result in any unreasonable overlooking of neighbouring properties or their amenity areas. A residential use would also not result in any inherent unacceptable neighbouring impacts, such as through noise or disturbance.

### Ecology

The residential use would be unlikely to cause inherent or direct harm to the sites ecological or biodiversity interest. The impact of the change of use upon the regulatory protection of the hedgerows is noted, but this relates to its retention in perpetuity as mitigation against harm to visual amenity and the character of the countryside. It is not proposed to be removed and the roadside hedgerow is by now outside of the application site. Policy MD9 (Promoting Biodiversity) requires all development to provide biodiversity enhancement, while no specific measures have been formally put forward these could be required by condition were the application to be approved.

### Mineral Safeguarding

The land is located within a Sandstone, Limestone and Sand and Gravel Mineral Safeguarding Area. Policy MG22 (Mineral Safeguarding Area) is relevant when assessing proposals in these areas and discourages any development which will prejudice future mineral extraction. However, given the proximity of other residential property to the site, as well as being within an SLA, it is very unlikely to be suitable for future extraction. Therefore, there would be no adverse implications for mineral resource safeguarding.

## 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. It is not known exactly when the fence was erected/use commenced, however it is 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.

## 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 reason:
  - i. By reason of its size, the rural/agricultural context, and the appearance and open character of the application site and surrounding land, the change of use of the land results in a demonstrably intrusive incursion into the countryside which is harmful to its appearance and character. It also results in an incremental and harmful urbanising effect on the countryside, which is in conflict with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1 and 2) of the LDP, and Policy DG13 of the Design in Landscape SPG, 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).
- (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 west and south of Orchard Bungalow, to require:
  - (i) The cessation of the residential use of the land,
  - (ii) The removal from the land of the metal shed, polytunnel, and domestic paraphernalia including, but not limited to, goal posts and play equipment.

- (3) In the event of non-compliance with the Notice, authorisation is also sought to take such legal proceedings as may be required.

#### Reason for Issuing Enforcement Notice

- (1) It appears to the Council that the above breach of planning control constituting the change of use of the land from agriculture to residential use has commenced within the last 10 years.
- (2) The unauthorised change of use of the land by reason of its size, the rural/agricultural context, and the appearance and open character of the application site and surrounding land, has resulted in a demonstrably intrusive incursion into the countryside which is harmful to its appearance and character. It has also resulted in an incremental and harmful urbanising effect on the countryside, which is in conflict with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1 and 2) of the LDP, and Policy DG13 of the Design in Landscape SPG, 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) 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. By reason of its size, the rural/agricultural context, and the appearance and open character of the application site and surrounding land, the change of use of the land results in a demonstrably intrusive incursion into the countryside which is harmful to its appearance and character. It also results in an incremental and harmful urbanising effect on the countryside, which is in conflict with the aims and criteria of Policies MD1 (criterion 1) and MD2 (criteria 1 and 2) of the LDP, and Policy DG13 of the Design in Landscape SPG, 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).