VALE of GLAMORGAN
BRO MORGANNWG

Agenda Item:

| Meeting of: | **Public Protection Licensing Committee** |
|---|---|
| Date of Meeting: | **Tuesday, 14 November 2023** |
| Relevant Scrutiny Committee: | All Scrutiny Committees |
| Report Title: | Commons Act 2006 - Application to Register Land as Town or Village Green – Land at Ringwood Crescent, St Athan |
| Purpose of Report: | To consider and determine the application to register the land at Ringwood Crescent as a town or village Green |
| Report Owner: | Victoria Davidson, Operational Manager Legal Services |
| Responsible Officer: | Jocelyn Ham, Senior Lawyer Legal Services |
| Elected Member and Officer Consultation: | None |
| Policy Framework: | None |

Executive Summary:

- The Vale of Glamorgan Council is the Commons Registration Authority for its administrative area for the purpose of exercising functions under the Commons Act 2006 ("the 2006 Act"). This function is the responsibility of Council and has been delegated to this Committee under the Council's constitution.
- In February 2023, an application was received by the Registration Authority to register two areas of land at Ringwood Crescent St Athan ("the Land") as town or village green ("the Application"). The Application was made by Ringwood Green Residents ("the Applicant") and the Land to which the Application relates is owned by Annington Property Ltd.
- The Application has been considered by both inhouse legal officers and also expert independent external legal advice has been taken on the Application.
- The Application now falls to be determined by the Committee whether the application should be rejected or in the alternative be referred to a non-statutory public inquiry. It is recommended that the Application be refused for the reasons set out in this report.

## Recommendations

1. To accept the conclusions in connection with the Application and to determine that the Application to register the Land as a town or village green be refused because the Applicant has failed to satisfy the statutory tests under section 15(2) of the 2006 Act for the reasons set out in this report.
2. In the alternative: To not accept the conclusions and refer the Application to a non-statutory public inquiry including recommending; the appointment of a legally qualified and suitably experienced independent chairperson to hold the inquiry; to prepare a report on their findings, and; recommend that the Council meet the costs of holding that inquiry.

## Reasons for Recommendations

1. In order for the Council as Commons Registration Authority to discharge its duty to determine the Application in accordance with the 2006 Act and the Commons (Registration of Town or Village Greens)(Interim Arrangements)(Wales) Regulations 2007.
2. As stated above.

## 1. Background

1.1 The Application dated 10th February, 2023 is made in respect of two parcels of land at Ringwood Crescent, St Athan which is close to MOD St Athan and are part of the former residential quarter of RAF St Athan. The two areas of land are proximate to each other but not adjoining one another. Both parcels comprise unfenced, managed grassland and are shown outlined red on the plan attached to the Application.

1.2 The Application was made pursuant to section 15(2) of the 2006 Act. Therefore, the Council in its capacity as Commons Registration Authority must consider on the balance of probabilities whether or not the Applicant has shown that "*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and they continue to do so at the time of the application*"(section 15(2)).

1.3 The Application in summary asserts that the Land has been used "as a recreational open space since 1938 and for at least the last 20 years i.e., since November 2002" and that "a significant number of inhabitants have indulged in lawful sports and pastimes on the land" and "that it has and is in general use by the local community for recreational and leisure purposes". The Application states that the locality for the purposes of the Application is the electoral ward of St Athan.

1.4 The submitted evidence for the Application is in the form of questionnaire responses from 160 people, including eleven people resident in nos.1-8 Ringwood Crescent. Those questionnaire responses indicate the use of the Land (generally expressed) for recreational activities such as walking, dog exercise, picnicking, and ball games.

1.5 A copy of the Application giving the asserted full justification for the Application and a plan of the Land is attached at Appendix 'A' and further Application documentation concerning the Application is attached at Appendices B to F.

1.6 Following receipt, the Application was advertised by notice pursuant to the 2007 Regulations by the Council in its capacity as Commons Registration Authority. An objection to the Application was subsequently received from the Landowner, Annington Property Ltd. ("the Objection"). No other objections were received.

1.7 As background, the Landowner acquired the freehold of the site (including the Land) comprising Ringwood Crescent from the MOD in 2002.The Landowner in turn sold various plots off in the 2000s, including 1-8 Ringwood Crescent. The transfers of nos.1-8 Ringwood Crescent included express rights to use so called "Amenity Areas" for "reasonable purposes connected with the residential use" of the transferred property. These Amenity Areas include the Land subject to the Application.

1.8 Furthermore, there are a number of notices erected on the Land which clearly states that the Land is "… is private property and there is no public access or right of way without the permission of the owner. The owner hereby permits access by members of the public onto the land for recreational purposes only at their own risk. This permission may be revoked at any time."

1.9 In summary the Objection from the Landowner is that the Application fails to satisfy the threshold test under section 15(2) of the 2006 Act for the following reasons:

a. The Application had failed to identify a proper "locality" and that in any event the user evidence of 160 persons did not amount to "a significant number of the inhabitants of the locality";
b. The use claimed was not "as of right", but rather "by right", since:
    i. the use by residents of nos.1-8 Ringwood Crescent was permitted by the express rights contained in the transfers; and
    ii. there were signs on the Land which expressly permit use by the public of the Land for recreational purposes, and that these signs had been present on the land since at least September 2009.
c. The evidence submitted failed to provide sufficient evidence as to the nature and timing of the recreational use claimed, and the areas of the Land to which it related.

1.10 The Applicant was given the opportunity to respond to the Objection but did not deny, dispute or challenge the factual existence of the express rights and signage asserted by the Landowner. However, the Applicant denied that the signage had been erected by the current landowner, Annington Property Ltd., but this is not a relevant question in these circumstances because if not the current landowner, a

previous landowner erected the signs with the purpose of giving permission for the Land to be used.

1.11 The Application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. To reiterate, under that provision, land is to be registered as a town or village green where:

> "15(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2)…applies.
>
> (2) This subsection applies where-
>
> (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
>
> (b) they continue to do so at the time of the application."

1.12 On the face of it, the Application therefore fails to meet the statutory test for a town or village green most significantly and importantly (although there were other elements to the Objection) because use of the Land has been "by right" i.e. with the permission of the Landowner, rather than "as of right". The legal principle "as of right" means that the Land in this instance has been used without force, secrecy or permission. In this case, it is the third limb, "without permission", that is of most relevance because the Landowner (and the previous landowner) has given its permission for the Land to be used by residents of Ringwood Crescent through statements made in the transfers when the properties were sold off and to the residents and public generally through the erection of signage.

1.13 Therefore, it was felt that this Application could be refused for this reason alone and furthermore, determined by the Council in its capacity as Commons Registration Authority without a non-statutory public inquiry being convened. Consequently, in order to make sure the position is clear, the Council has taken external independent legal advice from counsel on the merits of the Application and the process for determining an application without recourse to a non-statutory public inquiry.

1.14 In summary, counsel's advice is that the Council has a discretion as to how to go about deciding the Application as long as it is satisfied it has enough information to determine the Application, and if it doesn't, to determine the reasonable steps to take to obtain sufficient information; the Applicant has had a "reasonable opportunity" to deal with any point adverse to the Application; and the procedure is otherwise procedurally fair. The advice also states that to convene a public inquiry on every application "is likely to constitute an unwarranted imposition on the public purse."

1.15 On the merits of the Application, counsel has advised that there is considerable force in the Objection so far it relates to the claimed use being as "by right" and

that this is a complete answer to the Application in itself. The advice goes on to state that the Council has given the Applicant reasonable opportunity to respond to this part of the Objection but it has failed to do so.

1.16 It should be emphasised that the conclusions of the legal advice are not binding on the Committee. However, the Committee must consider the arguments made and decide whether it agrees with the conclusions on the key issues. The burden of proof of satisfying each element of the statutory criteria rests with the Applicant.

1.17 The Council in its capacity as Commons Registration Authority is required to either accept or reject the Application solely on the facts. Any other issues, including those of desirability or community needs, are not legally relevant and cannot be taken into consideration.

1.18 Under the current law, land can only have the legal status of a town or village green upon registration as such. If the Application is refused, no registration will take place. Conversely, if the position is not accepted, the matter will be referred to a non-statutory public inquiry with an inspector being appointed to hear and test evidence on the Application. This could also result in a recommendation that the Application be refused which the Committee will again be asked to endorse.

1.19 Members determining the Application have been provided access to the Objector's and Applicant's submissions and also counsel's advice.

1.20 Therefore, it is recommended that the Application be dismissed for the reasons set out in this report.

## 2. Key Issues for Consideration

2.1 The options available to the Committee are:

2.1.1 Accept the conclusions made in the legal advice and determine that this Application can be determined without calling a public inquiry and refuse the Application; or

2.1.2 Not accept the conclusions and advice given and proceed to a public inquiry.

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

3.1 The Council as Commons Registration Authority is under a duty to maintain a register of town or village greens and to consider any applications to register land as town or village green.

3.2 It is a matter for this Committee exercising its delegated powers to make arrangements for the discharge of the statutory registration functions of the Council.

3.3 This is a matter reserved for decision by this Committee under the Council's constitution and subject to the procedure set out in the relevant legislation.

## 4. Climate Change and Nature Implications

4.1 None.

## 5. Resources and Legal Considerations

**Financial**

5.1 Registration of a new town or village green is a corporate function and the cost of any non-statutory public inquiry will be met from within the existing Legal Services budget. As a benchmark, the last town or village green application inquiry cost circa £7,500.00 (which includes the appointment of an inspector to chair the inquiry and the hire of a hall etc. but does not include Council officer time).

**Employment**

5.2 None.

**Legal (Including Equalities)**

5.3 As set out in this Report but to confirm, the Application has been made under section 15(2) of the 2006 Act and must be considered by the Council in its capacity of Commons Registration Authority under the 2006 Act.

5.4 The Application has previously been processed under the procedure set out in the Commons (Registration of Town or Village Green) (Interim Arrangements) Wales) (Regulations 2007).

5.5 The Council in its capacity as the Commons Registration Authority will receive applications to register land as town or village green and must keep a register of town or village greens. This is a Council (statutory registration) function which has been delegated to this Committee as set out in the Council's constitution and in accordance with Schedule 1, Regulation 33 of the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007.

5.6 The manner in which the Council as Registration Authority goes about determining any application to register a town or village green is a matter for it, subject to challenge on public law grounds only.

5.7 As stated above, there is no right of appeal against the Council's decision but interested parties could challenge the decision by applying for judicial review. Further, failure to determine the application in accordance with the law or at all will leave the Council exposed to a judicial review or a claim of maladministration by the Public Service Ombudsman for Wales.

## 6. Background Papers

None.

FORM 44

**Commons Act 2006: Section 15**

# Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:

Vale of Glamorgan

Commons Registration Authority

13 February 2023

Application number: No. 01/2023

Register unit No(s): VG53

VG number allocated at registration:

(CRA to complete only if application is successful)

**Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:**

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

***Note 1***
*Insert name of registration authority.*

## 1. Registration Authority

To the

Vale of Glamorgan Council
Cyngor Bro Morannwg,
Civic Offices,
Holton Road Barry,
CF63 4RU.

## 2. Name and address of the applicant

*Note 2*
*If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.*

*If question 3 is not completed all correspondence and notices will be sent to the first named applicant.*

Name: Ringwood Green Residents c/o Santokh Singh Bamrah

Full postal address:

1 Ringwood Crescent,
St Athan

Postcode CF62 4LA

Telephone number: (incl. national dialling code) 07977 427219

Fax number: (incl. national dialling code)

E-mail address: novita75@gmail.com

## 3. Name and address of solicitor, if any and Planning Consultant

*Note 3*
*This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.*

Name: Andrew Burgess Type text here

Firm: Andrew Burgess Planning Ltd

Full postal address: 4 Linden Close

Waltham Chase, Southampton Hampshire

Post code SO32 2TZ

Telephone number: (incl. national dialling code) 07767 483290

Fax number: (incl. national dialling code)

E-mail address: andrew@andrewburgessplanning.co.uk

**Note 4**
*For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.*

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5. ☐

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

**Section 15(2)** applies: ☒

**Section 15(3)** applies: ☐

**Section 15(4)** applies: ☐

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

**Note 5**
*The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.*

## 5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

Ringwood Green
Ringwood Crescent

Location:

Ringwood Crescent
St Athan

** Only complete if the land is already registered as common land.*

Shown in edged red on the map which is marked and attached to the statutory declaration.

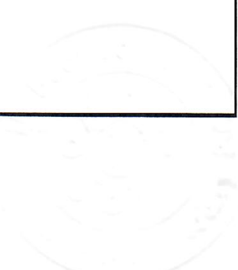
Common land register unit number (if relevant) *

**Note 6**
*It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.*

## 6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

Tick here if map attached:
The locality area is clearly shown on the attached plan Locality Plan SB1 marked with an Orange Boundary.



## 7. Justification for application to register the land as a town or village green

***Note 7***
*Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any*

**Introduction**
Ringwood Green has been used as a recreational open space since 1938 and for at least 20 years i.e., since November 2002.

A significant number of inhabitants have indulged in lawful sports and pastimes on the land, and it has and is in general use by the local community recreational and leisure purposes.

**Location**
The smaller land parcel is located within the settlement of Eglwys Brewis which has its own public open space. This land may however now be in the Private Ownership of Annington Homes. the largest land parcel is located adjacent to the defined settlement boundary. Eglwys Brewis itself is influenced by the St Athan Ministry of Defence site, which covers a large area of land to the south and west of Eglwys Brewis. More specifically, both sites are located within/adjoining the eastern extent of Eglwys Brewis, which is an established residential area with public open space.

The neighbourhood of Ringwood Crescent, St Athan The site comprises two parcels of land.

Both land parcels broadly rectangular in shape, the largest of which measures approximately 0.9 ha whilst the smallest measures approximately 0.41 ha. The larger parcel comprises a single piece of land, which is made up of managed grassland and contains a number of mature trees along the southern boundary, and mature hedgerow along the northern boundary. It is identified as an area of 'Informal Recreation Space' in The Vale of Glamorgan Open Space Background Paper (2013). (Document 1)

The smaller parcel is similarly made up of grassland, albeit is treelined with mature trees extending along the northern, eastern, and western boundaries.
This parcel is also identified as an area of 'Informal Recreation Space' in the Open Space Background Paper (2013), and the majority of trees are protected under a group Tree Preservation Order (TPO).

**Boundaries**
The smaller land parcel is bounded on all sides by Ringwood Crescent and the existing dwellings of this road. Ringwood Crescent separates the two sites, and accordingly, the larger parcel is also bounded by existing dwellings of Ringwood Crescent to the west. Ringwood Crescent merges with Burley Place along the southern boundary of the larger site, with existing dwellings of Burley Place forming the site's southern and eastern boundaries. Mature hedgerow separates the site from a number of agricultural land parcels to the north, beyond which lies the village of Flemingston.

Both sites of recreational open space are relatively flat and laid to grass which is cut and managed on a regular basis as is confirmed in the management accounts included in this application. The residents own 49% of this land and this is a situation of Joint ownership split by shareholding.

Eglwys Brewis is a predominantly residential settlement. In closest proximity to both sites, dwellings of Ringwood Crescent and Burley Place are typically larger semi-detached and detached houses, which are two-storey in height. It is well-established that the residents of these two roads use the adjoining recreational space. Indeed, it is obvious that this land is directly associated with these houses and was planned in that way from the outset.

Both land parcels are accessible via Ringwood Crescent, and the larger land parcel is also currently accessible from Burley Place. Both of these roads connect to Flemingston Road which provides access to St Athan Road, approx. 330m and 450m from the smaller and larger site, respectively. St Athan Road is the key route connecting St Athan (approx. 1km south of the larger site) to Cowbridge (approx. 6.9km north of the larger site). There is good pedestrian access from both sites at Eglwys Brewis to St Athan.

*witness statements in*

*support of the application.*

*This information is not needed if a landowner is applying to register the land as a green under section 15(8).*

**Conclusion**
There is overwhelming evidence to demonstrate that these two parcels of land are recreational
open space. Ringwood Green has been used as a recreational open space since 1938 and for at least 20 years i.e., since November 2002.
A significant number of inhabitants have indulged in lawful sports and pastimes on the land, and it has and is in general use by the local community recreational and leisure purposes.

This application and the supporting documentation comply with the relevant legislation to for Registration of the land as a Town or Village Green as set out in the Commons Act 2006. Planning (Wales) Act 2015 and the Planning (Wales) Act 2015 (Commencement No.5 and Transitional Provisions) Order 2018.

This application complies with The Commons Act 2006 section 15 (2) because, a significant number of the inhabitants of the locality or the neighbourhood within the locality, have indulged as of right in lawful sports and pastimes on the land for a period of 20 years; and they continue to do so at the time of this application.

The reference to " a locality" does not necessarily connote a defined area for administrative purposes, such as a parish and the phrase "any neighbourhood within a locality" means in effect 'any neighbourhood within one or more administrative areas.'

These circumstances apply to this application and there is no reason not to grant the application as requested.

Type

| | |
|---|---|
| ***Note 8***<br>*Please use a separate sheet if necessary.*<br><br>*Where relevant include reference to title numbers in the register of title held by the Land Registry.*<br><br>*If no one has been identified in this section you should write "none"*<br><br>*This information is not needed if a landowner is applying to register the land as a green under section 15(8).* | **8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green**<br><br>See Document 2<br>The landowner is<br>Annington Homes c/o 1 James Street, London, W1U 1DR |
| ***Note 9***<br>*List all such declarations that accompany the application. If none is required, write "none".*<br><br>*This information is not needed if an application is being made to register the land as a green under section 15(1).* | **9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land** |
| ***Note 10***<br>*List all supporting documents and maps accompanying the application. If none, write "none"*<br><br>*Please use a separate sheet if necessary.* | **10. Supporting documentation**<br><br>The following supporting documents are provided to support the application,<br>1. Open Space Background Paper (2013) Vale of Glamorgan Council<br>2. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green. See Excel Spreadsheet Document 10.<br>3. A plan with two areas outlined in Red.<br>4. Planning Application documents 02/01239/OUT 'A' referring to 'incidental open space' . Decision Notice,<br>5. Black and White Aerial Photograph 1945<br>6.Black and White Photograph 1945 |

7.Colour Photograph of the Army 17th November 2022

8.Colour Photographs of Bonfire Night 5th November 2022

8.Articles of Association Ringwood Crescent Residents Company Limited.

9.Video of Child cycling on the land May 2020

10.Excel Spreadsheet of 159 Questionnaires summarizing use of the land.

11. 160 Questionnaire Documents confirming the use of the land as recreational open space.

**Note 11**
*If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.*

## 11. Any other information relating to the application

It is expected that the following will challenge the application.

The landowner
Annington Homes c/o 1 James Street, London, W1U 1DR

The developer proposing residential development

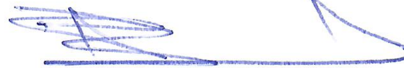
Edenstone Partnerships
1st Floor, Building 102
Wales 1 Business Park
Magor
NP26 3DG

and their

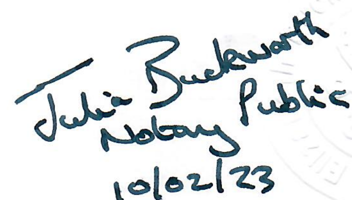
Planning Consultants -
LRM Planning Ltd
22 Cathedral Road
Cardiff
CF11 9LJ

**Note 12**
*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.*

Date: 10 February 2023

Signatures: 

Santokh Singh Bamrah on behalf of Ringwood Green Residents



**REMINDER TO APPLICANT**

**You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.**

***Data Protection Act 1998***

*The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.*

## Statutory Declaration In Support

*~~To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate,~~ by its solicitor, or by the person who signed the application.*

[1] *Insert full name (and address if not given in the application form).*

I Santokh Singh Bamrah[1] solemnly and sincerely declare as follows:—

[2] *Delete and adapt as necessary.*

[3] *Insert name if Applicable*

1.[2] I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) ([3] one of the applicants)).

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

*[4] Complete only in the case of voluntary registration (strike through if this is not relevant)*

Not Applicable--4. [4] I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

(i) a declaration of ownership of the land;
(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

*Cont/*

*[4] Continued*

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said ) *Signature of Declarant*

Santokh Singh Bamrah )

10 February 2023 )

at 95, Llanmaes Road, Llantwit Major CF61 2XE, Wales, UK

this xx 10th day of February 2023

Before me * Julia Buckworth Notary Public

Signature: Julia Buckworth

Address: 95, Llanmaes Road
Llantwit Major
CF61 2XE

Qualification: Notary Public

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* **The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.**

**Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.**

**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*

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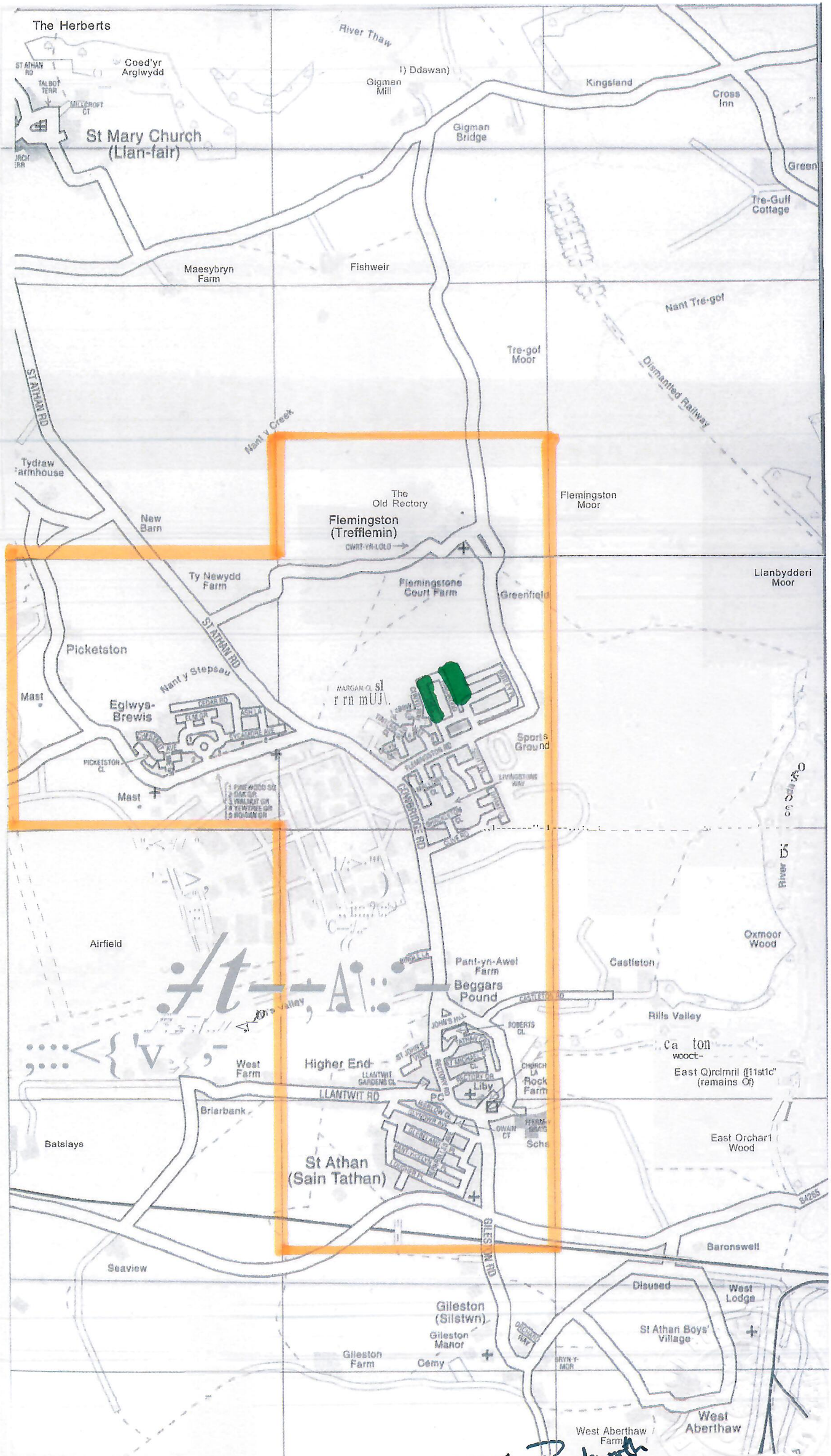
# LOCALITY PLAN

**Ringwood Crescent Village Green Application**
**07/02/23**
**Plan ref SB1**




Julie Buckworth

# Application For Town/Village Green Ringwood Crescent, St Athan, CF62 4LA

RINGWOOD CRESCENT

CLOSE

El Sub Sta

Play

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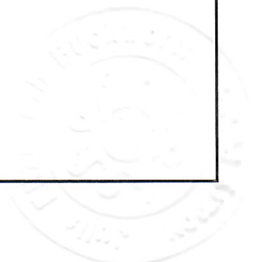
Metres

| | |
|---|---|
| Plan Produced for: | Andrew Burgess Planning Ltd |
| Date Produced: | 07 Dec 2022 |
| Plan Reference Number: | TQRQM22341134050867 |
| Scale: | 1:1250 @ A4 |

© Crown copyright and database rights 2021 OS 100042766



# Application for Town/Village Green, Ringwood Crescent, St Athan, CF62 4LA

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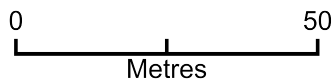

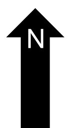


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| Plan Produced for: | Andrew Burgess Planning Ltd |
| Date Produced: | 07 Dec 2022 |
| Plan Reference Number: | TQRQM22341135950718 |
| Scale: | 1:1250 @ A4 |

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Vale of Glamorgan **Local Development Plan** 2011-2026

# Open Space

## Background Paper

September 2013

Local Development Plan
Cynllun Datblygu Lleol

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## 1. Introduction

1.1 This background paper is one of a series prepared by the Vale of Glamorgan as part of the evidence base used to inform the production of policies and site allocations for the Deposit Local Development Plan (LDP). Each background paper can be read in isolation or together with other background papers to gain a wider understanding of the issues facing the Vale of Glamorgan.

1.2 This background paper seeks to identify the amount and distribution of a range of open space types within the Vale of Glamorgan and to determine areas of deficiency or surplus for the existing population that might be addressed through the emerging LDP. It also considers the impact of population growth on the availability of open space throughout the LDP period and how this additional demand for open space can be catered for.

1.3 Within the urban fabric of cities, towns and villages open space can provide for a number of different functions. Depending upon the type, size and location of the open space it can facilitate play and informal recreation, it can act as a landscaping buffer within and between developments or can be used for competitive sports, family activities or even just relaxation.

1.4 The diverse character of open spaces, including parks and gardens, semi-natural greenspaces and allotments mean they provide a range of benefits for both people and wildlife and it is now generally accepted that the provision of high quality parks and open spaces can add value and distinctiveness to a locality and make an area a more attractive and desirable place to live.

1.5 In planning for open space it is important to strike a balance on the level of provision, too much and facilities can place a strain on budgets, and overall maintenance may suffer, too little and facilities will be under pressure and over used and their quality can deteriorate.

1.6 While each type of open space has a primary purpose, many open spaces also perform secondary functions that are often equally as important. In addition to facilitating sport and recreation outdoor sports facilities can also contribute towards local amenity and the many open spaces in urban areas perform vital functions for conservation and biodiversity and have a significant impact on the health and well being of those that use them for exercise or who merely live in close proximity.

1.7 Open space is therefore an important facet of modern day life and is increasingly being recognised by policy makers for the contributions that it can make to both national policy objectives such as the improvement of the nations health and more locally in the achievement of key local authority priorities across a range of strategy areas.

# 2 Executive Summary

## Section One – Audit of Existing Open Space Provision in the Vale of Glamorgan

2.1 The first section of the background paper comprises an audit of open space and seeks to identify the type, amount and spatial distribution of recreational and open space available in the Vale of Glamorgan in 'quantitative' terms only. The assessment has been based primarily on desktop research and the knowledge of officers with responsibility for the management and maintenance of open space. In identifying and categorising the open spaces significant use has been made of the council's digital mapping system to categorise and map the facilities identified.

2.2 The information contained within the open space audit will contribute to the evidence base of the emerging Vale of Glamorgan Local Development Plan (LDP) and will help to inform the policies and proposals that are developed relating to the provision of public open space.

2.3 The audit has been based on the typology of open space contained within the Welsh Assembly Government's revised Technical Advice Note 16: Sport, Recreation and Open Space (January 2009) (TAN). The following categories of open space included within the typology have been excluded from the audit, green corridors, accessible areas of countryside in the urban fringe, civic spaces and water.

2.4 Table 1 describes the categories and characteristics of the open space typologies that have been assessed.

### Table 1: Open Space Characteristics

| Open Space Type | Description | Purpose |
|---|---|---|
| Public Parks and Gardens | Areas of land normally enclosed, designed, constructed, managed and maintained as a public park or garden. | Accessible, high quality opportunities for informal recreation and community events. |
| Natural and Semi Natural Greenspace | Areas of undeveloped or previously developed land with residual natural habitats or which have been planted or colonised by vegetation and wildlife, including woodland and wetland areas. | Wildlife conservation, biodiversity and environmental education and awareness. |
| Outdoor Sports Facilities | Large and generally flat areas of grassland or specially designed surfaces, used primarily for designated sports i.e. playing fields, golf courses, tennis courts, bowling greens, areas which are generally bookable. | Participation in outdoor sports, such as pitch sports, tennis, bowls, athletics or countryside and water sports. |
| Amenity Greenspace | Landscaped areas providing visual amenity or separating different buildings or land uses for environmental, visual or safety reasons i.e. road verges, large roundabouts or greenspace in business parks. Ares of grass within housing areas that are used for a variety of informal or social activities such as play. | Opportunities for informal activities close to home or work or enhancement of the appearance of residential or other areas. |

| Open Space Type | Description | Purpose |
|---|---|---|
| Provision for children and young people | Areas providing safe and accessible opportunities for children's play usually linked to housing areas. | Areas designed primarily for play and social interaction involving children and young people, such as equipped play areas, ball courts, skateboard areas and teenage shelters. |
| Allotments | Areas of land of varying size usually found within or just outside a town and comprising numerous plots rented out to members of the community. | Provide opportunities for those who wish to do so to grow cultivate their own food crops. Benefiting the promotion of sustainability, health and social inclusion. |
| Cemeteries and Churchyards | Cemeteries, churchyards and other burial grounds. | Quiet contemplation and burial of the dead, often linked to the promotion of wildlife conservation and biodiversity. |

2.5 Where relevant, open space typologies have been assessed against the updated standards of provision recently published by the Fields in Trust (FIT) in their Planning and Design for Outdoor Sport and Play document (2008). Population figures utilised in the assessment have been taken from the 2010 Mid Year Estimates of population.

### Open Space within the Vale of Glamorgan

2.6 The results of the audit illustrate the quantity and spatial distribution of the range of open space types surveyed within the Vale of Glamorgan. Table 2 and the sections below provide a breakdown and summary by typology of the number and area of open space within the Vale of Glamorgan and more detailed information on each typology is contained within the relevant sections of the report and within the appendices.

**Table 2: Breakdown of Open Space Type within the Vale of Glamorgan**

| Typology | No sites | Area (ha) | % of Total Area | Provision per 1000 population |
|---|---|---|---|---|
| Public Parks and Gardens | 29 | 229.97 | 12.1 | 1.82 |
| Natural & Semi Natural Greenspaces | 60 | 677.31 | 35.1 | 5.36 |
| Outdoor Sports Facilities | 140 | 842.07 | 44.3 | 6.67 |
| Amenity Greenspace | 349 | 101.56 | 5.3 | 0.80 |
| Provision for children and young people | 121 | 8.51 | 0.5 | 0.07 |
| Allotments, community gardens and city farms | 23 | 18.76 | 1.0 | 0.15 |
| Cemeteries and churchyards | 65 | 33.29 | 1.7 | 0.26 |
| Total | 787 | 1901.03 | 100 | |

### Public Parks and Gardens

2.7 Parks and gardens are areas of land that are normally enclosed, specifically designed, and constructed, managed and maintained as public parks or gardens. They are intended to provide accessible, high quality opportunities for informal recreation and community events. This category also includes country parks.

2.8 Within the Vale of Glamorgan **29** spaces have been identified within this category that range in size from 0.05 hectares to 85.66 hectares. The total area of Public Parks and Gardens within the Vale of Glamorgan is **229.97** hectares.

2.9 The majority of public parks and gardens within the Vale of Glamorgan are found within the main urban settlements of Barry and Penarth with these two settlements accounting for almost 86% of the provision of this type of open space. The total figure is significantly enhanced by the inclusion of the two main country parks which combined account for approximately 168 hectares of the available provision. This figure is further increased by the inclusion of Duffryn House and Gardens which accounts for an additional 29 hectares.

2.10 The area of parks and gardens within the Vale of Glamorgan currently equates to **1.82** hectares per 1000 population. Appendix 1 provides more detail on the identified parks and gardens within the Vale of Glamorgan.

### Natural and Semi Natural Greenspaces

2.11 Natural and semi-natural greenspaces are primarily areas of undeveloped land where little or no maintenance takes place that have over time been naturally colonised by wildlife and vegetation. The area tends to be generally accessible on foot to large numbers of local residents.

2.12 Within the Vale of Glamorgan **60** sites of natural and semi-natural greenspace have been identified covering a total area of **677.31** hectares. This equates to **5.36** hectares per 1000 head of population however, the overall figure is significantly enhanced by the inclusion within the typology of common land which accounts for almost 550 hectares of the identified provision. If the common land was excluded from the overall total, a figure of **127.94** hectares or **1.01** hectares per 1000 head of population remains.

2.13 Including common land and assessed against the Natural Resources Wales standard of 2 hectares per 1000 head of population provision of natural and semi natural green spaces within the Vale of Glamorgan ranges from an under provision of **15.44** hectares to an over provision of **401.18** hectares.

2.14 Appendix 2 provides detailed information on the natural and semi natural greenspaces that have been identified within the Vale of Glamorgan.

### Outdoor Sports Facilities

2.15 Outdoor sports facilities cover a wide variety of open spaces and include both natural and artificial surfaces that provide for sport and recreation. Facilities covered include playing pitches, tennis courts, bowling greens, golf courses, athletics tracks and other outdoor sports areas. The primary purpose of this type of open space is to provide opportunities for people to participate in outdoor sports. Indoor Sports provision is considered separately in the Community Facilities background paper.

2.16 Within the Vale of Glamorgan **140** outdoor sports facilities have been identified covering an area of **842.07** hectares of land. This headline figure however includes **12** public or private golf courses that account for **619.64** hectares and which considerably distort the overall figure.

2.17 Assessed against the revised Fields in Trust (FIT) benchmark standard of 1.60 hectares per 1000 head of population the assessment illustrates a considerable variation in the level of provision ranging from an under provision of **15.34** hectares to an over provision of **175.42** hectares.

2.18 Appendix 3 provides detailed information on the Outdoor Sports Facilities that have been identified within the Vale of Glamorgan.

### Amenity Greenspace

2.19 Amenity greenspace is a general description for green space and landscaping that softens urban areas, allows for informal leisure and provides a setting for buildings. This type of open space is most commonly found in and around modern housing developments and has generally been created with the primary purpose of providing opportunities for informal recreational activities such as jogging or dog walking or for informal children's play close to home. Many of these areas are small parcels of land left over after a development has been completed but they nonetheless contribute to local amenity.

2.20 Within the Vale of Glamorgan **349** such sites have been identified that cover an area of **101.56** hectares. This equates to **0.80** hectares of amenity greenspace per 1000 head of population across the Vale of Glamorgan. Set against the revised quantity standard in the "Planning and Design for Outdoor Sport and Play (FIT 2008) of 0.55 per 1000 head of population this would indicate a current overprovision of amenity green space within the Vale of Glamorgan of **32.08** hectares.

2.21 The assessment has sought to include only those areas of amenity space that were considered to be large enough to provide for some level of informal recreation; smaller areas that provide merely for visual amenity have been excluded. As a result, the total amount of amenity greenspace available within the Vale of Glamorgan will invariably be greater than that identified within the assessment. Appendix 4 provides detailed information on the amenity Greenspaces that have been identified within the Vale of Glamorgan.

## Provision for Children and Young People

2.22 This type of open space includes areas of equipped play, Multi Use Games Areas (MUGAs), ball courts, and skateboard parks where the objective is to provide children with play spaces that enable social interaction with their peers while participating in energetic activities. Play for children and young people, does not involve the pursuit of any goal or reward.

2.23 There are national standards for equipped play and these are designated either Local Areas for Play (LAP), Local Equipped Area for Play (LEAP) or Neighbourhood Equipped Area for Play (NEAP), depending on its size, target age, variety and number of play pieces.

2.24 In addition to LAPs, LEAPs and NEAPs the audit has identified additional equipped play areas that, while not complying to any of the above standards, nonetheless make an important contribution to the provision of play areas for children and young people.

2.25 The assessment has identified **121**sites for children and young people totalling **8.51** hectares.

2.26 This figure comprises **24** LEAPs totalling **1.93** hectares, **9** NEAPs totalling **1.04** hectares, **10** MUGAs totalling **0.53** hectares, **9** skateboard parks totalling **0.42** hectares and **69** general play areas totalling **4.59** hectares.

2.27 Assessed against the revised FIT standard for designated equipped playing spaces of 0.25 hectares per 1000 head of population the assessment illustrates a general under provision of facilities for Children and Young People throughout the Vale of Glamorgan which ranges from 0.40 hectares to 1.93 hectares with only one ward showing a minor surplus in provision. Appendix 5 provides detailed information on the Provision for Children and Young People that have been identified within the Vale of Glamorgan.

## Allotments, Community Gardens and City Farms

2.28 Allotment gardens provide opportunities those people that wish to, to grow their own produce, supporting health, sustainability and social inclusion.

2.29 The audit has identified **23** allotment sites throughout the Vale of Glamorgan that cover an area of **18.76** hectares. These are under a variety of public and private ownerships and currently provide **843** allotment plots **45** of which have been identified as currently unavailable for a variety of reasons. As would be expected, the majority of the allotment sites identified are located within the main urban settlements which is representative of the historic development of allotment gardens and the main provision is to be found within Barry and Penarth with **11.20** and **2.37** hectares being found in each settlement respectively. Appendices 6 and 7 provide detailed information on the current allotment provision within the Vale of Glamorgan.

### Cemeteries and Churchyards

2.30 Cemeteries and churchyards are spaces set aside for the burial of the dead. They have a secondary but nonetheless important role in the promotion of wildlife and biodiversity.

2.31 The audit has identified **65** cemeteries and churchyards including **1** green burial site within the Vale of Glamorgan totalling a combined area of **33.29** hectares. This is split between **7** cemeteries with a combined area of **15.54** hectares, **57** churchyards with a combined area of **13.30** hectares and **1** green burial ground with an area of **4.45** hectares. Appendix 8 provides detailed information on the Cemeteries and Churchyards that have been identified within the Vale of Glamorgan.

## Section Two - Open Space Provision

2.32 Section two of the background paper builds on the open space audit and considers the recreational requirements that are likely to arise as a direct result of the population growth associated with the housing developments identified within the LDP. The section focuses specifically on the provision of children's play space and outdoor sport and considers the existing levels of provision within the ward or community area where new development is proposed and applies accepted standards of provision to calculate future open space requirements. The new LDP housing allocations provide for 7,829 dwellings which comprise a mix of size and type of sites in various locations throughout the Vale of Glamorgan.

2.33 New residential development should provide appropriate local facilities in close proximity to people's homes, small scale open space areas, including children's equipped play space, will normally be expected to be provided on housing development sites and will be secured either through planning conditions or section 106 agreements and include an appropriate provision for future care and maintenance. Where site size or constraints mean that it would not be practical or feasible to provide new facilities on site, consideration will be given to alternative off-site provision.

2.34 In many cases, development sites will not be large enough to provide appropriate strategic outdoor sport facilities e.g. playing fields, tennis courts, cricket pitches, to meet the cumulative needs arising from new residential development. Therefore Planning Obligations and Community Infrastructure Levy (CIL) will be used to seek contributions to provide these facilities elsewhere and/or for enhancing existing open space and recreational facilities within the locality. On large sites i.e. over 500 dwellings, it is anticipated that outdoor sports facilities such as playing fields will be provided on site.

### Children's Play Space

2.35 The Fields in Trust (FIT) Planning and Design for Outdoor Sport and Play Benchmark Standard for Outdoor Play requires 0.25 hectares of Designated Equipped Playing Space per 1000 population (or 2.5sqm per person). In addition, the FIT categorises children's play space into three types for different age groups as follows:

- **Local Areas for Play** (LAPs) for young children (aged 4-6 years) which comprise an activity zone of 100m$^2$;
- **Local Equipped Areas for Play** (LEAPs) for children aged 4-8 years which comprise an activity zone of 400m$^2$ with 5 types of play equipment; and,
- **Neighbourhood Equipped Areas for Play** (NEAPs) for older children (aged 8-14 years) which comprise an activity zone of 1000m$^2$ with 8 types of play equipment.

2.36 Using the average household size of 2.32 for the Vale of Glamorgan (Census 2011) it is therefore possible to calculate the likely population arising from new housing developments and the need for equipped playing space for children as follows:

**Standard for Children's Outdoor Play = No of dwellings X average household size (2.32) X standard per person (2.5m$^2$)**

### Outdoor Sport

2.37 In terms of strategic recreational facilities the FIT Benchmark Standard for All Outdoor Sport requires 1.60 hectares per 1000 population (or 16sqm per person). Again, using the average household size of 2.32 for the Vale of Glamorgan (Census 2011) it is possible to calculate the likely population arising from each housing development and therefore calculate the need for outdoor sport space as follows:

**Standard for outdoor sport = No of dwellings X average household size (2.32) X standard per person (16m$^2$)**

### Housing 'Windfall' Analysis

2.38 In addition to open space requirements identified through LDP housing site allocations, the study also considers additional population growth through non allocated or 'windfall' sites and throughout the plan period it is anticipated that an additional 2,448 dwellings will be delivered on such sites. It is anticipated that as these sites are inherently small or constrained sites they will largely be incapable of accommodating adequate provision for open space on site, and facilities will therefore need to be provided off-site.

### Open Space Requirements

2.39 The study considers the requirements for open space generated by each of the residential development allocations as well as the perceived windfall allocations for each of the identified settlements based on an analysis of historic trends. Where sites are capable of accommodating the required open space provision on site, these are identified and detailed in Table 20 and illustrated in Appendix 17 and supported by the inclusion of a policy within the Deposit LDP. Where there is an identified shortage of open space which cannot be accommodated on development allocations, locations for off site provision have been identified.

## Conclusions

2.40 The report provides an audit of the existing open space within the Vale of Glamorgan and outlines the range of open space across relevant typologies detailed within TAN 16. As a rural authority with an extensive coastline, the open space provision identified within the background paper is significantly enhanced by the open countryside and coastline that is generally easily accessible to the population of the Vale of Glamorgan.

2.41 The audit provides background evidence to inform and support the application of Development Management Policies within the Plan, but will not be the only information which will be relied upon when considering future requirements for open space provision.

2.42 The identified housing allocations within the Deposit LDP will provide for an additional 7,829 dwellings within the Vale of Glamorgan over the Plan period. A further 2,448 dwellings are anticipated as windfall development. These sites will be required to provide appropriate levels of community infrastructure including public open space and play facilities in accordance with the provisions of a suite of Development Management Policies and any relevant and appropriate standards utilised by the Vale of Glamorgan Council's Grounds Maintenance Division. In this regard the Deposit Plan makes provision for new and/or enhanced children's play facilities and outdoor sports facilities across the Vale of Glamorgan as detailed in Part Two of the background paper where deficiencies have been identified. In addition, the Deposit Plan provides for substantial extensions to both Cosmeston Lakes and Porthkerry Country Parks.

2.43 The information contained within this background paper will assist in negotiating the provision of new or enhanced outdoor sports and children's play space provision. However the Vale of Glamorgan Council will always utilise the revised standards as detailed in the Fields in Trust Planning and Design for Outdoor Sport and Play Manual as a basis for securing additional or improved provision of facilities.

# Section 1 – Audit of Existing Open Space Provision in the Vale of Glamorgan

## 3. What is Open Space?

3.1 Open space is defined in the Town and Country Planning Act 1990 as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.

3.2 The revised TAN 16 states that open space should be regarded as all open space of public value, including not just land, but also water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport, recreation and tourism, and can also act as a visual amenity, and may have conservation and biodiversity importance.

3.3 TAN 16 also states that areas which are privately owned may have amenity value, although access will not be possible without the agreement of the land owner. Areas like domestic gardens are relevant, since places without or with few gardens, are likely to be more reliant upon the provision of public spaces.

3.4 TAN 16 provides a typology of open space as a useful basis for preparing an open space assessment; this is included at section 8.

## 4. Benefits of Open Space.

4.1 Open space is an essential element of a modern day life and it is widely recognised that the provision of high quality 'public realm' facilities such as parks and gardens, civic spaces and informal greenspaces are not only highly valued by residents of an area, they can assist in the promotion of an area as an attractive place to live, increasing property values and improving local environmental quality.

4.2 Well located, designed and managed open spaces can also afford an area a wide range of additional social, economic, environmental, educational and recreational benefits and these are detailed below.

### Social benefits

- Providing safe outdoor areas that are accessible to all ages of the population to mix and socialise.
- Social cohesion, the potential to engender a sense of community ownership and pride.
- Providing opportunities for community events and voluntary activities.
- Providing opportunities to improve health and take part in a wide range of outdoor sports and activities.

### Recreational

- Providing easily accessible recreation areas as an alternative to other more chargeable leisure pursuits.
- Offers wide range of leisure opportunities from informal leisure and play to formal events, activities and games.
- Open spaces, particularly parks, are the first areas where children come into contact with the natural world.
- Play opportunities are a vital factor in the development of children.

### Environmental

- Reducing motor car dependence to access specific facilities.
- Providing habitats for wildlife as an aid to local biodiversity.
- Helping to stabilise urban temperatures and humidity.
- Providing opportunities for the recycling of organic materials.
- Providing opportunities to reduce transport use through the provision of local facilities.

### Educational

- Valuable educational role in promoting an understanding of nature and the opportunity to learn about the environment.
- Open spaces can be used to demonstrate virtues of sustainable development and health awareness.

### Economic

- Adding value to surrounding property, both commercial and residential, thus increasing local tax revenues.
- Contribution to urban regeneration and renewal projects.
- Contributing to attracting visitors and tourism, including using the parks as venues for major events.
- Encouraging employment and inward investment.
- Complementing new development with a landscape that enhances its value.

## 5. Why undertake the audit?

5.1 The results of the audit will allow the Council to identify where deficits or surpluses of open space, sport and recreational facilities exist within the Vale of Glamorgan. This information will provide an evidence base that will inform the targeted allocation of open space within the Local Development Plan set out in Section 2 of this background paper and assist in the determination of planning applications to ensure developments provide adequate open space facilities either through on-site provision or financial contributions. It will also form a significant part of the Infrastructure Plan and delivery of open space under the Community Infrastructure Levy.

## 6. Demographics & Local Features

6.1 The Vale of Glamorgan is Wales' most southerly Unitary Authority, lying west of Cardiff between the M4 and the Severn Estuary and covering 33,097 hectares, of which approximately 85% (28,132 hectares) is agricultural land. The Vale has 53 kilometres of coastline, of which 19 kilometres is designated as Heritage Coast. Its neighbouring authorities are Bridgend County Borough Council to the west, Cardiff Council to the east and Rhondda Cynon Taf County Borough Council to the north.

6.2 The 2012 mid-year estimates indicate that the Vale of Glamorgan has a current population of 126,831, and the Welsh Government 2011 Population Projections estimate that this figure is set to rise to 132,500 by 2026. Currently approximately 51,500 people reside in Barry, the Vale's administrative centre, which has benefited in recent years from ongoing regeneration projects within the town centre and the Waterfront. A further 43,000 are distributed amongst the larger towns of Penarth, Llantwit Major, Dinas Powys and Cowbridge. The remaining population is scattered throughout the Vale's smaller rural villages and hamlets. The forecast increase in population within the Vale of Glamorgan will increase the pressure on existing open spaces, sport and recreation facilities and is likely to create demand for further provision.

6.3 Within the Vale there is a clear distinction between its urban and rural areas, which creates differences in the nature of the issues affecting the area. For example, whilst in some parts of the rural Vale there exist some of the most affluent wards in Wales, in Barry there are communities that fall within the highest 10% of most deprived areas in Wales. In these urban communities, health, education and high employment are of particular relevance, whereas in some of the rural communities, poor access to services, the provision of affordable housing and a decline in the traditional rural economy are seen by residents as being important issues. The main urban centres are in general well served by a range of open space provision however this situation is not repeated within the smaller rural town sand villages where provision is much more sporadic.

6.4 The scattered nature of the Vale's rural settlements and its close proximity to Cardiff and the M4 has resulted in a steady increase of car ownership (78% of all households), with some 46% of the population travelling outside the Vale for work. This leads to congestion on key routes at peak times, despite the fact that some of the larger settlements of Barry, Dinas Powys, Llantwit Major, Penarth and Rhoose are well served by rail. This high level of car ownership also means that residents are not wholly reliant upon local open space provision to meet their recreational needs.

6.5 The Vale of Glamorgan benefits from a wide range of environmental resources including two sites designated as European sites under the Habitats Directive, (Severn Estuary and Dunraven Bay). In addition, a significant part of the Vale's coastline is designated as Heritage Coast, and there are a large number of national and locally important designated sites of nature conservation value. In terms of cultural heritage, the Vale has an extensive range of Listed Buildings, County Treasures, and Scheduled Ancient Monuments as well as 38 Conservation Areas.

6.6 The abundance of natural and built environmental assets in the Vale provides leisure, recreation and tourism opportunities for its residents but they also require the need for careful management to ensure that such activities do not impinge on their quality and unacceptably affect their character.

## 7. Policy Framework

### National

7.1 Planning Policy Wales Edition 5 November 2012 (PPW) sets out the land use planning policies of the Welsh Government. It is supplemented by a series of Technical Advice Notes (TAN). PPW, the TANs and circulars together comprise national planning policy which should be taken into account by local planning authorities in Wales in the preparation of Local Development Plans (LDPs).

7.2 PPW requires that local authorities should provide the framework for well located sport, recreation and leisure facilities and that these should be: *"sensitive to the needs of users, attractive, well designed, well maintained, safe and accessible to all."*

7.3 The Welsh Government's main planning objectives in respect of sport and recreation are to promote:

- A more sustainable pattern of development by creating and maintaining networks of facilities and open spaces in places well served by sustainable means of travel, in particular within urban areas;
- Social inclusion, improved health and well-being by ensuring that everyone, including the elderly and those with disabilities, has easy access to good quality, well designed facilities and open space; and
- The provision of innovative, user–friendly, accessible facilities to make our urban areas, particularly town centres, more attractive places, where people will choose to live, to work and to visit.

7.4 PPW also refers to the need for the planning system to ensure that adequate land and water resources are allocated for formal and informal sport and recreation and that open spaces, particularly in urban areas where they fulfil multiple purposes, not only enhancing the quality of life, but contributing to biodiversity, the conservation of nature and landscape, air quality and the protection of groundwater should be protected.

7.5 Technical Advice Note 16: Sport, Recreation and Open Space (January 2009) provides technical guidance, which supplements the policy set out in PPW. It advises on the role of the planning system in making provision for sport and recreational facilities, and open informal spaces, as well as protecting existing facilities and open spaces to meet the diversity of recreational needs throughout Wales.

7.6 The TAN promotes evidence based locally generated standards although local planning authorities can continue to use current standards as the basis of their LDP policies. It considers that the objectives set out in PPW can only reasonably be achieved by undertaking an Open Space Assessment which should include an assessment of need and an audit of available supply.

7.7 The objectives of PPW and TAN 16 in respect of sport, recreation and open space are further supported and strengthened by a number of strategies that set out the WGs policies and priorities in a number of areas complimentary to policy in respect of sport, recreation and open space.

7.8 ‘One Wales - A Progressive Agenda for the Government of Wales’ (June 2007), sets out the Welsh Government’s overarching strategy for its actions to introduce change in Wales. It recognises that most people do not take enough physical activity to gain health benefits. It accepts that physical activity is beneficial to health, and provides for the creation of an all-Wales coastal path, encourages sport, physical activity (particularly cycling and walking) and the enjoyment of the natural environment. It promotes the retention of school playing fields to develop opportunities for schools and colleges to work with local sports clubs to invest in sports coaching. The Welsh Government also seeks to foster a sense of ‘public ownership’ in relation to the countryside, urban green spaces and the coastline, recognising that many socially excluded groups do not currently enjoy available social, cultural and health benefits.

7.9 ‘People, Places, Futures - The Wales Spatial Plan 2008 Update’ (July 2008) sets out Welsh Government policies and priorities in a spatial context, including creating sustainable communities and sustainable accessibility. It recognises that the quality of the environment is fundamental, sets out actions for the protection or enhancement of urban and rural areas and provides the context and direction of travel for Local Development Plans (LDPs) produced by local planning authorities.

7.10 The Update brings the Wales Spatial Plan of 2004 into line with ‘One Wales’ and gives status to the Area work which has been undertaken since the plan was originally prepared. It recognises that our environment is fundamental to our quality of life and that its protection and regeneration is essential for health and well-being and for economic opportunities. The Update recognises that climate change must be addressed if we are to avoid consequences, and that doing so provides the opportunity to rethink the way we live and work, by encouraging more walking and cycling as part

of daily life, providing safe and clean open spaces with more opportunities to enjoy wildlife, and improving the way we manage air quality, waste, soils and water.

7.11 **'Climbing Higher: The Welsh Assembly Government Strategy for Sport and Physical Activity' (January 2005)** sets out the long-term strategy for sport and physical activity in Wales for the next twenty years. Sport is defined by the Council of Europe as "physical activity which, through casual or organised participation, aims at expressing or improving physical fitness and well-being, forming social relationships, or obtaining results in competition at all levels". Active Recreation is defined as "physical activity carried out in leisure time, including activities such as dancing, aerobics or brisk walking".

7.12 The purpose of the strategy is to achieve an active, healthy and inclusive Wales, where sport, physical activity and active recreation provide a common platform for participation, fun and achievement, which binds communities and the nation and where the outstanding environment of Wales is used sustainably to enhance confidence in ourselves and our place in the world.

7.13 'Climbing Higher' has spatial land use planning implications at national and local levels. It includes targets, in particular that by 2025:

- The percentage of people in Wales using the Welsh natural environment for outdoor activities will increase from 36% to 60%.
- 95% of people in Wales will have a footpath or cycle path within a 10 minute walk.
- No-one should live more than a 6 minute walk (300metres) from their nearest natural green space.
- All public sector employees and 75% of all other employees will have access to sport and physical activity facilities at, or within 10 minutes walk of the workplace.

7.14 **Providing Accessible Natural Greenspace in towns and cities (Countryside Council for Wales 2006)** - This guidance has been produced by the Countryside Council for Wales and relates to the identification of accessible greenspace sites worthy of protection. Natural greenspace comprises sites that are valued by the community, provide important refuges for wildlife in otherwise impoverished areas, and are beneficial to public health and wellbeing. The toolkit recommends standards for greenspace provision in towns and cities across Wales and sets out an implementation process.

### Local

7.15 **Vale of Glamorgan Adopted Unitary Development Plan 1996-2011** – The adopted Vale of Glamorgan UDP recognises that there is considerable demand for development within the Vale of Glamorgan and that as a result of this, existing recreation sites may come under pressure for development. The plan therefore seeks to ensure that sufficient land and other resources are allocated in the UDP for organised sport and informal recreation and seeks to protect and improve existing recreational provision and to provide new facilities and opportunities in areas of identified deficiency.

7.16 **The Vale of Glamorgan Community Strategy 2011 – 2021 –** The adopted Community Strategy includes a range of strategic objectives which seek to ensure that the aims and targets of all the organisations active in the Vale are geared towards providing a focused and consistent quality of services to residents, visitors and businesses. In particular and of direct relevance to sport and play the Community Strategy recognises that access to play, leisure, sporting and cultural activities is fundamental for a healthy and active lifestyle for all children and young people and will encourage all children and young people to participate in play schemes and sporting activities through working in schools and with the wide range of sports clubs and societies.

## 8. Typology of Open Space

8.1 Technical Advice Note 16 proposes the following typology of space as a useful basis for preparing Open Space Assessments and development plan policies. Many spaces have multiple uses, and areas should be categorised by the primary or main use of the area concerned:

1. **Public parks and gardens** - including urban parks, country parks and formal gardens;

2. **Natural and semi-natural greenspaces** - including woodland, urban forestry, scrub, grasslands, open access land (e.g. mountain, moor, heath, downland, common land and meadows) wetlands, wastelands and derelict open land and rocky areas (e.g. cliffs, quarries and pits), and coastal land;

3. **Green corridors** - including river and canal banks, footpaths, cycleways, bridleways, disused railway land and rights of way; these may link different areas within and between urban areas. They may also form part of a network which links urban areas, or links them to the surrounding countryside.

4. **Outdoor sports facilities (with natural or artificial surfaces, publicly or privately owned)** - including tennis courts, bowling greens, sports pitches, golf courses, athletics tracks, school and other institutional playing fields, and other outdoor sports areas. A sports pitch is currently defined as a playing field, larger than 0.4 hectares in size, that has been marked for team games in the last five years.

5. **Amenity greenspace (most commonly, but not exclusively in housing areas)** - including informal recreation spaces (private or open to the public), roadside verges, greenspaces in and around housing and other premises e.g. hospitals, schools and colleges, industrial and business premises, domestic gardens and grounds, and village greens;

6. **Provision for children and young people** - including play areas, areas for wheeled play, including skateboarding, outdoor kickabout areas, and other less formal areas (e.g. 'hanging out' areas, teenage shelters);

7. **Allotments, community gardens, and city (urban) farms** - a statutory allotment is defined as having an area not exceeding 40 poles (1,000sq metres);

8. **Cemeteries and churchyards**;

9. **Accessible areas of countryside in the urban fringe** - which directly adjoin or are connected to an urban area;

10. **Civic spaces** - including civic and market squares, promenades and other predominantly hard surfaced areas designed for pedestrians. These spaces may include planted areas and trees;

11. **Water** - including open air tidal and freshwater pools, ponds, rivers, canals, lakes, reservoirs, docks, and harbours.

8.2 This typology should be taken into account by local planning authorities when assessing existing need and provision, and when determining future requirements for open space and recreational facilities.

## 9. Scope of the Report

9.1 This report is a technical desk based study that has been undertaken to provide quantitative information on the level of open space and play provision within the Vale of Glamorgan.

9.2 Open spaces have been identified using the Council's Geographical Information and mapping data systems and in house grounds maintenance records. Where available, use has also been made of publicly available aerial survey information e.g. Google Maps to confirm site details.

9.3 Thereport has been selective in the type of open space that it has sought to consider and in this regard, green corridors, accessible areas of countryside in the urban fringe, civic spaces and water as detailed within the TAN 16 typology have been excluded from the assessment. Further, the assessment has concentrated on the main towns and villages within the Vale of Glamorgan and little or no consideration has been given to the large areas of agricultural or coastal land that can contribute to opportunities local amenity, local biodiversity or offer opportunities for active or indeed passive recreation.

9.4 Population figures used in the assessment are the Welsh Government's 2011 Mid Year Estimates.

9.5 The overall aim of the quantitative assessment is to:

- Provide an understanding of the existing provision for each type of open space.
- Establish areas of the Vale of Glamorgan suffering from a deficiency in open space provision.
- Provide a guide as to where new development might be expected to provide additional open space provision (see further details in Section 2).

### Standard of Provision

9.7 Fields in Trust (FIT) formerly the National Playing Fields Association, has prepared benchmark standards for outdoor sport and play to replace the "Six Acre Standard". The new benchmark standards recognise that facilities should meet technical and accessibility criteria which reflect the quality and usefulness of particular spaces. The benchmark standards recommended by FIT have been utilised in the preparation of this report.

### Beaches

9.8 Beaches and the coastal environment make an important contribution to open space and provide opportunities for a range of informal recreation activities. With 53 kilometres of coastline including 22 kilometres of Heritage Coast, the Vale of Glamorgan possesses an immensely valuable open space resource that is in general accessible to the majority of the local population by a range of transport modes.

9.9 While coastal land is included under the natural and semi natural category of open space in the typology contained within the TAN 16, only a small number of coastal sites have been included in this assessment as they are considered to be important in a local context and are easily accessible by a range of transport modes for large sections of the population and provide an open space resource in locations that could not be excluded from the overall assessment.

9.10 Notwithstanding the exclusion of the coast from the assessment, the council accepts that the coastal environment is an important and fragile resource that is highly susceptible to change and has undertaken a coastal study as background information to the LDP process. The study makes recommendations for the future management and protection of the coastal environment and highlights its visual, ecological and recreational importance.

### Public Rights of Way

9.11 Public Rights of Way (PROW) include Footpaths, Bridleways, Restricted Byways and Byways Open to All Traffic (BOATs, of which there presently are none in the Vale). The Vale of Glamorgan has an extensive PROW network with over 550km of PROW including 498km of footpaths, 27 km of bridleways and 27 km of restricted byways which combine to provide an extensive recreational resource which facilitates access to the open countryside on the edge of towns and villages and the wider rural Vale of Glamorgan and coast.

### Woodland

9.12 The Vale of Glamorgan like many local authority areas in South Wales contains large quantities of woodland blocks. Many of these provide for public access and contribute to the informal recreational provision within the Vale of Glamorgan, contributing to local amenity and playing an important role in supporting biodiversity.

## Quiet Areas

9.13 The Environmental Noise Directive 2002/49/EC was transposed in Wales by the Environmental Noise (Wales) Regulations 2006 (as amended) ("the Regulations") and requires the Welsh Government as the competent authority to develop Action Plans to preserve environmental noise quality where it is good. The Directive requires that "quiet areas" are designated in "agglomerations" (large urban areas) and that these are protected from increases in environmental noise, that is, noise from transport and industry. Quiet areas must be tranquil areas of value to the local community.

9.14 The policy in Wales focuses on urban green space, and the Welsh Ministers have set criteria for quiet areas based on the tranquillity benefits that they provide for local urban residents. This encompasses not only consideration of positive and negative sounds, but also the presence of nature, visual/aesthetic factors, access, and safety. Once a quiet area has been formally designated, planning policy (PPW Edition 5 November 2012 Paragraph 13.15.2) requires that development plan policies should have regard to the need to protect it from an increase in noise, and afford it special consideration when noise-generating development is proposed nearby. Noise can have a significant impact on local amenity, health and well being and the environmental protection policies of the LDP will be applied to development proposals that generate excessive noise to ensure that noise levels are kept to an acceptable standard. It should be stressed that environmental noise is unwanted or harmful sound, and does not include the sounds made by the legitimate amenity or recreational use of open space.

9.15 The Vale of Glamorgan lies within the Cardiff/Penarth Agglomeration and five quiet areas have been designated within Penarth. These are:

1. Penarth Head Lane.
2. Belle Vue Park.
3. Alexandra Park.
4. Golden Gates.
5. Victoria Playing Fields.

9.16 Detailed boundaries of the designated quiet areas are shown at Appendix 16 and the quiet areas have been identified on the LDP Constraints Map. All of the designated quiet areas have been identified within the open space assessment. The LDP will include an Environmental Protection Policy which will ensure the impact on such areas is considered at application stage.

# 10. Assessment of Open Space by Type with recommendations

## 10.1 Public Parks and Gardens

### Definition

10.1.1 Parks and gardens are areas of land normally enclosed, designed, constructed managed and maintained as public parks or gardens and they do not therefore include such open spaces as informal open space or parkland that is not usually accessible for the enjoyment of the general public. Parks and gardens include urban parks, formal parks and country parks but not informal open space. Public parks and gardens are intended to provide accessible, high quality opportunities for a variety of informal recreation and community events.

### Strategic Context

10.1.2. Public parks and gardens can contribute to a sense of place and can help define local communities. In times when the urban fabric changes with increased regularity, they can provide communities with a level of stability and sense of place.

10.1.3 The size and distribution of the majority of public parks and gardens is closely allied to the expansion of settlements and today the majority of such facilities are to be found within the larger urban centres or settlements and are surrounded by residential development. While the way in which public parks and garden are utilised may have changed from when they were originally established, and they may seem less relevant to the needs of modern society and people's needs and expectations than when they were first laid out, the loss of such facilities would raise significant opposition and there should be a presumption in favour of their retention.

10.1.4 Public parks and gardens play an important amenity role within communities and contribute to a sense of well being by adding to the general quality of life of an area in contrast in many cases to the surrounding built environment. Like many other types of open space they provide highly accessible locations for informal recreation where users can merely walk or undertake more physical activity if desired, Many parks and gardens also contain a range of recreational facilities such as play areas, tennis courts and bowling greens. While the country parks are sensitively managed for informal recreation, wildlife and countryside management the urban parks also make an important contribution to supporting wildlife, providing green spaces within otherwise built up areas. There is also a perceived economic benefit derived from public parks and gardens which enhance an areas image and make it more attractive to potential investor.

10.1.5 Larger parks and gardens are likely to attract users from a far wider catchment and have a much higher profile than smaller facilities that serve a more local area. Within the Vale of Glamorgan the public parks and gardens are generally found within the main urban centres.

### Policy Context

10.1.6 Planning Policy Wales states that formal and informal open spaces, including parks, with significant recreational or amenity value should be protected from development, particularly in urban areas where they fulfil multiple purposes, not only enhancing the quality of life, but contributing to biodiversity, the conservation of nature and landscape, air quality and the protection of groundwater.

10.1.7 TAN 16 reflects the "Environment Strategy for Wales" which states that every community should have access to a high quality, well planned and maintained built environment which provides access to green spaces and areas for recreation, and supports biodiversity. The TAN recognises that poor quality environments with poorly maintained buildings, public spaces and lack of parks and green spaces can have a detrimental effect on our quality of life, and on our overall health and well-being.

### Audit

10.1.8 The audit of provision has identified **29** public parks and gardens within the Vale of Glamorgan; this includes **3** country parks covering **196.96** hectares, **16** urban parks covering **19.58** hectares and **10** formal gardens covering **13.43** hectares or **229.97** hectares in total, **12.1%** of the open space identified within the Vale of Glamorgan. Table 3 provides a breakdown of public parks and gardens provision within the Vale of Glamorgan by ward and Appendix 1 provides more detailed information on each of the identified sites. Appendix 2 illustrates the location of the identified Public Parks and Gardens across the Vale of Glamorgan.

10.1.9 As illustrated below, the formal urban parks and gardens are generally located within the main urban centres of the Vale of Glamorgan. In Penarth and Barry, Victorian and Edwardian park development was to proceed hand in hand with the rapid growth of each town, both to provide open recreational areas for increasing numbers of new residents and to attract visitors. Many of the public parks and gardens within the Vale of Glamorgan contain a variety of facilities and equipment including some that fall within other open space typologies such as play areas (provision for children and young people) or bowling greens and tennis courts (outdoor sports facilities). Where these facilities have been identified the resultant area of the park or garden has been reduced accordingly.

### Table 3: Distribution of Country Parks, Urban Parks and Formal Gardens by Ward

| Ward | No. of Sites | Area (Ha) |
|---|---|---|
| Country Parks | | |
| Illtyd | 1 | 82.51 |
| Plymouth | 1 | 85.66 |
| Wenvoe | 1 | 28.79 |
| **Sub Total** | **3** | **196.96** |
| Urban Parks | | |
| Baruc | 1 | 7.03 |
| Buttrills | 2 | 1.39 |
| Cadoc | 2 | 2.49 |
| Court | 1 | 0.17 |
| Cowbridge | 2 | 1.57 |
| Dinas Powys | 1 | 0.11 |
| Llantwit Major | 1 | 0.30 |
| Rhoose | 1 | 0.70 |
| St.Augustines | 5 | 5.82 |
| **Sub Total** | **16** | **19.58** |
| Formal Gardens | | |
| Baruc | 2 | 7.51 |
| Buttrills | 1 | 1.51 |
| Cadoc | 1 | 0.20 |
| Cowbridge | 2 | 0.59 |
| Dyfan | 1 | 0.53 |
| Plymouth | 2 | 1.46 |
| St.Augustines | 1 | 1.63 |
| **Sub Total** | **10** | **13.50** |
| **Total** | **29** | **229.97** |

### Standards of Provision

10.1.10 There are no definitive national or local standards of provision for public parks and gardens, their location, size and character in the majority of cases, having been established by local historic events or as an integral part of a major redevelopment or an area master plan and it is unlikely that there will be a major increase in provision of this typology.

10.1.11 Table 4 illustrates the distribution of the public parks and gardens identified by ward per 1000 head of population for those wards where public parks and gardens are located.

Table 4: Public Parks and Gardens per 1000 head of population by Ward

| Ward | Population | No. of Sites | Area (Ha) | % of Total Area | Area per 1000 pop'n |
|---|---|---|---|---|---|
| | | | | | |
| Baruc | 6,281 | 3 | 14.54 | 6.3 | 2.31 |
| Buttrills | 6,357 | 3 | 2.90 | 1.3 | 0.46 |
| Cadoc | 10,002 | 3 | 2.69 | 1.2 | 0.27 |
| Court | 4,748 | 1 | 0.17 | 0.1 | 0.04 |
| Cowbridge | 6,180 | 4 | 2.16 | 0.9 | 0.35 |
| Dinas Powys | 7,799 | 1 | 0.11 | 0.1 | 0.01 |
| Dyfan | 5,166 | 1 | 0.53 | 0.2 | 0.10 |
| Illtyd | 8,201 | 1 | 82.51 | 35.9 | 10.06 |
| Llantwit Major | 10,621 | 1 | 0.30 | 0.1 | 0.03 |
| Plymouth | 5,836 | 3 | 87.12 | 37.9 | 14.93 |
| Rhoose | 6,907 | 1 | 0.70 | 0.3 | 0.10 |
| St.Augustines | 6,478 | 6 | 7.45 | 3.2 | 1.15 |
| Wenvoe | 2,659 | 1 | 28.79 | 12.5 | 10.83 |
| | | | | | |
| Total | 87,235 | 29 | 229.97 | 100 | 2.64 |

10.1.12 The current Vale wide provision of public parks and gardens per 1000 head of population equates to **1.82** hectares however this figure is distorted by the inclusion of the 3 country parks within the Vale of Glamorgan which account for over 85% of the total area of this category. If the three country parks were to be excluded from the assessment, a more accurate provision of **0.26** hectares per 1000 head of population would result. For those wards that include public parks and gardens the area per 1000 head of population would equate to 2.64 hectares (including country parks) or 0.40 hectares (excluding country parks).

### Conclusions

10.1.13 It is unsurprising that with the exception of one or two of the smaller parks and gardens identified, the majority are located within the larger urban settlements of Barry and Penarth where their development in most cases has been inherently linked with the expansion and increase in the general prosperity and wealth of the towns and its inhabitants.

10.1.14 While areas of play space and outdoor sports provision are frequently provided as part of major new residential developments, the establishment of new formal parks and gardens on the scale and grandeur of those identified within the assessment is rare in modern times, although initiatives such as the Heritage Lottery Fund have in many cases enabled their restoration, renovation and improvement.

10.1.15 Therefore, given that new public parks or gardens are unlikely it is considered that the setting of a standard for their provision is not warranted. Similarly, the creation of new country parks on the scale of those developed during the 1970s and early 1980's in the UK is unlikely within the Vale of Glamorgan and again no standard of provision is proposed. It should be noted however that the Deposit Plan provides for extensions to

the two existing country parks, with an additional 27 and 42 hectares of land being added to Cosmeston Lakes Country Park and Porthkerry Country Park respectively.

10.1.16 Therefore, where contributions from new development are sought towards open space provision under this typology, it should realistically be focussed on improving and upgrading existing facilities and infrastructure and to improve access provision by creating new entrance points or developing safe routes to the facility for pedestrians and cyclists, This is especially relevant where the local population is likely to increase placing additional pressures on established facilities.

### Recommendations

- Where appropriate, consideration is given through the implementation of a Community Infrastructure and Planning Obligations Policy to enhancing, upgrading and/or improving access to existing public parks and gardens within the Vale of Glamorgan.

## 10.2 Natural and semi-natural greenspaces

### Definition

10.2.1 The primary role of natural and semi-natural greenspace is the promotion of biodiversity and nature conservation. Natural and semi-natural greenspaces are mostly areas of undeveloped land where little or no maintenance has been undertaken and which have over time become colonised with wildlife and vegetation.

10.2.2 The typology of open space contained within TAN 16 identifies a wide variation in natural and semi-natural greenspace that includes woodland, urban forestry, scrub, grassland, open access land (e.g. mountain, moor, heath, downland, common land and meadows) wetland, wastelands and derelict open land and rocky areas (e.g. cliffs, quarries and pits) and coastal land. Such uses often overlap with other open space typologies and may even be classified in some instances as amenity greenspace. Natural resources Wales (NRW) define such spaces as places where greenspace structure and quality of management combine to support a diverse or distinctive flora and fauna which otherwise might not be encountered in the built environment. In such places, the natural process will be dominant and the visitor will enjoy a distinctive sense of place.

10.2.3 Natural and semi natural greenspaces can play an important role in providing for wildlife conservation and biodiversity. They also provide significant recreational opportunities as like amenity greenspaces they are generally accessible on foot to a large section of the local population. In this regard, natural and semi natural open spaces can play a similar role and function to that of amenity green space however it is essential that a balance between recreational use, biodiversity and conservation is achieved.

### Strategic Context

10.2.4 Like many other kinds of open space within the TAN 16 typology, natural and semi-natural greenspaces can provide a number of benefits to the areas in which they are located. They make an important contribution to the quality of the environment and to the quality of life in urban areas, and are valued by the local community and provide important refuges for wildlife. Additional benefits from such spaces can include:

*Health benefits:* access to nature provides physical and psychological, health benefits. Studies have shown that people living in a greener environment report fewer health complaints, have better perceived general health and better mental health.

*Economic benefits*: natural open space acts as a green magnet, attracting people to live and work in the area. Greening also plays an integral role in the regeneration initiatives and new and existing infrastructure, the public realm, and other developments.

*Educational benefits*: natural greenspaces provide accessible educational resources for nature study and visiting such sites provides hands-on experience of plants and animals and provides children and adults with opportunities to learn about and understand nature, potentially leading to a respect for living things and a desire to conserve them.

*Functional benefits:* vegetated surfaces help to slow water runoff and so reduce the risk of flooding. Vegetation provides local climatic benefits and helps to prevent erosion, ameliorate ambient noise and absorb some pollutants.

*Sustainable development:* the natural world provides a range of sustainability benefits. Natural greenspaces provide valuable wildlife habitats and help to create habitats that will contribute to the conservation of threatened species.

### Policy Context

10.2.5 The Welsh Government is committed to promoting Habitat and Species Action Plans relevant to Wales prepared under the United Kingdom Biodiversity Action Plan (UKBAP) in fulfilment of its obligations under the Countryside and Rights of Way Act. Planning Policy Wales (Edition 5 November 2012) (PPW) reiterates the UKBAP which includes objectives to conserve, and, where practicable, enhance the quality and range of wildlife habitats, species and ecosystems.

10.2.6 PPW recognises that the planning system has an important part to play in meeting biodiversity objectives by promoting development which creates new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable.

10.2.7 This approach is supported in TAN 16 which states that open space, particularly that with a significant amenity, nature conservation or recreational value should be protected.

10.2.8 The CCW is the Welsh Government's statutory adviser on outdoor recreation and provides technical advice on nature and landscape conservation. Recognising that accessible natural green spaces make an important contribution to the quality of the environment and life in urban areas, the CCW has developed a toolkit to help ensure that everyone in Wales has access to natural greenspace. The CCW toolkit recognises that natural greenspace can occur across all categories of open space however, the typology detailed in TAN 16 identifies specific landscape types that make up natural and semi-natural greenspace and these have been considered in this assessment.

### Audit

10.2.9 The audit of provision has identified a total of 60 sites that cover an area of **677.31** hectares or **35.1%** of the identified open space within the Vale of Glamorgan. Table 5 below illustrates the type of natural and semi-natural greenspaces within the Vale of Glamorgan and its distribution by ward. A more detailed breakdown of the sites identified by the audit is provided at Appendix 3. Appendix 4 illustrates the location of the identified Natural and Semi-Natural Greenspaces across the Vale of Glamorgan.

**Table 5: Natural and Semi-Natural Greenspace by Ward.**

| Ward | Coastal Land | Common Land | Grassland | Scrubland | Woodland | Area Total (Ha) |
|---|---|---|---|---|---|---|
| Baruc | 24.42 | - | - | - | 2.54 | 26.96 |
| Buttrills | - | - | 3.00 | - | - | 3.00 |
| Cadoc | - | - | - | 0.36 | 16.41 | 16.77 |
| Cornerswell | - | - | - | - | 4.64 | 4.64 |
| Court | - | - | 2.47 | - | - | 2.47 |
| Cowbridge | - | 85.69 | 4.57 | 12.16 | - | 102.42 |
| Dinas Powys | - | 16.04 | - | - | - | 16.04 |
| Gibbonsdown | - | - | - | 3.10 | - | 3.10 |
| Illtyd | - | - | - | 0.67 | 2.5 | 3.17 |
| Llandough | - | - | - | - | 1.07 | 1.07 |
| Llandow/Ewenny | - | 29.80 | - | - | - | 29.80 |
| Llantwit Major | - | 0.96 | 0.49 | 4.35 | - | 5.80 |
| Plymouth | - | - | - | - | 2.00 | 2.00 |
| Rhoose | - | - | - | 31.62 | - | 31.62 |
| St.Augustines | - | - | - | - | 1.23 | 1.23 |
| St.Brides Major | - | 405.46 | 1.00 | - | - | 406.46 |
| Stanwell | - | - | 3.04 | 2.49 | - | 5.53 |
| Wenvoe | - | 11.42 | - | - | 3.81 | 15.23 |
| **Total** | **24.42** | **549.37** | **14.57** | **54.75** | **34.20** | **677.31** |

10.2.9 Given the rural character of the majority of the Vale of Glamorgan the assessment of natural and semi natural greenspace has been limited to that which is within or closely related to the existing residential settlement boundaries. The identified provision is complemented however by the open countryside that surrounds each settlement and therefore, the actual level of provision of this typology will undoubtedly be greater than is illustrated within the assessment and will include additional areas of natural and semi natural greenspaces that are widely accessible e.g. via the public rights of way network.

### Standards of Provision

10.2.11 The Countryside Council for Wales's (CCW) toolkit for accessible natural greenspace recommends that the provision of natural and semi natural greenspace should be at least **2 hectares per 1000 head of population.** This is structured according to a system of tiers to which sites of different sizes comply.

10.2.12 The provision of natural and semi natural greenspace identified equates to **5.36** hectares per 1000 head of population for the whole of the Vale of Glamorgan or **6.87** hectares per 1000 head of population for those wards in which semi natural greenspace occurs. However this figure has been calculated based on the inclusion of the **549.37** hectares of common land identified which is primarily located within the western part of the Vale of Glamorgan. If common land were to be excluded from the assessment, the provision of natural and semi natural greenspace per 1000 head of population within the Vale of Glamorgan would reduce to **1.01** hectares.

10.2.13 Set against the CCW standard, Table 6 below illustrates the provision of natural and semi natural greenspace within the Vale of Glamorgan by ward including and excluding common land. The table illustrates the considerable variation in the provision of natural and semi natural greenspace across the Vale of Glamorgan and the distortion that results from the inclusion of common land changing a major over provision into a significant under provision.

Table 6: Provision of Natural and Semi-Natural greenspace by Ward

| Ward | Pop'n | Area Total (Ha) | Hectare per 1000 population | Area (Ha) required to meet CCW standard | Provision (including common land)(Ha) | Provision (excluding common land)(Ha) |
|---|---|---|---|---|---|---|
| Baruc | 6281 | 26.96 | 4.29 | 12.56 | +14.40 | +14.40 |
| Cadoc | 10002 | 19.77 | 1.98 | 20.00 | -0.23 | -0.23 |
| Cornerswell | 5353 | 4.64 | 0.87 | 10.71 | -6.07 | -6.07 |
| Court | 4748 | 2.47 | 0.52 | 9.50 | -7.03 | -7.03 |
| Cowbridge | 6180 | 102.42 | 16.57 | 12.36 | +90.06 | +4.37 |
| Dinas Powys | 7799 | 16.04 | 2.06 | 15.60 | +0.44 | -15.60 |
| Gibbonsdown | 5895 | 3.10 | 0.53 | 11.79 | -8.69 | -8.69 |
| Illtyd | 8201 | 3.17 | 0.39 | 16.40 | -13.23 | -13.23 |
| Llandough | 1977 | 1.07 | 0.54 | 3.95 | -2.88 | -2.88 |
| Llandow/Ewenny | 2643 | 29.80 | 11.28 | 5.29 | +24.51 | -5.29 |
| Llantwit Major | 10621 | 5.80 | 0.55 | 21.24 | -15.44 | -16.40 |
| Plymouth | 5836 | 2.00 | 0.34 | 11.67 | -9.67 | -9.67 |
| Rhoose | 6907 | 31.62 | 4.58 | 13.81 | +17.81 | +17.81 |
| St.Augustines | 6478 | 1.23 | 0.19 | 12.96 | -11.73 | -11.73 |
| St.Brides Major | 2638 | 406.46 | 154.08 | 5.28 | +401.18 | -4.28 |
| Stanwell | 4416 | 5.53 | 1.25 | 8.83 | -3.30 | -3.30 |
| Wenvoe | 2659 | 15.23 | 5.73 | 5.32 | +9.91 | -1.51 |
| Total | 98634 | 677.31 | 6.87 | 197.27 | +480.04 | -69.33 |

### Coastal Land

10.2.14 The typology of open space included in TAN 16 details that coastal land should be considered as a component of the natural and semi natural greenspace available within an area and the CCW guide makes reference to the contribution that the coast and in particular the urban coast can make to the quality of life and the natural experience. However, as a coastal authority the Vale of Glamorgan benefits from a substantial coastal line and defining areas that that are accessible and which can be classified as open space is problematical given the many variables that exist. Therefore, with the exception of a small number of cliff top and headland sites within the primary settlement of Barry and Penarth where the principal use is for recreation, coastal areas have not been considered within the assessment.

### Woodland

10.2.15 The typology of open space included in TAN 16 details that woodland is a component of the natural and semi natural greenspace available within an area. However as with coastal land, woodland has been largely excluded from this assessment except where it is located with urban settlements and is easily accessible. The level of provision will therefore be far greater than that detailed within the assessment.

### Conclusions

10.2.16 The assessment illustrates the significant variation of natural and semi natural green spaces across the Vale of Glamorgan. In built up areas the level of such open space is severely reduced and in many cases access may be restricted. It is unlikely that such areas will be planned While the information provided above illustrates significant variation in the provision of natural and semi natural greenspace across the Vale of Glamorgan, as this variation largely results from the inclusion or exclusion of common land, the under or over provision is not considered to be a cause for concern as the number of sites identified is an obvious and likely substantial underestimate particularly when coastal land has been largely excluded from the assessment.

10.2.17 It is therefore only considered appropriate to draw the following basic conclusions from the assessment:

- The overall provision of natural and semi natural greenspace (when considering the natural and semi natural greenspace types as detailed within TAN 16 typology) within the Vale of Glamorgan is sufficient however this figure is distorted by the inclusion of common land and at ward level significant deficiencies have been identified.

- The majority of the natural and semi natural greenspaces identified comprises common land which is largely located within the rural vale away from the main centres of population.

10.2.18 It is considered appropriate given the development of the accessible natural greenspace toolkit by Natural Resources Wales to adopt the recommended standards of provision and accessibility.

### Recommendations

- Seek the improved management of existing sites of natural and semi natural greenspaces.

- Seek improved access to existing areas of natural and semi natural greenspaces including coastal land by way of local access improvements and improvements to the Public Rights of Way Network.

## 10.3 Outdoor Sports Facilities

### Definition

10.3.1 Outdoor sports facilities cover a wide variety of open spaces and include both natural and artificial surfaces that provide for sport and recreation. Types of outdoor sports facilities include playing pitches, tennis courts, bowling greens, golf courses athletics tracks and other outdoor sports areas. They can be owned and managed by a wide range of both public and private agencies and associations including local councils, town and community councils, sports associations and sports clubs. The primary purpose of this type of open space is to provide opportunities for people to participate in outdoor sports.

### Strategic Context

10.3.2 While the primary purpose of outdoor sports facilities are well defined, they also function as a recreational and an amenity resource and can often act as a focal point for a community. This is particularly true for sports pitches which frequently perform a secondary function as the local dog walking, kick about or jogging track.

10.3.3 The provision of this kind of facility is very much demand led and the land required to deliver some types of new outdoor sports facilities can be sizeable and provision can therefore in many instances be challenging if not impossible. Maximising the use of not only existing facilities but also facilities at school sites can therefore represent a major opportunity to improve the provision of outdoor sports facilities and new developments should be designed with this in mind.

### Policy Context

10.3.4 It is now widely accepted that sport and physical activity can contribute to meeting the objectives of a wide range of key policy agendas and this is recognised in the range of policy documents produced by the Welsh Government. Planning Policy Wales (Edition 5 November 2012) recognises the contribution that sport and recreation can contribute to our quality of life and the Welsh Government (WG) supports the development of sport and recreation and a wide range of leisure activities that encourage physical activity. PPW stresses the importance of playing fields whether public or privately owned and seeks to protect them from development except where: facilities can best be retained and enhanced through the redevelopment of a small part of the site; alternative provision of equivalent community benefit is made available; or there is an excess of such provision in the area.

10.3.5 These objectives are reflected in TAN 16 Sport, Recreation and Open Space which aims to integrate further the links between health and well being, sport and recreational activity and development in Wales through the development of land use planning guidance in accordance with the policies set out in PPW.

10.3.6 Fields in Trust (FIT) formerly the National Playing Fields Association has recently published a revision to their Six Acre Standard, "Planning and Design for Outdoor Sport and Play" which includes revised benchmark standards for quantity, quality and accessibility for a range of outdoor play facilities.

### Audit

10.3.7 The audit of provision of outdoor sports facilities within the Vale of Glamorgan identified a total of **140** sites comprising of **15** bowling greens (3.67 hectares), 4 cricket pitches (10.24 hectares), **21** tennis courts (4.38 hectares), **49** school playing fields (74.30 hectares), **38** sports pitches (128.40 hectares), **1** athletics track (1.44 hectares) and **12** golf courses (619.64 hectares) covering a total area of **842.07** hectares. A detailed breakdown of the outdoor sports facilities identified in the assessment is included at Appendix 5. Appendix 6 illustrates the location of the identified Outdoor Sports Facilities across the Vale of Glamorgan.

10.3.8 TAN 16 recommends that the audit for outdoor sport should include golf courses even though these may not be available for wider community use. Therefore, golf courses have been included in the audit and provision calculations have been provided which include and exclude this facility for general information.

10.3.9 The assessment illustrates a varied provision across those wards in which facilities are located within the Vale of Glamorgan ranging from an under provision of 15.34 hectares to an over provision of 175.42 hectares.

### Standards of Provision

10.3.10 The Fields in Trust (FIT) formerly the National Playing Fields Association (NPFA) have recently reviewed their "Six Acre Standard" that was either referred to or adopted by an estimated 70% of local planning authorities across the UK. The revised FIT Benchmark Standards (2008) include recommended standards for all outdoor sports facilities and for pitch sports facilities. The standards recommended by Fields in Trust are detailed in Table 7 below. The assessment has utilised the overall benchmark standard of 1.60 hectares per 1000 head of population.

**Table 7: Fields in Trust Benchmark Standard for All Outdoor Sport**

| Type of Local Authority | Benchmark Standard (hectares per 1000 population) |
|---|---|
| Urban | 1.60 |
| Rural | 1.76 |
| Overall | 1.60 |

10.3.11 Table 8 below provides a breakdown of provision by type by ward across the Vale of Glamorgan for all outdoor sports set against the FIT 1.6 hectare per 1000 head of population standard and Table 9 illustrates the provision of these facilities across the Vale of Glamorgan.

Table 8: Provision of All Outdoor Sports by Ward

| Ward | Pop'n | Area Total (Ha) | Hectare per 1000 population | Area (Ha) required to meet FIT standard | Provision (Ha) | Provision (excluding golf courses) |
|---|---|---|---|---|---|---|
| Baruc | 6,281 | 4.28 | 0.68 | 10.05 | -5.77 | -5.77 |
| Buttrills | 6,357 | 4.19 | 0.66 | 10.17 | -5.98 | -5.98 |
| Cadoc | 10,002 | 0.66 | 0.07 | 16.00 | -15.34 | -15.34 |
| Castleland | 4,852 | 0.00 | 0.00 | 7.76 | -7.76 | -7.76 |
| Cornerswell | 5,353 | 15.49 | 2.89 | 8.56 | +6.93 | +6.93 |
| Court | 4,748 | 7.25 | 1.53 | 7.60 | -0.35 | -0.35 |
| Cowbridge | 6,180 | 14.81 | 2.41 | 9.89 | +4.92 | +4.92 |
| Dinas Powys* | 7,799 | 101.00 | 12.95 | 12.48 | +88.52 | +12.33 |
| Dyfan* | 5,166 | 64.92 | 12.57 | 8.27 | +56.65 | +6.63 |
| Gibbonsdown | 5,895 | 18.54 | 3.15 | 9.43 | +9.11 | +9.11 |
| Illtyd | 8,201 | 13.24 | 1.61 | 13.12 | -0.12 | -0.12 |
| Llandough | 1,977 | 3.80 | 1.92 | 3.16 | +0.64 | +0.64 |
| Llandow/Ewenny* | 2,643 | 66.69 | 25.23 | 4.23 | +62.46 | +4.64 |
| Llantwit Major | 10,621 | 24.95 | 2.35 | 16.99 | +7.96 | +7.96 |
| Peterston-s-Ely* | 2,289 | 101.42 | 44.31 | 3.66 | +97.76 | +1.19 |
| Plymouth* | 5,836 | 60.87 | 10.43 | 9.34 | +51.53 | +3.05 |
| Rhoose | 6,907 | 6.88 | 1.00 | 11.05 | -4.17 | -4.17 |
| St.Athan* | 4,495 | 28.54 | 6.35 | 7.19 | +21.35 | -1.49 |
| St.Augustines | 6,478 | 1.19 | 0.18 | 10.36 | -9.17 | -9.17 |
| St.Brides Major* | 2,638 | 99.34 | 37.66 | 4.22 | +95.12 | +0.93 |
| Stanwell | 4,416 | 4.90 | 1.11 | 7.07 | -2.17 | -2.17 |
| Sully | 4,543 | 19.44 | 4.28 | 7.27 | +12.17 | +12.17 |
| Wenvoe* | 2,659 | 179.67 | 67.57 | 4.25 | +175.42 | +1.89 |
| Total | 126,336 | 842.07 | 6.67 | 202.14 | +640.01 | +20.37 |

* Wards with a golf course(s)

**Table 9: Outdoor Sports Facilities by Ward within the Vale of Glamorgan**

| Ward | Bowling Greens | | Cricket Pitches | | Tennis Courts | | School Playing Fields | | Sports Pitches | | Athletics Tracks | | Golf Courses | | Totals | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) |
| Baruc | 2 | 0.45 | 1 | 1.85 | 2 | 0.33 | 1 | 0.48 | 1 | 1.17 | | | | | 7 | 4.28 |
| Buttrills | 1 | 0.27 | | | 2 | 0.27 | 2 | 1.24 | 1 | 0.97 | 1 | 1.44 | | | 7 | 4.19 |
| Cadoc | 1 | 0.19 | | | | | 3 | 0.47 | 3 | 7.29 | | | | | 7 | 7.95 |
| Castleland | | | | | | | | | | | | | | | 0 | 0 |
| Cornerswell | | | | | | | 5 | 8.20 | | | | | | | 5 | 8.2 |
| Court | | | | | | | 1 | 0.89 | 1 | 6.36 | | | | | 2 | 7.25 |
| Cowbridge | 1 | 0.26 | | | 2 | 0.33 | 3 | 4.66 | 5 | 9.56 | | | | | 11 | 14.81 |
| Dinas Powys | 2 | 0.49 | | | 3 | 0.88 | 5 | 12.6 | 2 | 10.84 | | | 2 | 76.19 | 14 | 101 |
| Dyfan | | | | | | | 1 | 0.3 | 2 | 14.6 | | | 1 | 50.02 | 4 | 64.92 |
| Gibbonsdown | | | | | | | 4 | 11.58 | 2 | 6.96 | | | | | 6 | 18.54 |
| Illtyd | 1 | 0.23 | | | 1 | 0.11 | 3 | 10.22 | 1 | 2.68 | | | | | 6 | 13.24 |
| Llandough | | | | | 1 | 0.13 | 1 | 0.75 | 1 | 2.92 | | | | | 3 | 3.8 |
| Llandow / Ewenny | | | 1 | 3.81 | 1 | 0.06 | 2 | 0.56 | 3 | 4.44 | | | 2 | 57.82 | 9 | 66.69 |
| Llantwit Major | 1 | 0.22 | | | 1 | 0.21 | 4 | 10.96 | 2 | 13.56 | | | | | 8 | 24.95 |
| Peterston-s-Ely | | | | | 1 | 0.15 | 2 | 1.12 | 2 | 3.58 | | | 1 | 96.57 | 6 | 101.42 |
| Plymouth | 1 | 0.42 | | | 3 | 0.9 | 1 | 0.99 | 2 | 10.08 | | | 2 | 48.48 | 9 | 60.87 |
| Rhoose | 1 | 0.24 | | | 1 | 0.11 | 2 | 0.81 | 2 | 5.72 | | | | | 6 | 6.88 |
| St Athan | | | | | 1 | 0.22 | 1 | 0.76 | 2 | 4.72 | | | 1 | 22.84 | 5 | 28.54 |
| St Augustines | 2 | 0.49 | | | 1 | 0.57 | 1 | 0.13 | | | | | | | 4 | 1.19 |
| St Brides Major | | | 1 | 1.14 | | | 2 | 0.86 | 2 | 3.15 | | | 1 | 94.19 | 6 | 99.34 |
| Stanwell | | | | | | | 2 | 4.9 | | | | | | | 2 | 4.9 |
| Sully | 2 | 0.41 | 1 | 3.44 | | | 1 | 0.40 | 2 | 15.19 | | | | | 6 | 19.44 |
| Wenvoe | | | | | 1 | 0.11 | 2 | 1.42 | 2 | 4.61 | | | 2 | 173.53 | 7 | 179.67 |
| **Totals** | **15** | **3.67** | **4** | **10.24** | **21** | **4.38** | **49** | **74.3** | **38** | **128.4** | **1** | **1.44** | **12** | **619.64** | **140** | **842.07** |

### Conclusions

10.3.12 Set against the Fields in Trust (FIT) revised standards it is evident that there is a substantial variation in the availability of outdoor sports provision across the Vale of Glamorgan with some wards having a substantial overprovision and other wards illustrating a significant deficiency.

10.3.13 Future residential developments will increase pressure of existing outdoor sports facilities and new development should therefore contribute to improving the level of this provision especially in areas where deficiencies have been identified. Based on identified housing numbers set against the standards of provision, the Deposit Plan identifies areas where new outdoor sports facilities and/or improvements to existing outdoor sports provision will be required. More detail is provided in Section 2 of the background paper.

### Recommendations

- Seek to provide new and improved outdoor sports facilities within the Vale of Glamorgan within those wards identified as having deficiencies in the existing level of provision, particularly where new housing growth will exacerbate existing deficiencies..
- Seek improved sustainable and safe access to existing outdoor sports facilities

## 10.4 Amenity Greenspace

### Definition

10.4.1 It is difficult to offer a practical definition for amenity greenspace compared to other open space types as the typology is a general description for green spaces and landscaping that occurs within the urban environment of towns and cities. It softens the urban fabric, provides a setting for buildings and offers space for social interaction and larger areas afford space for informal recreational and leisure activities such as jogging or walking the dog.

10.4.2 Amenity greenspace is found in and around modern housing developments, offices and areas of employment and individually or collectively, they contribute to the overall visual amenity of an area. Generally, they include spaces that are open to free and spontaneous use by the public but are not laid out or formally managed for a specific function such as a public playing field or sports ground. Modern amenity greenspace tends to be either those parts of development sites that cannot be developed because they are underlain by utility services, or they are those spaces which are merely left over after the development has been completed.

### Strategic Context

10.4.3 The provision of amenity space to meet the needs of new development is important in promoting the well being of its users and enhancing the general quality of the environment. The identified benefits derived from amenity greenspace include improved public health, reduced stress levels, child development through creative play, interaction with nature and economic prosperity. The typology of open space within TAN 16 indicates that amenity greenspace includes informal recreation spaces whether private or open to the public, roadside verges, greenspaces in and around housing and other premises e.g. hospitals, schools and colleges, industrial and business premises, domestic gardens and grounds, and village greens. Amenity green spaces can have an overlapping function with parks and gardens and natural areas and can also be used as informal areas for children's play where there are no other facilities. It is important therefore that the provision of amenity greenspaces is considered within the context of other types of open space.

### Policy Context

10.4.4 The Welsh Government recognises the importance of creating and maintaining open spaces particularly in urban areas and the benefits that they can bring across a range of policy areas. Planning Policy Wales (Edition 5 November 2012) directs that formal and informal open green spaces, including parks with significant recreational or amenity value should be protected from development, particularly in urban areas where they fulfil multiple purposes, not only enhancing the quality of life, but contributing to biodiversity, the conservation of nature and landscape, air quality and the protection of groundwater. Such open spaces it states have a role in climate protection and in enabling the adaptation of urban areas to the impacts of climate change, for example by contributing to flood management and helping to reduce urban heat island effects.

10.4.5 This objective is repeated within TAN 16 which also recognises the role that such spaces can play in responding to climate change, helping to maintain reasonable local temperatures, improving local air quality and acting as surface water run offs and the contribution that they can make to biodiversity. The TAN makes clear that open space, particularly that with a significant amenity value, recreational or nature conservation value should be protected.

### Audit

10.4.6 The assessment has sought to include only those areas of amenity space that were considered to be large enough to provide for some level of informal recreation, smaller areas that provide merely for visual amenity have been excluded. As a result, the total amount of amenity greenspace available within the Vale of Glamorgan will invariably be greater than that identified within the assessment and the information provided can only realistically be viewed as a guide.

10.4.7 The audit has identified **349** sites of amenity greenspace across the Vale of Glamorgan which amount to a total of **101.56** hectares or **5.3%** of the total open space provision identified. This comprises **26.36** hectares of greenspace in and around housing and other premises, **57.85** hectares of informal recreation space, **1.30** hectares of domestic

gardens and grounds, **10.83** hectares of roadside verge and **5.22** hectares of village greens. This equates to **0.80** hectares of amenity greenspace per 1000 head of population across the Vale of Glamorgan.

10.4.8 Given the broad nature of the typology, amenity greenspace is found in all wards however Table 10 below illustrates that there are significant differences in the level of provision ranging from 0.10 hectares per 1000 head of population in Llandough to 2.16 hectares per 1000 head of population in Gibbonsdown.

10.4.9 A more detailed breakdown of each of the sites identified is included at Appendix 7. Appendix 8 illustrates the location of the identified Amenity Greenspaces across the Vale of Glamorgan.

**Table 10: Amenity Greenspace by Ward.**

| Ward | Pop'n | No. of Sites | Area (Ha) | % of Total Area | Area per 1000 pop'n |
|---|---|---|---|---|---|
| Baruc | 6281 | 7 | 1.54 | 1.5 | 0.25 |
| Buttrills | 6357 | 7 | 2.22 | 2.2 | 0.35 |
| Cadoc | 10002 | 39 | 12.17 | 12.0 | 1.22 |
| Castleland | 4852 | 8 | 2.00 | 2.0 | 0.41 |
| Cornerswell | 5353 | 7 | 0.99 | 1.0 | 0.18 |
| Court | 4748 | 15 | 3.30 | 3.3 | 0.70 |
| Cowbridge | 6180 | 34 | 3.08 | 3.0 | 0.50 |
| Dinas Powys | 7799 | 19 | 4.47 | 4.4 | 0.57 |
| Dyfan | 5166 | 13 | 2.57 | 2.5 | 0.50 |
| Gibbonsdown | 5895 | 24 | 13.15 | 13.0 | 2.23 |
| Illtyd | 8201 | 16 | 5.45 | 5.4 | 0.66 |
| Llandough | 1977 | 2 | 0.22 | 0.2 | 0.11 |
| Llandow/Ewenny | 2643 | 7 | 1.23 | 1.2 | 0.47 |
| Llantwit Major | 10621 | 41 | 9.90 | 9.7 | 0.93 |
| Peterston-s-Ely | 2289 | 4 | 0.56 | 0.6 | 0.24 |
| Plymouth | 5836 | 14 | 9.77 | 9.5 | 1.67 |
| Rhoose | 6907 | 13 | 2.94 | 2.8 | 0.43 |
| St.Athan | 4495 | 19 | 8.09 | 8.0 | 1.80 |
| St.Augustines | 6478 | 8 | 6.11 | 6.0 | 0.94 |
| St.Brides Major | 2638 | 17 | 5.04 | 5.0 | 1.91 |
| Stanwell | 4416 | 13 | 1.18 | 1.2 | 0.27 |
| Sully | 4543 | 11 | 2.54 | 2.5 | 0.56 |
| Wenvoe | 2659 | 11 | 3.04 | 3.0 | 1.14 |
| Total | 126,336 | 349 | 101.56 | 100 | |

**Standards of Provision**

10.4.10 Many local authorities have adopted their own standards of provision for amenity greenspace and survey work undertaken by the FIT for the preparation of their benchmark standards found that a median level of provision for such authorities was 0.7 hectares per 1000 population. This compared favourably to the children's playing

space standard in 'The Six Acre Standard (1992), which indicated that 0.4 – 0.5 hectares of amenity greenspace per 1,000 head of population should be provided for casual or informal play space in housing areas.

10.4.11 The revised quantity standard in the "Planning and Design for Outdoor Sport and Play (FIT 2008) is 0.55 per 1000 head of population and this updated figure provides a widely accepted standard and applying this to the amenity greenspace provision within the Vale of Glamorgan would suggest that a suitable provision would be 69.48 hectares or a current overprovision of amenity greenspace of 32.08 hectares. However, this headline figure does not reflect the difference in provision in each ward and a more representative illustration of the over/under provision of amenity greenspace within the Vale of Glamorgan against the FIT standard is shown in Table 11.

**Table 11: Amenity Greenspace provision by Ward against the FIT standard.**

| Ward | Pop'n | Area (Ha) | Area per 1000 pop'n | Area per 1000 pop'n @0.55 Ha | Provision |
|---|---|---|---|---|---|
| Baruc | 6281 | 1.54 | 0.25 | 3.45 | -1.91 |
| Buttrills | 6357 | 2.22 | 0.35 | 3.50 | -1.28 |
| Cadoc | 10002 | 12.17 | 1.22 | 5.50 | +6.67 |
| Castleland | 4852 | 2.00 | 0.41 | 2.67 | -0.67 |
| Cornerswell | 5353 | 0.99 | 0.18 | 2.94 | -1.95 |
| Court | 4748 | 3.30 | 0.70 | 2.61 | +0.69 |
| Cowbridge | 6180 | 3.08 | 0.50 | 3.40 | -0.32 |
| Dinas Powys | 7799 | 4.47 | 0.57 | 4.29 | +0.18 |
| Dyfan | 5166 | 2.57 | 0.50 | 2.84 | -0.27 |
| Gibbonsdown | 5895 | 13.15 | 2.23 | 3.24 | +9.91 |
| Illtyd | 8201 | 5.45 | 0.66 | 4.51 | +0.94 |
| Llandough | 1977 | 0.22 | 0.11 | 1.09 | -0.87 |
| Llandow/Ewenny | 2643 | 1.23 | 0.47 | 1.45 | -0.22 |
| Llantwit Major | 10621 | 9.90 | 0.93 | 5.84 | +4.06 |
| Peterston-s-Ely | 2289 | 0.56 | 0.24 | 1.26 | -0.70 |
| Plymouth | 5836 | 9.77 | 1.67 | 3.21 | +6.56 |
| Rhoose | 6907 | 2.94 | 0.43 | 3.80 | -0.86 |
| St.Athan | 4495 | 8.09 | 1.80 | 2.47 | +5.62 |
| St.Augustines | 6478 | 6.11 | 0.94 | 3.56 | +2.55 |
| St.Brides Major | 2638 | 5.04 | 1.91 | 1.45 | +3.59 |
| Stanwell | 4416 | 1.18 | 0.27 | 2.43 | -1.25 |
| Sully | 4543 | 2.54 | 0.56 | 2.50 | +0.04 |
| Wenvoe | 2659 | 3.04 | 1.14 | 1.46 | +1.58 |
| Total | 126,336 | 101.56 | 0.80 | 69.48 | +32.08 |

### Conclusions

10.4.12 Amenity greenspace is widely distributed throughout the Vale of Glamorgan. However, although there is a significant level of provision this is unevenly dispersed with the majority of usable amenity green unsurprisingly being located within the main urban settlements.

10.4.13 It is considered important that amenity greenspace continues to be integrated into new developments whether they are for housing, employment or retail uses. However, the exact level and type of provision should be considered not only against the revised FIT standard but given the overlapping nature of this type of open space, also against the wider provision of open space within the area of the development. For this reason, it is not considered appropriate to define a consistent standard of provision for amenity greenspace within the Vale of Glamorgan as areas of deficiency may be offset by other types of open space and a broader assessment of the level of open space provision within an area should be taken.

10.4.14 Where new sites cannot be provided, consideration should be given to the upgrading of existing amenity greenspace sites within the locality. While this may not always be appropriate qualitative enhancements that improve the basic infrastructure at a site may also be acceptable.

10.4.15 In proposing new amenity greenspace a prime consideration should be the size of the provision. While many local authorities have adopted a minimum size standard for amenity greenspace the Vale of Glamorgan will always defer to the appropriate standards as expressed within the revised FIT manual (2008).

### Recommendations

- Seek the increased provision of amenity greenspace as part of new development proposals especially in areas of identified deficiencies.

- Seek improved access to existing areas of amenity green space and where appropriate enhancements of that provision.

## 10.5 Provision for Children and Young People

### Definition

10.5.1 This type of open space addresses areas where the primary aim and activity is “play”, where children are doing what they want to do in the way they want to do it and for their own reasons. In general, the term “play provision”, is used to describe the areas where these activities take place and their primary purpose is as places where children and young people can socially interact while engaging in energetic activities.

10.5.2 Generally play grounds and play areas are primarily located within parks, playing fields or other public open spaces and Local Equipped Areas for Play (LEAP), Neighbourhood Equipped Areas for Play (NEAP) and Multi Use Games Areas (MUGA) and include facilities such as equipped play areas, ball courts and skateboard parks.

They are designated primarily for play and social interaction involving children and young people.

### Strategic Context

10.5.3 It is widely accepted that the importance of play for children extends far beyond the general activity itself and makes a critical contribution to physical, social and emotional development. It can contribute to the promotion of healthy living, preventing illness and aiding the social development of children whatever their ages. Playgrounds and other play facilities provide important social meeting places for both adults and children and when a playground is well located it is generally well used and well maintained. Children will be more inclined to utilise playgrounds located within parks when they are accompanied by adults, but tend to use those nearer to their homes when they are on their own or accompanied by friends.

### Policy Context

10.5.4 The Welsh Government supports the development of sport and recreation, and the wide range of leisure pursuits which encourage physical activity. The Welsh Government recognises the importance of physical activity to the development and well being of children and adults and for the social and economic life of Wales. 'Climbing Higher' sets out the Assembly Government's long term strategy for an active, healthy and inclusive Wales where sport and physical activity are used to enhance the quality of life nationally and in local communities.

10.5.5 TAN 16 states that it is vital that children and young people, including those who are disabled, can access areas for casual and more formal organised uses, which provide safe, secure opportunities to socialise and play. While acknowledging the role that formal, equipped play areas can play to the development of children within local communities, the TAN also notes that such areas are not the only form of provision that should be offered and suggests a wider range of provision such as wheeled play areas, community woodlands and informal areas which can also provide opportunities for children to interact and gain the social, health and well-being benefits which can be derived from physical play.

### Audit

10.5.6 The audit of provision for open space provision for Children and Young People identified **115** sites for play that cover a total area of **8.14** hectares. For the purposes of the audit, Provision for Children and Young People includes all equipped area for play. This includes **24** Local Equipped Areas for Play, **9** Neighbourhood Equipped Areas for Play, **9** Multi Use Games Areas, **64** Play Areas and **9** Skateboard Parks. The provision of the facilities by ward within the Vale of Glamorgan is shown in Table 12 below and more detailed information on each of the identified sites is contained in Appendix 9. Appendix 10 illustrates the location of the identified Provision for Children and Young People across the Vale of Glamorgan.

Table 12: Provision for Children and Young People by Ward within the Vale of Glamorgan.

| | LEAP | | NEAP | | MUGA | | Play Area | | Skateboard Park | | Totals | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ward | No. | Area (Ha) | No | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) | No. | Area (Ha) |
| Baruc | - | - | 1 | 0.11 | 1 | 0.08 | 2 | 0.15 | 1 | 0.07 | 5 | 0.41 |
| Buttrills | 1 | 0.03 | 2 | 0.12 | - | - | 1 | 0.03 | - | - | 4 | 0.18 |
| Cadoc | 2 | 0.16 | 2 | 0.33 | - | - | 2 | 0.02 | 1 | 0.08 | 7 | 0.59 |
| Castleland | 1 | 0.09 | 1 | 0.01 | 1 | 0.12 | 3 | 0.28 | - | - | 6 | 0.50 |
| Cornerswell | 1 | 0.21 | - | - | - | - | 3 | 0.10 | 1 | 0.04 | 5 | 0.35 |
| Court | - | - | 1 | 0.39 | 1 | 0.06 | 2 | 0.23 | - | - | 4 | 0.68 |
| Cowbridge | 4 | 0.21 | - | - | 2 | 0.11 | 4 | 0.81 | 1 | 0.02 | 11 | 1.15 |
| Dinas Powys | 1 | 0.10 | - | - | - | - | 6 | 0.17 | 1 | 0.10 | 8 | 0.37 |
| Dyfan | 1 | 0.05 | - | - | - | - | - | - | - | - | 1 | 0.05 |
| Gibbonsdown | 2 | 0.07 | - | - | - | - | 1 | 0.02 | - | - | 3 | 0.09 |
| Illtyd | 1 | 0.02 | - | - | 1 | 0.01 | 6 | 0.11 | - | - | 8 | 0.14 |
| Llandough | - | - | - | - | - | - | 1 | 0.06 | - | - | 1 | 0.06 |
| Llandow/Ewenny | 1 | - | - | - | - | - | 7 | 0.70 | 1 | 0.02 | 8 | 0.72 |
| Llantwit Major | - | 0.03 | - | - | 1 | 0.03 | 9 | 0.64 | 1 | 0.03 | 12 | 0.73 |
| Peterston-s-Ely | - | - | - | - | - | - | 2 | 0.18 | - | - | 2 | 0.18 |
| Plymouth | 2 | 0.46 | 1 | 0.04 | 1 | 0.03 | 1 | 0.01 | - | - | 5 | 0.54 |
| Rhoose | 3 | 0.32 | - | - | - | - | 6 | 0.26 | 1 | 0.03 | 10 | 0.61 |
| St.Athan | 1 | 0.07 | - | - | - | - | 2 | 0.19 | 1 | 0.03 | 4 | 0.29 |
| St.Augustines | 1 | 0.01 | 1 | 0.04 | 1 | 0.03 | 2 | 0.08 | - | - | 5 | 0.16 |
| St.Brides Major | - | - | - | - | - | - | 3 | 0.21 | - | - | 3 | 0.21 |
| Stanwell | 1 | 0.05 | - | - | - | - | - | - | - | - | 1 | 0.05 |
| Sully | - | - | - | - | - | - | 3 | 0.20 | - | - | 3 | 0.20 |
| Wenvoe | 1 | 0.05 | - | - | 1 | 0.06 | 3 | 0.14 | - | - | 5 | 0.25 |
| Total | 24 | 1.93 | 9 | 1.04 | 10 | 0.53 | 69 | 4.59 | 9 | 0.42 | 121 | 8.51 |

## Standards of Provision

10.5.7 The Fields in Trust (FIT) previously the National Playing Fields have recently reviewed their "Six Acre Standard" that was either referred to or adopted by an estimated 70% of planning authorities within their development plans. The updated FIT standards for Outdoor Play are detailed at Table 13 below.

Table 13: Fields in Trust Benchmark Standard for Outdoor Play

| Children's Playing Space | Benchmark Standard (hectares per 1000 population) |
|---|---|
| Designated Equipped Playing Space | 0.25 |
| Informal Playing Space | 0.55 |
| Children's Playing Space | 0.80 |

10.5.8 Table 14 below illustrates the Provision for Children and Young People within the Vale of Glamorgan assessed against the 0.25 hectares per 1000 head of population FIT standard for designated equipped playing spaces and illustrates the general under provision of such facilities across the Vale of Glamorgan.

10.5.9 While the assessment illustrates an under provision of play facilities across the Vale of Glamorgan the level of under provision is likely to be less than that indicated as the audit has only considered the extent of the play facility itself and has not included any extraneous open spaces that surround the facility which in many definitions contribute to the size of the facility.

10.5.10 In considering the future provision of all types of play areas within the Vale of Glamorgan, the FIT standards detailed in Planning and Design for Outdoor Sports and Play will form the basis of the Council's determinations.

**Table 14: Provision of All Children's Play Space by Ward**

| Ward | Pop'n | Area Total (Ha) | Hectare per 1000 population | Area (Ha) required to meet FIT standard | Provision (Ha) |
|---|---|---|---|---|---|
| Baruc | 6281 | 0.41 | 0.07 | 1.57 | -1.16 |
| Buttrills | 6357 | 0.18 | 0.03 | 1.59 | -1.41 |
| Cadoc | 10002 | 0.59 | 0.06 | 2.50 | -1.91 |
| Castleland | 4852 | 0.50 | 0.10 | 1.21 | -0.71 |
| Cornerswell | 5353 | 0.35 | 0.07 | 1.34 | -0.99 |
| Court | 4748 | 0.68 | 0.14 | 1.19 | -0.51 |
| Cowbridge | 6180 | 1.15 | 0.19 | 1.55 | -0.40 |
| Dinas Powys | 7799 | 0.37 | 0.05 | 1.95 | -1.58 |
| Dyfan | 5166 | 0.05 | 0.01 | 1.29 | -1.24 |
| Gibbonsdown | 5895 | 0.09 | 0.02 | 1.47 | -1.38 |
| Illtyd | 8201 | 0.14 | 0.02 | 2.05 | -1.91 |
| Llandough | 1977 | 0.06 | 0.03 | 0.49 | -0.43 |
| Llandow/Ewenny | 2643 | 0.72 | 0.27 | 0.66 | 0.06 |
| Llantwit Major | 10621 | 0.73 | 0.07 | 2.66 | -1.93 |
| Peterston-s-Ely | 2289 | 0.18 | 0.08 | 0.57 | -0.39 |
| Plymouth | 5836 | 0.54 | 0.09 | 1.46 | -0.92 |
| Rhoose | 6907 | 0.61 | 0.09 | 1.73 | -1.12 |
| St.Athan | 4495 | 0.29 | 0.06 | 1.12 | -0.83 |
| St.Augustines | 6478 | 0.16 | 0.02 | 1.62 | -1.46 |
| St.Brides Major | 2638 | 0.21 | 0.08 | 0.66 | -0.45 |
| Stanwell | 4416 | 0.05 | 0.01 | 1.10 | -1.05 |
| Sully | 4543 | 0.20 | 0.04 | 1.14 | -0.94 |
| Wenvoe | 2659 | 0.25 | 0.09 | 0.66 | -0.41 |
| Total | 126336 | 8.43 | | 31.58 | -23.15 |

### Conclusions

10.5.11 It is evident from the above table that there is a general under provision of facilities for Children and Young People across the Vale of Glamorgan with only one ward showing an over provision against the FIT standards. While facilities are spread across all wards, the level of provision within each ward various considerably.

10.5.12 In recent years the Vale of Glamorgan Council has invested in refurbishing and upgrading existing sites and in providing new play facilities and equipment and new children's play facilities have also been secured through s106 agreements on planning applications. Future residential development should continue to provide new children's play facilities both to address identified areas of deficiency and to provide for new residents and the Deposit Plan therefore identifies areas where new and enhanced facilities will be required based on the identified housing numbers set against the standards of provision.

10.5.13 Given the level of under provision of play facilities across the Vale of Glamorgan, where it is not possible for new development proposals to provide additional play facilities, contributions should be sought to improve the quality of existing play areas and equipment. Where the standard of existing facilities is acceptable improvements that enhance access routes and enable safer access to children's play facilities should be provided..

### Recommendations

- Provide new play facilities as part of all new developments wherever practical and, where appropriate, enhance the quality of existing children's play facilities.
- Where possible, seek to address the identified deficiencies in the provision of play facilities for children and young people within the Vale of Glamorgan.
- Improve access to children's play facilities.

## 10.6 Allotments

### Definition

10.6.1 The term 'allotment' is defined within The Allotments Act 1925 as: "An allotment garden or any parcel of land not more than five acres in extent cultivated or intended to be cultivated as a garden farm, or partly as a garden farm and partly as a farm".

10.6.2 In the UK, allotments are small parcels of land rented to individuals usually for the purpose of growing food crops. There is no set standard size but the most common plot is 10 rods, an ancient measurement equivalent to 302 square yards or 253 square metres.

10.6.3 The majority of allotment sites are owned by local authorities and may be termed 'statutory' or 'temporary' where 'statutory' allotment land is land of which the freehold or very long lease is vested in the allotments authority, and which was either originally purchased for allotments or subsequently appropriated for allotment use. 'Temporary' allotment land is rented by an allotments authority or owned by the authority but ultimately destined for some other use. Some allotments are owned by the Church of England.

10.6.4 The designation of a local authority site as 'temporary' or 'statutory' is particularly important since, under section 8 of the Allotments Act 1925, a local authority must seek permission from the Secretary of State before selling or changing the use of a 'statutory' site. In seeking such approval, the local authority must satisfy the Secretary of State that adequate provision has been made for allotment holders who are displaced by the sale of the site.

### Strategic Context

10.6.5 The function of allotments and their value to society is currently undergoing a re-evaluation. Traditionally, allotments were established within built up areas to provide land on which the poorer elements of society could cultivate their own fresh fruit and vegetables. With the increase in high density housing with limited or no gardens, the growth in the number of allotments increased and this increase was further intensified by the onset of the two world wars when the crops produced on allotments supplemented household food provision.

10.6.6 However since the end of the Second World War, the number of allotments nationally has slowly declined as modern housing developments included larger gardens that enabled people to diversify their gardens and grow fresh produce.

10.6.7 More recently however, there has been a resurgence of interest in the ownership and use of allotments brought about by peoples concerns and raised awareness of where their food has been sourced from, general environmental issues and indeed raised concerns about health. This resurgence of interest in allotments and locally grown food in general, has in part been led by celebrity chefs and innovative schemes such as land sharing.

10.6.8 The contribution that allotments make to urban regeneration and the quality of life within urban areas is increasingly being recognised as allotments provide access to fresh and cheap sources of fresh vegetables and facilitate physical and social activity and interaction. Localised food production reduces the need for transportation and hence the impact upon the environment, and allotments whether under cultivation or untended, provide valuable wildlife habitats and contribute to local biodiversity. Their positive contribution towards the economic, social and environmental sustainability of communities is also becoming more apparent. Allotments can help councils and other organisations achieve a range of important objectives from health and wellbeing through to biodiversity and community cohesion.

### Policy Context

10.6.9 The legal framework governing Allotments has developed over an extended period of time in a piecemeal fashion and is encapsulated within a number of Acts of Parliament dating from the early 1900s, namely the Smallholdings and Allotments Act 1908, the Allotments Act 1922, the Allotments Act 1925 and the Allotments Act 1950.

10.6.10 Each of these Acts expanded upon the basic principle set out in the 1908 Act that placed a duty on local authorities to provide sufficient allotments according to demand. Subsequent Acts set the minimum size of allotments, established statutory allotments

which a local authority could not sell or convert to an alternative use without Ministerial consent and made improved provisions for compensation and tents rights.

10.6.11 Planning Policy Wales (Edition 5 November 2012) (PPW) paragraph 5.5.18 states that allotments should be retained, particularly where they have an important open space function and contribute to sustainable development. Similarly, TAN 16 recognises the importance of allotments in the provision of green spaces and the contribution that they can make to sustainability, opportunities for leisure, exercise and healthy food, the improvement of biodiversity and social interaction.

### Audit

10.6.12 The assessment has identified **23** allotment sites within the Vale of Glamorgan providing some **843** individual allotment plots and accounting for some **18.76** hectares of land. Of these **8** sites are located within Barry, **5** are in Penarth and the remaining **10** sites are in towns within the rural vale.

10.6.13 Ownership of the allotments sites is mixed with sites being provided by the Vale of Glamorgan Council, local town or community councils or by private allotment associations.

10.6.14 Table 15 illustrates the distribution of the allotment sites within the Vale of Glamorgan by ward within the Vale of Glamorgan. Detailed information in respect of each site is provided in Appendix 11. Appendix 13 illustrates the location of the identified parks and gardens across the Vale of Glamorgan.

**Table 15: Allotment Provision in the Vale of Glamorgan by Ward.**

| Allotments, Community Gardens and City (Urban) Farms | | |
|---|---|---|
| Ward | No. of Sites | Area (Ha) |
| Buttrills | 1 | 0.27 |
| Cadoc | 1 | 2.65 |
| Castleland | 1 | 0.36 |
| Cornerswell | 2 | 1.05 |
| Court | 2 | 1.20 |
| Cowbridge | 2 | 0.34 |
| Dinas Powys | 1 | 0.56 |
| Gibbonsdown | 2 | 2.49 |
| Illtyd | 1 | 4.23 |
| Llandough | 2 | 1.63 |
| Llandow/Ewenny | 1 | 0.29 |
| Llantwit Major | 1 | 0.89 |
| Peterston-super-Ely | 1 | 0.14 |
| Plymouth | 1 | 0.74 |
| Rhoose | 1 | 0.72 |
| St.Augustines | 2 | 0.58 |
| Wenvoe | 1 | 0.62 |
| Total | 23 | 18.76 |

10.6.15 Although the trend is now changing, historically there has been little demand for allotments and many became heavily overgrown or their quality deteriorated. As a result, of the 843 identified plots, 45 are currently unavailable for use either because they have substandard soil conditions or because they are heavily overgrown. Considerable effort is now being made to bring these plots back into viable use and this number has significantly decreased in recent years with increased investment and increased interest in the allotments.

### Standards of Provision

10.6.16 There are currently no existing standards set either nationally or locally for the provision of allotments. However a range of guidance and recommendations has been prepared by numerous organisations and agencies on the standards for allotment provision.

10.6.17 The National Society of Allotment and Leisure Gardeners (NSALG) suggest that the target for provision, based on the findings of a national survey, should be 20 allotment plots per 1000 households (i.e. 20 allotments per 2,400 people or approximately 1 allotment per 120 people using the latest census estimate of 2.32 people per household). In the Vale of Glamorgan this would equate to 1,093 allotment plots as opposed to the existing 843 plots, a deficiency of some 250 allotments. If this standard was to be applied to only those wards in which allotments were located this would result in a requirement for 851 allotments as opposed to the existing 843 plots, an over provision of 8 allotment plots.

10.6.18 The 1969 Thorpe Report recommended a minimum standard of allotment provision of 0.2 hectares (0.5 acres) per 1000 population. In the context of the Vale of Glamorgan this would equate to a provision of 25.26 hectares made over to allotments as opposed to the existing provision of 18.76 hectares or a deficiency of 6.5 hectares. Relating this standard to those wards in which allotments were located this would result in a requirement for 19.77 hectares of allotments or a deficiency of 1.0 hectares.

10.6.19 Although not a standard, the National Allotment Survey of 1997 identified an average provision in England of 15 plots per 1000 households. This level has been adopted by many organisations and is included in "Growing in the Community, Good Practise Guide" prepared by the Local Government Association and updated in 2001 and is seen as a more useful measure than some of the other standards that have been suggested. In the Vale of Glamorgan application of this standard would equate to a total provision of 817 allotments (utilising 2.32 people per household) as opposed to the actual figure of 843 allotments an over provision of 26 plots. Relating this standard to those wards in which allotments were located this would result in a requirement for 639 allotments or an over provision of 204 allotments.

10.6.20 The forecast in the House of Commons Select Committee report 'The Future of Allotments' (1998), recommended a spatial standard of 0.25 hectares per 1000 population which would suggest an allotment provision within the Vale of Glamorgan of 31.58 hectares as opposed to the existing 18.76 or a deficiency of 12.82 hectares. If this standard were to be applied to only those wards in which allotments were located this would result in a requirement for 24.70 hectares of allotments as opposed to the existing 18.76 or a deficiency of 5.94 hectares.

10.6.21 Assessing the overall provision of allotments in the Vale of Glamorgan illustrates the difference between the levels of provision dependent upon which of the various standards is applied.

10.6.22 Appendix 12 illustrates allotment provision by ward assessed against the most commonly used standards as detailed above. This indicates that there is a varied picture across the Vale of Glamorgan in those wards where allotments exist with a considerable range in the level of over and under provision of facilities.

10.6.23 In undertaking all of the figures above, it should be noted unavailable plots have been included within the calculations as considerable progress is being made in bringing unavailable plots back into beneficial use.

### Demand

10.6.24 It is clear from the information collected that there is a significant and increasing demand for allotment ownership within the Vale of Glamorgan. This is evidenced by the 954 people that currently appear on waiting lists across the various allotment sites identified.

### Conclusions

10.6.25 The assessments detailed above illustrate that there is a substantial variation in the standard of provision of allotments dependent upon which evaluation is applied. This ranges from a considerable under provision to a substantial over provision when considered against the National Allotment Survey recommendations of 1997. One thing however that is certain is that given the current economic climate there is sustained demand for allotment plots and there is no reason to believe that this demand will decrease in the foreseeable future.

10.6.26 Therefore policies within the emerging LDP will seek to protect and where possible enhance and enable the provision of additional allotment sites wherever development opportunities allow. As proposals to dispose of allotments for alternative uses would usually require the local authority to seek consent from the Welsh Government under Section 8 of the Allotments Act 1925 it is not considered necessary to apply further specific protection to allotments within the LDP however such uses will be covered by the general protectionist policies contained within the LDP.

### Recommendations

- Consider future proposals for new allotment provision, with regard to the existing levels of facilities and the demand for such facilities.

## 10.7 Cemeteries and Churchyards

### Definition

10.7.1 As well as the obvious similarities, there are important differences between churchyards and cemeteries. Traditionally Churchyards are places of burial connected to churches either physically or through ownership, they are generally small in extent and their use is historic in nature and many have existed for centuries. They are usually relatively small and are generally owned by the denominational authority of the church to which they are attached.

10.7.2 By contrast, cemeteries tend to be large tracts of land located on the outskirts of settlements and have been in common use since the 1820s and most are now owned or managed by local authorities. The term cemetery is generally used to describe parcels of land designated or intended for the interment of human remains. Church law applies to churchyards, and in part to the consecrated sections of cemeteries. Cemeteries are not always partly or wholly consecrated.

10.7.3 In addition to cemeteries and churchyards, there has in recent years been an increased interest in and movement towards "green burials" as an alternative and more sustainable and environmentally friendly method of burial. While sometimes within municipal cemeteries such facilities are more often than not found within quiet rural settings where the deceased is buried in a biodegradable casket with little or no permanent sign of disposal evident on the landscape. Such a facility has recently been established within the Vale of Glamorgan.

### Strategic Context

10.7.4 Although their use for more active recreational pastimes is generally inappropriate, cemeteries and churchyards, particularly in urban areas can be havens of green space and tranquillity that afford high levels of amenity.

10.7.5 While in terms of land area they represent a relatively minor resource, in urban areas in particular they can be highly important for biodiversity and nature conservation providing a sanctuary for a wide range of flora and fauna. In many cases, cemeteries and churchyards may be the only open space within a settlement and while any use for recreational purposes must be subsidiary to, and compatible with, their main function as places of burial, they can provide places for walking or quiet reflection.

10.7.6 During the twentieth century, practice in relation to burial has changed significantly and there has been an increasing move towards cremation rather than full internment. A recent study by the Council as a part of the Local Development Plan (LDP) evidence base into current burial land provision and practices within the Vale has indicated that burial to cremation rates are similar to national levels with full burials accounting for 27% and cremation accounting for 73% of all disposals. The study provides a comprehensive review of the existing burial facilities within the Vale of Glamorgan and considers additional need during the period of the emerging LDP.

### Policy Context

10.7.7 TAN 16 lists cemeteries and churchyards within the general open space typology and recognises the contribution that they can make to increasing amenity particularly within urban areas. The TAN also recognises the finite capacity of cemeteries and churchyards which means that there is a requirement to identify areas for future use. In this regard, the TAN identifies that demographic data can provide local planning authorities with information to forecast future provision. Cemeteries and churchyards should be accessible to all.

### Audit

10.7.8 The audit of provision of cemeteries and churchyards within the Vale of Glamorgan has identified a total of **65** cemeteries, churchyards and green burial sites totalling an area of **33.29** hectares This includes **7** cemeteries covering an area of **15.54** hectares, **57** churchyards covering **13.30** hectares and **1** green burial site of **4.45** hectares.

10.7.9 Table 16 provides a breakdown of the cemeteries and churchyards by ward and Appendix 14 provides a more detail on the sites that have been identified. Appendix 15 illustrates the location of the identified Cemeteries and Churchyards across the Vale of Glamorgan.

**Table 16: Distribution of Cemeteries and Churchyards by Ward.**

| Ward | No. of Sites | Area Total (Hectares) |
|---|---|---|
| Churchyards | | |
| Baruc | 1 | 0.16 |
| Buttrills | 1 | 0.11 |
| Cadoc | 1 | 0.19 |
| Cornerswell | 1 | 0.01 |
| Cowbridge | 9 | 2.28 |
| Dinas Powys | 3 | 0.74 |
| Dyfan | 1 | 0.03 |
| Llandough | 1 | 0.35 |
| Llandow / Ewenny | 8 | 1.60 |
| Llantwit Major | 7 | 1.03 |
| Peterston-super-Ely | 5 | 1.33 |
| Rhoose | 5 | 1.09 |
| St.Athan | 4 | 0.37 |
| St.Augustines | 1 | 0.84 |
| St.Brides Major | 2 | 0.83 |
| Stanwell | 1 | 1.00 |
| Sully | 2 | 0.30 |
| Wenvoe | 4 | 1.04 |
| Sub Total | 57 | 13.30 |

| Ward | No. of Sites | Area Total (Hectares) |
|---|---|---|
| Green Burials | | |
| Peterston-super-Ely | 1 | 4.45 |
| Sub Total | 1 | **4.45** |
| Cemeteries | | |
| Cowbridge | 1 | 0.51 |
| Dinas Powys | 1 | 0.69 |
| Dyfan | 1 | 9.65 |
| Llantwit Major | 1 | 0.85 |
| Plymouth | 1 | 2.99 |
| Rhoose | 1 | 0.43 |
| St.Athan | 1 | 0.42 |
| Sub Total | **7** | **15.54** |
| Total | 65 | 33.29 |

### Standards of provision

10.7.10 There are no definitive national or local standards of provision in respect of cemeteries and churchyards, their location and size being primarily based on the historic development of individual settlements and local need. Therefore, given that this assessment considers the amenity value of such facilities no assessment of need has been undertaken and no conclusions drawn from the information compiled. The provision of such facilities will therefore continue to be dictated by local need as expressed in the Council's burial land study.

### Conclusions

10.7.11 It is important to recognise that the primary function of cemeteries and churchyards is as places for the burial and remembrance of the dead and that their role and use in providing local amenity while important, is but secondary to this main function. In this regard, the need for additional burial and remembrance facilities will be established through mechanisms other than the level of amenity that results from a cemetery or churchyard and it is therefore not considered appropriate or necessary to set standards of provision.

10.7.12 However it is appropriate to acknowledge the significant contribution that cemeteries and churchyards can make both to local amenity and to the enhancement of biodiversity within the Vale of Glamorgan. Therefore, while it is not considered appropriate to consider the application of a standard of provision, the contribution that cemeteries and churchyards make to the local environment should form a material consideration when assessing proposals that would result in their loss.

10.7.13 As background evidence to the LDP the Council has undertaken a study into the need for burial land within the Vale of Glamorgan during the plan period i.e. to 2026, which has indicated an increasingly ageing population and a steadily increasing number of deaths per year from approximately 1280 per year in 2011 to 1400 per year in 2026. If this trend continues, the study has concluded that many of the existing burial facilities within the Vale of Glamorgan will have reached or be close to their full capacity by 2026 and that there will be a need for additional facilities during or soon after this period.

### Recommendations

- Review the capacity of existing burial facilities as a part of the review process of the Local Development Plan.

Section 2 – Open Space Provision in the Vale of Glamorgan

# 11. Impact of LDP Growth on Open Space Provision in the Vale of Glamorgan

## 11.1 Introduction

11.1.1 This section builds on the open space audit outlined earlier in this background paper and considers the public open space and recreational requirements that are likely to arise as a direct result of population growth associated with housing developments expected throughout the Local Development Plan period of 2011-2026. This section focuses specifically on the provision of open space in the form of children's play space and outdoor sport. Provision for indoor sport is considered separately in the Community Facilities Background Paper.

11.1.2 All new residential developments create additional demand for open space and recreational facilities. Planning Policy Wales (Edition 5, November 2012) states that the planning system should ensure that adequate land and water resources are allocated for formal and informal sport and recreation, taking full account of the need for recreational space and current levels of provision and deficiencies, and of the impact of developments related to sport and recreation on the locality and local communities (paragraph 11.1.10 refers). Furthermore, TAN 16 states at paragraph 3.15 "Local planning authorities should ensure that new development, including that in commercial and industrial areas, makes adequate provision to meet the recreational needs arising, and opportunities for walking and cycling."

11.1.3 To calculate the open space requirements for housing allocations and windfall developments identified in the LDP, firstly consideration must be given to existing levels of provision within the ward or community area where the development will take place, as outlined in this background paper. In some areas there may be existing surplus open space to meet additional demand arising from new housing developments, but elsewhere new or improved facilities will be required because of existing deficiencies in provision or where new demand exceeds current supply. This is explored in more detail in the context of the Vale of Glamorgan LDP in this paper.

## 11.2 Providing Open Space for New Development

11.2.1 To ensure that new residential developments provide appropriate local facilities in close proximity to people's homes, small scale open space areas, including children's equipped play space, will normally be expected to be provided on housing development sites. These will be secured either through planning conditions or section 106 agreements including appropriate provision for maintenance. In some cases, development sites will be too small or constrained such that it is not practical or feasible to provide such facilities on site. Therefore, consideration has been given to alternative off-site provision which may be secured either through section 106 planning obligations or Community Infrastructure Levy which is considered in more detail below.

11.2.2 In most cases, development sites will not be large enough to provide appropriate strategic outdoor sport (such as playing field provision, tennis courts, cricket pitches etc) to meet the cumulative needs arising from new residential development. Therefore

Planning Obligations and Community Infrastructure Levy (CIL) will be used to seek contributions to provide these facilities elsewhere and for enhancing existing open space and recreational facilities including equipped play space, to serve those sites that are unable to provide such facilities on site. On particularly large sites (i.e. over 500 dwellings) it is likely to be necessary to provide outdoor sports facilities such as playing fields on site.

## 11.3 Standards of Open Space Provision

### Children's Play Space

11.3.1 In terms of children's play space, the Fields in Trust (FIT) Benchmark Standard for Outdoor Play requires 0.25 hectares of Designated Equipped Playing Space per 1000 population (or 2.5sqm per person). Using the average household size of 2.32 for the Vale of Glamorgan (Census 2011) it is possible to calculate the likely population arising from housing developments and therefore calculate the need for equipped playing space for children as follows:

**Standard for Children's Outdoor Play = No of dwellings X average household size (2.32) X standard per person (2.5m$^2$)**

11.3.2 The FIT categorises children's play space into three types for different age groups:

- **Local Areas for Play** (LAPs) for young children (aged 4-6 years) which comprise an activity zone of 100m$^2$;
- **Local Equipped Areas for Play** (LEAPs) for children aged 4-8 years which comprise an activity zone of 400m$^2$ with 5 types of play equipment; and,
- **Neighbourhood Equipped Areas for Play** (NEAPs) for older children (aged 8-14 years) which comprise an activity zone of 1000m$^2$ with 8 types of play equipment.

Using these categories, it is then possible to translate the benchmark requirement area into actual requirements on site. For example, an area requirement of 600m$^2$ would in practical terms equate to the provision of 1 Local Equipped Area for Play (LEAP) with 5 types of play equipment and 2 Local Areas for Play (LAP). In practice this will need to be determined on a site-by-site basis at the time a planning application is submitted to have regard to site specific circumstances including the proposed development mix and layout.

### Outdoor Sport

11.3.3 In terms of strategic recreational facilities the FIT Benchmark Standard for All Outdoor Sport requires 1.60 hectares per 1000 population (or 16sqm per person). Again, using the average household size of 2.32 for the Vale of Glamorgan (Census 2011) it is possible to calculate the likely population arising from each housing development and therefore calculate the need for outdoor sport space as follows:

**Standard for outdoor sport = No of dwellings X average household size (2.32) X standard per person (16m$^2$)**

11.3.4 Using the standard area measurements for outdoor sport facilities (shown in table 17 below) it is then possible to equate this standard into practical provision. For example an area requirement for 13,500m² would in practical terms equate to a senior football pitch and 2 tennis courts.

Table 17: Standard Dimensions for Outdoor Sport Facilities

| Type of Facility | Dimensions |
|---|---|
| Senior Rugby Union Pitch | 80m x 154m (12,320m²) |
| Midi Rugby Pitch (U11/U12) | 53m x 80m (4,240m²) |
| Mini Rugby Pitch (U7/U8) | 60m x 30m (3,200m²) |
| Senior Football Pitch | 126m x 96m (12,096m²) |
| Junior Football Pitch (U11/U12) | 88m x 57m (5,016m²) |
| 5-a-side Pitch | 46m x 36m (1,656m²) |
| Cricket Pitch | 11,927m² |
| Tennis Court | 36.5m x 18.3m (668m²) |
| Lawn Bowling Green | 40.7m x 40.7m (1,656m²) |
| Skatepark | 50m x 20m (1000m²) |
| BMX Track | 50m x 20m (1000m²) |
| Basketball Court | 32m x 19m (608m²) |

Source: Sport England 'Comparative Sizes of Sports Pitches & Courts' (2009)

## 11.4 LDP Housing Growth and Demand for Open Space

### LDP Housing Allocation Analysis

11.4.1 Throughout the LDP period (2011-2016) it is anticipated that 7,829 dwellings will be provided on allocated housing sites, which are identified in the LDP. These comprise a mix of size and type of sites in various locations throughout the Vale of Glamorgan, where open space requirements will vary depending upon existing levels of provision. In some cases the overall level of existing provision in the Ward will mask issues occurring in particular settlements where outdoor sport provision is provided elsewhere in the ward but would not reasonably meet the requirements of the new developments listed. Therefore, additional analysis of existing open space provision has been undertaken for the following settlements where new housing has been allocated:

- Aberthin
- Bonvilston
- Colwinston
- Culverhouse Cross
- St. Nicholas
- Wick
- Ystradowen

11.4.2 Table 18 outlines the open space requirements for each housing allocation contained within the LDP based on the above methodology. Where sites already benefit from planning permission at the time of writing, these are indicated along with details of the provision secured at that time.

### Table 18: LDP Housing Allocation open space requirements

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 1. Phase 2, Barry Waterfront | 1700 | 13 Local Areas for Play (LAPs)<br>2 Local Equipped Areas for Play (LEAPs) with 5 types of equipment<br>1 Neighbourhood Equipped Area for Play (NEAP) with 8 types of play equipment<br>Off-site improvements in lieu of on-site provision | Ward: Baruc & Castleland<br><br>Granted outline Planning Permission (2009/00946/OUT) subject to a Section 106 agreement on 2nd March 2012. |
| 2. Land at Higher End, St. Athan | Phase 1: 100<br><br>Phase 2: 120 | Phase 1:<br>1 Local Equipped Area for Play on site and maintenance, other off-site improvements in lieu of full provision.<br><br>Phase 2:<br>1 LEAP and 3 LAPs or equivalent children's play space (696m²) and maintenance.<br><br>Outdoor sport space = 4454m² which can be met by existing provision. | Ward: St. Athan<br><br>Phase 1 - 100 dwellings granted planning permission at St. Johns Well (2009/01368/OUT) subject to a s106 agreement on 28th November 2011.<br><br>Existing under-provision of children's play space of 0.83 ha and over provision of 21.35 ha of outdoor sport space within St. Athan Ward. |
| 3. Land at Church Farm, St. Athan | 250 | 1 Local Equipped Area for Play and 1 Neighbourhood Equipped Area for Play or equivalent children's play space (1450m²)<br><br>Outdoor sport space = 9,280m² which can be met by existing provision. | Ward: St. Athan<br><br>Existing under-provision of children's play space of 0.83 ha and over provision of 21.35 ha of outdoor sport space within St. Athan Ward. |
| 4. Former stadium site / Land adjacent to Burley Place, St. Athan | 65 | 1 Local Equipped Area for Play or equivalent children's play space (377m²)<br><br>Outdoor sport space = 2,413m² which can be met by existing provision. | Ward: St. Athan<br><br>Existing under-provision of children's play space of 0.83 ha and over provision of 21.35 ha of outdoor sport space within St. Athan Ward. |
| 5. Land to the east of Eglwys Brewis | 300 | 2½ Local Areas for Play, 1 Local Equipped Area for Play and 1 Neighbourhood Equipped Area for Play or equivalent children's play space (1740m²)<br><br>Outdoor sport space = 11,136m² which can be met by existing provision. | Ward: St. Athan<br><br>Existing under-provision of children's play space of 0.83 ha and over provision of 21.35 ha of outdoor sport space within St. Athan Ward. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 6. Land adjacent to Froglands Farm, Llantwit Major | 90 | 1 Local Area for Play and 1 Local Equipped Area for Play or equivalent children's play space ($522m^2$)<br><br>Outdoor sport space = $3,341m^2$ which can be met by existing provision. | Ward: Llantwit Major<br><br>The ward has an under-provision of children's play space of 1.93 ha and an overprovision of outdoor sport space of 7.96ha. |
| 7. Land between new Northern Access Road and Eglwys Brewis Road | 375 | 4 Local Areas for Play, 2 Local Equipped Areas for Play and 1 Neighbourhood Equipped Area for Play or equivalent children's play space ($2,175m^2$)<br><br>Outdoor sport space = $13,920m^2$ which can be met by existing provision. | Ward: Llantwit Major<br><br>The ward has an under-provision of children's play space of 1.93 ha and an overprovision of outdoor sport space of 7.96ha. |
| 8. Barry Island Pleasure Park | 124 | £230,000 contribution in lieu of on-site provision | Ward: Baruc<br><br>Granted outline Planning Permission (2008/01533/OUT) subject to a Section 106 agreement. |
| 9. White Farm | 177 | 6.9 hectares of open space on site, crossing for Coldbrook, and children's play area | Ward: Dyfan & Gibbonsdown<br><br>Granted outline Planning Permission (2002/01636/OUT) subject to a Section 106 agreement on 12th February 2007 |
| 10. Land to the east of Pencoedtre Lane | 67 | 1 Local Equipped Area for Play, amenity green space on site (at least 3711sqm) | Ward: Cadoc<br><br>Granted outline Planning Permission (2008/01531/OUT) subject to a Section 106 agreement on 23rd June 2010 |
| 11. Land to the west of Pencoedtre Lane | 40 | 2½ Local Areas for Play or equivalent children's play space ($232m^2$)<br><br>Outdoor sport space = $1,484m^2$ which can be met by existing provision. | Ward: Gibbonsdown<br><br>The ward has an under-provision of children's play space of 1.38 ha, and overprovision of outdoor sport space of 9.11ha |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 12. Ysgol Maes Dyfan | 45 | Children's play space = 261m² equates to 2½ Local Areas for Play or equivalent<br><br>Outdoor sport space = 1,670m² | Ward: Court<br><br>The ward has an under-provision of children's play space of 0.51ha, and outdoor sport space of 0.35ha. |
| 13. Barry Magistrates Court | 52 | £103,500 contribution in lieu of on-site provision | Ward: Castleland<br><br>Granted Planning Permission as part of a mixed use scheme (2012/01114/FUL) subject to a Section 106 agreement on 5th March 2013. |
| 14. Court Road Depot, Barry | 50 | Children's play space = 290m² equates to 3 Local Areas for Play or equivalent<br><br>Outdoor sport space = 1,856m² | Ward: Court<br><br>The ward has an under-provision of children's play space of 0.51ha, and outdoor sport space of 0.35ha. |
| 15. Holm View | 50 | Children's play space = 290m² equates to 3 Local Areas for Play or equivalent<br><br>Outdoor sport space = 1,856m² which can be met by existing provision. | Ward: Gibbonsdown<br><br>The ward has an under-provision of children's play space of 1.38 ha, and overprovision of outdoor sport space of 9.11ha |
| 16. Hayes Wood, The Bendricks | 55 | Children's play space = 319m² equates to 3 Local Areas for Play or equivalent<br><br>Outdoor sport space = 2,042m² | Ward: Castleland<br><br>The ward has an under-provision of children's play space of 0.71 ha and of outdoor sport space of 7.76ha. |
| 17. Cowbridge Comprehensive Lower School | 21 | £47,880 contribution in lieu of on-site provision | Ward: Cowbridge<br><br>Granted Planning Permission (2011/01248/FUL) subject to a Section 106 agreement on 21st September 2012. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 18. Cowbridge Comprehensive 6th Form Block, Aberthin Road | 20 | Children's play space = 116m² equates to 1 Local Area for Play or equivalent<br><br>Outdoor sport space = 742m² which can be met by existing provision. | Ward: Cowbridge<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha.<br><br>The site is too small to provide a meaningful children's play space on site. |
| 19. Land adjoining St. Athan Road, Cowbridge | 130 | Children's play space = 754m² equates to 3½ Local Areas for Play and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 4,825m² which can be met by existing provision. | Ward: Cowbridge<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. |
| 20. Land to the north and west of Darren Close, Cowbridge | 390 | Children's play space = 2,262m² equates to 5 Local Areas for Play, 2 Local Equipped Areas for Play and 1 Neighbourhood Equipped Area for Play or equivalent<br><br>Outdoor sport space = 14,477m² which can be met by existing provision. | Ward: Cowbridge<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. |
| 21. Plasnewydd Farm, Llantwit Major | 130 | Children's play space = 754m² equates to 3½ Local Areas for Play, and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 4,825m² which can be met by existing provision. | Ward: Llantwit Major<br><br>The ward has an under-provision of children's play space of 1.93 ha and an overprovision of outdoor sport space of 7.96ha. |
| 22. Land adjacent to Llantwit Major Bypass | 70 | Children's play space = 406m² equates to 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 2,598m² which can be met by existing provision. | Ward: Llantwit Major<br><br>The ward has an under-provision of children's play space of 1.93 ha and an overprovision of outdoor sport space of 7.96ha. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 23. Land at Upper Cosmeston Farm, Lavernock | 235 | Children's play space = 1,363m$^2$ equates to 1 Local Equipped Area for Play and 1 Neighbourhood Equipped Area for Play or equivalent<br><br>Outdoor sport space = 8,723m$^2$ which can be met by existing provision. | Ward: Sully<br><br>The ward has an under-provision of children's play space of 0.94 ha and an over-provision of outdoor sport space of 12.17ha. |
| 24. Land adjoining St. Josephs School, Sully Road | 80 | Children's play space = 464m$^2$ equates to 1 Local Area for Play, and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 2,970m$^2$ which can be met by existing provision. | Ward: Stanwell, adjoins Dinas Powys & Plymouth wards.<br><br>There is an under-provision of children's play space of 1.05 ha within Stanwell and 1.58ha and 0.92ha in Dinas Powys and Plymouth wards respectively. Whilst Stanwell has an under provision of outdoor sport space of 2.17ha, neighbouring Dinas Powys and Plymouth wards have extensive overprovision. |
| 25. Headlands School, St. Augustine's Road | 65 | Children's play space = 377m$^2$ equates to 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 2,413m$^2$ | Ward: St. Augustine's<br>The ward has an under-provision of children's play space of 1.46 hectares and an under provision of outdoor sport space of 9.17 hectares. |
| 26. Land at and adjoining St. Cyres School, Murch Road | 300 | Children's play space = 1,740m$^2$ equates to 3½ Local Areas for Play, 1 Local Equipped Area for Play and 1 Neighbourhood Equipped Area for Play or equivalent<br><br>Outdoor sport space = 11,136m$^2$ which can be met by existing provision. | Ward: Dinas Powys<br><br>The ward has an under-provision of children's play space of 1.58ha but an overprovision of 88.52ha of outdoor sport space. |
| 27. Land off Caerleon Road, Dinas Powys | 75 | Children's play space = 435m$^2$ equates 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 2,784m$^2$ which can be met by existing provision. | Ward: Dinas Powys<br><br>The ward has an under-provision of children's play space of 1.58ha but an overprovision of 88.52ha of outdoor sport space. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 28. Land at adjoining Ardwyn, Pen-y-Turnpike | 15 | Children's play space = 87m² equates 1 Local Area for Play or equivalent<br><br>Outdoor sport space = 557m² which can be met by existing provision. | Ward: Dinas Powys<br><br>The ward has an under-provision of children's play space of 1.58ha but an overprovision of 88.52ha of outdoor sport space. |
| 29. Land at Cross Common Road | 50 | Children's play space = 290m² equates to 3 Local Areas for Play or equivalent<br><br>Outdoor sport space = 1,856m² which can be met by existing provision. | Ward: Dinas Powys<br><br>The ward has an under-provision of children's play space of 1.58ha but an overprovision of 88.52ha of outdoor sport space. |
| 30. Land south of Llandough Hill / Penarth Road | 130 | Children's play space = 754m² equates to 3½ Local Areas for Play and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 4,826m² which in isolation can be met by existing provision but having regards to cumulative site allocation generates an overall requirement in Llandough for 9837m² which requires 3437m² additional provision for outdoor sport. | Ward: Llandough<br><br>The ward has an under-provision of children's play space of 0.43ha and an overprovision of 0.64 ha of outdoor sport space. |
| 31. Land north of Leckwith Road | 15 | Children's play space = 87m² equates 1 Local Area for Play or equivalent<br><br>Outdoor sport space = 557m² which in isolation can be met by existing provision but having regards to cumulative site allocation generates an overall requirement in Llandough for 9837m² which requires 3437m² additional provision for outdoor sport. (Where is this met?) | Ward: Llandough<br><br>The ward has an under-provision of children's play space of 0.43ha and an overprovision of 0.64 ha of outdoor sport space.<br><br>The site is too small to provide a meaningful children's play space on site. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 32. Llandough Landings | 120 | Children's play space = 696m$^2$ equates to 3 Local Areas for Play and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 4,454m$^2$ which in isolation can be met by existing provision but having regards to cumulative site allocation generates an overall requirement in Llandough for 9837m$^2$ which requires 3437m$^2$ additional provision for outdoor sport. | Ward: Llandough<br><br>The ward has an under-provision of children's play space of 0.43ha and an overprovision of 0.64 ha of outdoor sport space. |
| 33. Land north of the Railway Line, Rhoose | Phase 1: 350 (14 ha)<br><br>Phase 2: 300 (12 ha) | Phase 1:<br>Provide 55.4sqm per dwelling in the form of:<br>• sport pitches with changing facilities<br>• 1 No. Multi Use Games Area<br>• 1 No. Neighbourhood Equipped Area for Play<br>• 3 No. Local Area for Play<br><br>Children's play space = 1,740m$^2$ equates to 3½ Local Areas for Play, 1 Local Equipped Area for Play and 1 Neighbourhood Equipped Area for Play or equivalent<br><br>Outdoor sport space = 11,136m$^2$ | Ward: Rhoose<br><br>Phase 1 granted Outline planning permission (2010/00686/EAO) subject to a section 106 agreement on (PENDING).<br><br>The site lies within Rhoose ward with an under-provision of children's play space of 1.12ha and 4.17ha for outdoor sport. |
| 34. Land south of the Railway Line, Rhoose | 87 | 3,440m$^2$ of open space in the form of:<br><br>• 320m$^2$ of amenity greenspace<br>• 3120m$^2$ of equipped play space | Ward: Rhoose<br><br>Granted Outline planning permission (2012/00937/FUL) subject to a section 106 agreement on (PENDING).<br><br>The site lies within Rhoose ward with an under-provision of children's play space of 1.12ha and 4.17ha for outdoor sport. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 35. Land to the west of Port Road, Wenvoe | 140 | Children's play space = 812m² equates to 2 Local Equipped Areas for Play or equivalent<br><br>Outdoor sport space = 5,197m² which can be met by existing provision. | Ward: Wenvoe<br><br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. |
| 36. Land adjoining Court Close, Aberthin | 20 | Children's play space = 116m² equates to 1 Local Area for Play or equivalent<br><br>Outdoor sport space = 742m² | Ward: Cowbridge<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. However, there is no outdoor sport provision within Aberthin itself. |
| 37. Land to the east of Bonvilston | 120 | Children's play space = 696m² equates to 3 Local Equipped Areas for Play and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 4,454m² | Ward: Wenvoe<br><br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. However, there is no outdoor sport provision within Bonvilston itself. |
| 38. Land to rear of St. Davids Church in Wales Primary School, Colwinston | 65 | Children's play space = 377m² equates to 1 Local Equipped Area for Play or equivalent which cannot be met by existing provision.<br><br>Outdoor sport space = 2,413m² | Ward: Llandow/Ewenny<br><br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha. Colwinston village has an over-provision of children's play space of 0.027ha and an over provision outdoor sport space of 0.95ha. |
| 39. ITV Wales, Culverhouse Cross | 250 | Children's play space = 1450m² equates to 1 Local Equipped Area for Play and 1 Neighbourhood Equipped Area for Play or equivalent<br><br>Outdoor sport space = 9,280m² | Ward: Wenvoe<br><br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. However, there is no outdoor sport provision within Culverhouse Cross itself. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 40. The Garden Emporium, Fferm Goch | 40 | On site provision of incidental open space. Off-site provision of play equipment (£15,000) | Ward: Llandow/Ewenny<br><br>Resolution to Grant Outline Planning Permission (2012/00862/OUT) subject to a Section 106 agreement (pending). |
| 41. Ogmore Residential Centre | 84 | 55.4sqm per dwelling provided on site | Ward: St. Brides Major<br><br>Granted outline Planning Permission (2009/00489/OUT) at appeal subject to a Section 106 agreement on 9th March 2012. |
| 42. Ogmore Caravan Park | 82 | 55.4sqm per dwelling provided on site | Ward: St. Brides Major<br><br>Part of a mixed use scheme. Granted outline Planning Permission (2009/01273/OUT) subject to a Section 106 agreement on 26th September 2011. |
| 43. Land to the East of St. Nicholas | 100 | Children's play space = 580m $^2$ equates to 2 Local Areas for Play and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 3,712m $^2$ | Ward: Wenvoe<br><br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. However, there is no outdoor sport provision within St. Nicholas itself. |
| 44. Land off St. Brides Road, Wick | 100 | Children's play space = 580m $^2$ equates to 2 Local Areas for Play and 1 Local Equipped Area for Play or equivalent<br><br>Outdoor sport space = 3,712m $^2$ which can be met by existing provision. | Ward: St. Brides Major<br><br>The ward has an under-provision of children's play space of 0.45ha and an overprovision of 95.12ha of outdoor sport space. Wick village has an under-provision of children's play space of 0.053ha and an over provision outdoor sport space of 0.47ha. |

| Site | No. of dwellings | Open Space Requirements | Notes |
|---|---|---|---|
| 45. Land off Sandy Lane, Ystradowen | 85 | Children's play space = 493m² equates to 1 Local Equipped Area for Play and 1 Local Area for Play or equivalent<br><br>Outdoor sport space = 3,155m² | Ward: Cowbridge & adjoins Peterston-Super-Ely Ward<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha.The site is almost adjacent to Peterston-Super-Ely ward with an under provision children's play space of 0.39 ha and an over-provision of outdoor sport space of 97.76ha. However, Ystradowen itself does not have adequate provision for outdoor sport. |
| 46. Land West of Swanbridge Road, Sully<br><br>(RESERVE SITE) | 500 | Children's play space = 2,900m² equates to 1 Local Area for Play, 1 Local Equipped Area for Play and 2 Neighbourhood Equipped Areas for Play or equivalent<br><br>Outdoor sport space = 18,560m² which can be met by existing provision. | Ward: Sully<br><br>The ward has an under-provision of children's play space of 0.94 ha and an over-provision of outdoor sport space of 12.17ha. |

### Housing 'Windfall' Analysis

11.4.3 Throughout the plan period it is anticipated that an additional 2,448 dwellings will be delivered on 'windfall' sites i.e. non allocated housing sites. By considering historic trends and considering the implications of the proposed LDP growth strategy a spatial distribution of these houses has been devised and is included in the Housing Supply Background Paper. The table below demonstrates where these new dwellings create additional need for open space facilities that must be catered for. Given that these sites are inherently small or constrained sites which are generally incapable of making adequate provision for open space on site; these requirements need to be provided for off-site.

Table 19: LDP Housing 'Windfalls' Open Space Requirements

| | Total No. of windfall dwellings over LDP 2011-2026 | Open Space Requirements | Notes |
|---|---|---|---|
| KEY SETTLEMENT | | | |
| Barry | 856 | Children's play space = 4965m² Outdoor sport space = 31,775m² which can be met by existing provision | Overall shortage of children's play space throughout Barry.<br><br>Including golf courses, there is an overprovision of 30.44ha of outdoor sport space. |
| SERVICE CENTRE SETTLEMENTS | | | |
| Cowbridge, Llanblethian | 170 | Children's play space = 986m² which needs to be provided for<br><br>Outdoor sport space = 6310m² which can be met by existing provision | Ward: Cowbridge<br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. |
| Llantwit Major | 170 | Children's play space = 986m² which needs to be provided for<br><br>Outdoor sport space = 6310m² which can be met by existing provision | Ward: Llantwit Major<br>The ward has an under-provision of children's play space of 1.93 ha and an overprovision of outdoor sport space of 7.96ha. |
| Penarth | 242 | Children's play space = 1404m²<br><br>Outdoor sport space = 8983m² | Overall shortage of children's play space throughout Penarth.<br><br>Including golf courses, there is an overprovision of 47.12ha of outdoor sport space. |

| | Total No. of windfall dwellings over LDP 2011-2026 | Open Space Requirements | Notes |
|---|---|---|---|
| PRIMARY SETTLEMENTS | | | |
| Dinas Powys | 48 | Children's play space = 278m$^2$<br><br>Outdoor sport space = 1782m$^2$ which can be met by existing provision | Ward: Dinas Powys.<br>The ward has an under-provision of children's play space of 1.58ha but an overprovision of 88.52ha of outdoor sport space. |
| Llandough | 48 | Children's play space = 278m$^2$<br><br>Outdoor sport space = 1782m$^2$ | Ward: Llandough<br>The ward has an under-provision of children's play space of 0.43ha and an overprovision of 0.64 ha of outdoor sport space, which is insufficient to meet the needs generated from allocated and windfall development. |
| Rhoose | 48 | Children's play space = 278m$^2$<br><br>Outdoor sport space = 1782m$^2$ | Ward: Rhoose<br>The ward has an under-provision of children's play space of 1.12ha and 4.17ha for outdoor sport. |
| St. Athan | 48 | Children's play space = 278m$^2$<br><br>Outdoor sport space = 1782m$^2$ which can be met by existing provision | Ward: St. Athan<br>Existing under-provision of children's play space of 0.83 ha and over provision of 21.35 ha of outdoor sport space within St. Athan Ward. |
| Sully | 48 | Children's play space = 278m$^2$<br><br>Outdoor sport space = 1782m$^2$ which can be met by existing provision | Ward: Sully<br>The ward has an under-provision of children's play space of 0.94 ha and an over-provision of outdoor sport space of 12.17ha. |
| Wenvoe | 48 | Children's play space = 278m$^2$<br><br>Outdoor sport space = 1782m$^2$ which can be met by existing provision | Ward: Wenvoe<br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. |

| | Total No. of windfall dwellings over LDP 2011-2026 | Open Space Requirements | Notes |
|---|---|---|---|
| MINOR RURAL SETTLEMENTS | | | |
| Aberthin | 24 | Children's play space = 139m$^2$<br><br>Outdoor sport space = 891m$^2$ | Ward: Cowbridge<br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. However, within Aberthin there is no outdoor sport provision. |
| Bonvilston | 26 | Children's play space = 151m$^2$<br><br>Outdoor sport space = 965m$^2$ | Ward: Wenvoe<br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. However, within Bonvilston there is no outdoor sport provision and under-provision of 807m$^2$ of children's play space. |
| Colwinston | 26 | Children's play space = 151m$^2$ which can be met by existing provision.<br><br>Outdoor sport space = 965m$^2$ which can be met by existing provision. | Ward: Llandow/Ewenny<br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha. Colwinston village has an over-provision of children's play space of 0.027ha and an over provision outdoor sport space of 0.95ha. |
| Corntown | 26 | Children's play space = 151m$^2$ which can be met by existing provision.<br><br>Outdoor sport space = 965m$^2$ which can be met by existing provision. | Ward: Llandow/Ewenny<br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha. Within Corntown there is an over-provision of children's play space of 2185m$^2$ and 15.8ha of outdoor sport. |
| Culverhouse Cross | 24 | Children's play space = 139m$^2$<br><br>Outdoor sport space = 891m$^2$ | Ward: Wenvoe<br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. However, within Culverhouse Cross there is no outdoor sport provision and has an under-provision of children's play space of 0.05ha. |

| | Total No. of windfall dwellings over LDP 2011-2026 | Open Space Requirements | Notes |
|---|---|---|---|
| East Aberthaw | 24 | Children's play space = 139m$^2$ which can be met by existing provision.<br><br>Outdoor sport space = 891m$^2$ | Ward: Rhoose<br>The ward has an under-provision of children's play space of 1.12ha and 4.17ha for outdoor sport. East Aberthaw has an over-provision of children's play space of 227m$^2$ but no outdoor sport. |
| Ewenny | 26 | Children's play space = 151m$^2$ which can be met by existing provision.<br><br>Outdoor sport space = 965m$^2$ which can be met by existing provision. | Ward: Llandow/Ewenny<br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha.<br><br>Within Ewenny there is no outdoor sport provision, but there is significant overprovision in nearby Corntown and there is an over-provision of children's play space of 120m$^2$ |
| Fferm Goch | 24 | Children's play space = 139m$^2$<br><br>Outdoor sport space = 891m$^2$ which can be met by existing provision | Ward: Cowbridge<br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. Within Fferm Goch there is an under provision of children's play of 60m$^2$ and overprovision of outdoor sport of 1136m$^2$ |
| Graig Penllyn | 24 | Children's play space = 139m$^2$ which can be met by existing provision<br><br>Outdoor sport space = 891m$^2$ which can be met by existing provision | Ward: Cowbridge<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. However, within Graig Penllyn there is an over-provision of children's play space of 0.2ha and 1.02ha of outdoor sport. |
| Llancarfan | 26 | Children's play space = 151m$^2$<br><br>Outdoor sport space = 965m$^2$ | Ward: Rhoose<br><br>The ward has an under-provision of children's play space of 1.12ha and 4.17ha for outdoor sport. However, within Llancarfan there is no children's play provision and under provision of outdoor sport of 1324m$^2$. |

| | Total No. of windfall dwellings over LDP 2011-2026 | Open Space Requirements | Notes |
|---|---|---|---|
| Llandow | 24 | Children's play space = 139m² which can be met by existing provision<br><br>Outdoor sport space = 891m² | Ward: Llandow/Ewenny<br><br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha. Within Llandow there is an overprovision of 350m² of children's play space but no outdoor sport. |
| Llanmaes | 26 | Children's play space = 151m² which can be met by existing provision<br><br>Outdoor sport space = 965m² | Ward: Llantwit Major<br><br>The ward has an under-provision of children's play space of 1.93 ha and an overprovision of outdoor sport space of 7.96ha. Within Llanmaes there is an overprovision of 138m² of children's play space but no outdoor sport. |
| Llysworney | 24 | Children's play space = 139m²<br><br>Outdoor sport space = 891m² | Ward: Llandow/Ewenny<br><br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha. However, within Llysworney there is no outdoor sport and an under-provision of children's play space of 37m². |
| Ogmore By Sea | 26 | Children's play space = 151m²<br><br>Outdoor sport space = 965m² | Ward:  St. Brides Major<br><br>The ward has an under-provision of children's play space of 0.45ha and an overprovision of 95.12ha of outdoor sport space. However, within Ogmore there is no outdoor sport provision and insufficient children's play. |
| Pendoylan | 24 | Children's play space = 139m² which can be met by existing provision<br><br>Outdoor sport space = 891m² which can be met by existing provision | Ward: Peterston-Super-Ely<br><br>The ward has an under provision children's play space of 0.39 ha and an over-provision of outdoor sport space of 97.76ha. Within Pendoylan there is and over provision of 900m² children's play space and 0.28ha of outdoor sport provision. |
| Penllyn | 24 | Children's play space = 139m²<br><br>Outdoor sport space = 891m² | Ward: Cowbridge<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. However, within Penllyn there is no outdoor sport or children's play provision. |

| | Total No. of windfall dwellings over LDP 2011-2026 | Open Space Requirements | Notes |
|---|---|---|---|
| Peterston-Super-Ely | 26 | Children's play space = 151m$^2$<br><br>Outdoor sport space = 965m$^2$ which can be met by existing provision | Ward: Peterston-Super-Ely<br><br>The ward has an under provision children's play space of 0.39ha and an over-provision of outdoor sport space of 97.76ha. Within Peterston-Super-Ely village there is under-provision of children's play of 1040m$^2$ and an overprovision of outdoor sport space 1.38ha. |
| Sigingstone | 24 | Children's play space = 139m$^2$<br><br>Outdoor sport space = 891m$^2$ | Ward: Llandow/Ewenny<br><br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha. However, within Sigingstone there is no outdoor sport or children's play provision. |
| Southerndown | 24 | Children's play space = 139m$^2$<br><br>Outdoor sport space = 891m$^2$ which can be met by existing provision. | Ward: St. Brides Major<br><br>The ward has an under-provision of children's play space of 0.45ha and an overprovision of 95.12ha of outdoor sport space. Within Southerndown village there is no children's play provision but there is a Cricket pitch for outdoor sport. |
| St Brides Major | 26 | Children's play space = 151m$^2$<br><br>Outdoor sport space = 965m$^2$ which can be met by existing provision. | Ward: St. Brides Major<br><br>The ward has an under-provision of children's play space of 0.45ha and an overprovision of 95.12ha of outdoor sport space. Within St. Brides Major there is an over-provision of outdoor sport but an under-provision of children's play space of 1055m$^2$. |
| St Nicholas | 26 | Children's play space = 151m$^2$<br><br>Outdoor sport space = 965m$^2$ | Ward: Wenvoe<br><br>The ward has an under-provision of children's play space of 0.41ha and an overprovision of 1.89ha of outdoor sport space. However, within St. Nicholas there is no outdoor sport or children's play provision. |
| Treoes | 24 | Children's play space = 139m$^2$<br><br>Outdoor sport space = 891m$^2$ | Ward: Llandow/Ewenny<br><br>The ward has an over-provision of children's play space of 0.06ha and an over provision outdoor sport space of 62.46ha. However, within Treoes there is an under provision of 0.13ha of outdoor sport and 237m$^2$ of children's play space. |

| | Total No. of windfall dwellings over LDP 2011-2026 | Open Space Requirements | Notes |
|---|---|---|---|
| Wick | 26 | Children's play space = 151m$^2$ which needs to be met.<br><br>Outdoor sport space = 965m$^2$ which can be met by existing provision | Ward: St. Brides Major<br><br>The ward has an under-provision of children's play space of 0.45ha and an overprovision of 95.12ha of outdoor sport space. Wick village has an under-provision of children's play space of 0.053ha and an over provision outdoor sport space of 0.47ha. |
| Ystradowen | 26 | Children's play space = 151m$^2$<br><br>Outdoor sport space = 965m$^2$ | Ward: Cowbridge<br><br>The ward has an under-provision of children's play space of 0.40 ha and an overprovision of outdoor sport space of 4.92ha. However, within Ystradowen there is inadequate outdoor sport and an under-provision of 1050m$^2$ of children's play space. |
| Other Areas | 122 | Children's play space = 708m$^2$<br><br>Outdoor sport space = 4529m$^2$ | These are one off dwellings outside settlements such as barn conversions, agricultural dwellings and other exceptions. Given the overall shortage of children's place space throughout the Vale, provision should be made at appropriate strategic locations such as Country Parks. |

## 11.5 Meeting the Need for Open Space

11.5.1 Given the identified deficiencies in children's play space throughout the Vale of Glamorgan, where practical new residential developments will be expected to make appropriate provision for on-site equipped children's play areas. This may not be possible on smaller housing allocation sites and windfall sites and this is considered further in 11.5.3 below.

11.5.2 In light of the analysis above, it is clear that some of the housing allocations need to make adequate provision for outdoor sport on site in addition to children's play facilities, or where this is not possible alternative off-site provision. Table 20 provides details of the proposed open space allocations within the Deposit LDP. Where land is proposed to be allocated, this is identified on the Proposals Map and referred to within the LDP text. In addition in some cases land needs to be allocated alongside housing developments (as part of a mixed use on the overall site) to meet wider needs generated from windfall developments in addition to housing allocations alone; in particular in the settlements of Bonvilston, Culverhouse Cross, St. Nicholas and Ystradowen where other opportunities to meet additional demands for open space are not readily available. Plans of the sites are attached at Appendix 17.

11.5.3 In the case of the Hayes Wood housing allocation, the site is too small to provide a meaningful area for outdoor sport provision and it has not been possible to identify alternative off-site provision in the immediate vicinity. Given the good walking and cycling links to nearby Sully, where there is plenty of outdoor sport provision, it is therefore considered acceptable that no specific provision for outdoor sport be provided in the Bendricks area.

11.5.4 Similarly, in the case of Land adjoining Court Close Aberthin housing allocation, the site is too small to provide a meaningful area for outdoor sport provision and it has not been possible to identify alternative off-site provision in the immediate vicinity. Given the proximity to Cowbridge, where there is adequate outdoor sport provision, it is therefore considered acceptable that no specific provision for outdoor sport be provided in the Aberthin area.

Table 20: Provision for Open Space

| Site description | Open Space requirement | Method of provision |
|---|---|---|
| Phase 2, Barry Waterfront | 7.83ha of open space on site including public realm and children's play areas | Open space allocated alongside residential land as part of allocation. |
| White Farm | 6.9 hectares of open space on site, crossing for Coldbrook, and children's play area | Open space allocated alongside residential land as part of mixed use allocation. |
| Ysgol Maes Dyfan | Outdoor sport space = 1,670m$^2$ equates to 5-a-side pitch or equivalent | To be provided on land adjoining housing allocation. |
| Headlands School, St. Augustine's Road | Outdoor sport space = 2,413m$^2$ equates to a 5-a-side pitch and tennis court or equivalent | Existing outdoor sport provision on site should be retained or improved to provide public open space (mixed use allocation) |
| Land north of the Railway Line, Rhoose | Phase 1:<br>Provide 55.4sqm per dwelling in the form of:<br>• sport pitches with changing facilities<br>• 1 No. Multi Use Games Area<br>• 1 No. NEAP<br>• 3 No. Local Area for Play<br><br>Phase 2:<br>Outdoor sport space = 11,136m$^2$ equates to a senior rugby or football pitch or equivalent | Open space allocated alongside residential land as part of mixed use allocation. On phase 2 this may be in the form of dual-use of educational facilities (see also Education Facilities Background Paper). |
| Land to the east of Bonvilston | Outdoor sport space = 4,454m$^2$ (for allocated housing) plus 965m$^2$ (for windfalls) = 5419m$^2$ equates a Junior Football Pitch or equivalent to be provided on site.<br><br>Total Children's play space required from windfalls unable to provide on site = 151m$^2$ equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location. | Open space allocated alongside residential land as part of mixed use allocation. It would be preferable to locate the open space in the western part of the site to integrate with the existing adjoining community. |

| Site description | Open Space requirement | Method of provision |
|---|---|---|
| ITV Wales, Culverhouse Cross | Outdoor sport space = 9,280m$^2$ (for allocated housing) plus 891m$^2$ (for windfalls) = 10,171m$^2$ equates to a Junior Football Pitch and a Midi Rugby Pitch or equivalent to be provided on site.<br><br>Total Children's play space required from windfalls unable to provide on site = 139m$^2$ equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location. | Open space allocated alongside residential land as part of mixed use allocation. |
| Land to the East of St. Nicholas | Outdoor sport space = 3,712m$^2$ (for allocated housing) plus 965m$^2$ (for windfalls) = 4677m$^2$ equates to a midi Rugby Pitch or equivalent to be provided on site.<br><br>Total Children's play space required from windfalls unable to provide on site = 151m$^2$ equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location. | Open space allocated alongside residential land as part of mixed use allocation. |
| Land off Sandy Lane, Ystradowen | Outdoor sport space = 3155m$^2$ (for allocated housing) plus 965m$^2$ (for windfalls) = 4120m$^2$ which equates to a midi Rugby Pitch or equivalent to be provided on site.<br><br>Total Children's play space required from windfalls unable to provide on site = 151m$^2$ equates to 1½ Local Areas for Play or equivalent to be provided on site. | Open space allocated alongside residential land as part of mixed use allocation. |

### Off Site Requirements

11.5.5 In addition to the above allocations for open space and having regard to the projected number of houses expected on windfall developments, which are likely to be smaller and constrained sites, there is need to ensure other adequate off-site facilities are provided. Having regard to existing levels of provision and the need generated by proposed development, from both windfalls and housing allocations unable to provide the requisite open space on site, the need for off-site open space has been identified in the following locations:

### Aberthin

Total Children's play space required from windfalls unable to be provided on site = 139m$^2$. This equates to 1 Local Area for Play or equivalent to be provided in a strategic location.

Total outdoor sport space required from allocated sites and windfalls unable to provide on site = 1633m$^2$. This equates to a BMX track and tennis court or equivalent to be provided in a strategic location.

### Barry

Total Children's play space required from windfalls unable to be provided on site = 4965m$^2$. This should be provided in a strategic location, and equates to 4 NEAPs, 2 LEAPs and 2 LAPs. Appropriate locations which serve the Barry area are:

- Romilly Park
- The Knap
- Porthkerry Country Park
- Barry Island

### Cowbridge

Total Children's play space required from allocated sites and windfalls unable to be provided on site = 1102m$^2$. This equates to 1 Neighbourhood Equipped Area for Play and 1 Local Area for Play or equivalent to be provided in a strategic location. Appropriate locations which serve the Cowbridge area are:

- Twt Park
- Bear Field

### Dinas Powys

Total Children's play space required from windfalls unable to provide on site = 278m$^2$. This equates to 3 Local Areas for Play or equivalent to be provided in a strategic location. Appropriate locations which serve the Dinas Powys area are:

- Dinas Powys Common
- Murchfield playing fields and community centre
- Parc Bryn-Y-Don

### East Aberthaw

Total outdoor sport space required from windfalls unable to be provided on site = 891m$^2$. This equates to a tennis court or equivalent to be provided in a strategic location.

### Fferm Goch

Total Children's play space required from windfalls unable to be provided on site = 139m$^2$. This equates to 1 Local Area for Play or equivalent to be provided in a strategic location.

### Llancarfan

Total Children's play space required from windfalls unable to be provided on site = 151m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

Total outdoor sport space required from windfalls unable to provide on site = 965m$^2$. This equates to a skatepark or equivalent to be provided in a strategic location.

### Llandough

Total Children's play space required from allocated sites and windfalls unable to be provided on site = 348m$^2$. This equates to 1 Local Equipped Area for Play or equivalent to be provided in a strategic location e.g. Dochdwy Road play area.

Total outdoor sport space required from allocated sites and windfalls unable to be provided on site = 5219m$^2$. This equates to a junior football pitch or equivalent to be provided in a strategic location e.g. land to rear of Lewis Road.

### Llandow

Total outdoor sport space required from windfalls unable to be provided on site = 891m$^2$. This equates to a basketball court or equivalent to be provided in a strategic location.

### Llanmaes

Total outdoor sport space required from windfalls unable to be provided on site = 965m$^2$. This equates to a skatepark or equivalent to be provided in a strategic location.

### Llysworney

Total Children's play space required from windfalls unable to be provided on site = 139m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.
Total outdoor sport space required from windfalls unable to be provided on site = 891m$^2$. This equates to a basketball court or equivalent to be provided in a strategic location.

### Llantwit Major

Total Children's play space required from windfalls unable to be provided on site = 986m$^2$. This equates to 2 Local Equipped Area for Play and 1 Local Area for Play or equivalent to be provided in a strategic location. Appropriate locations which serve the Llantwit Major area are:

- Llantwit Major Playing Fields / Rugby Ground
- Windmill Playing Fields

### Ogmore-By-Sea

Total Children's play space required from windfalls unable to be provided on site = 151m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

Total outdoor sport space required from allocated sites and windfalls unable to be provided on site = 965m$^2$. This equates to a skatepark or equivalent to be provided in a strategic location.

### Penarth

Total Children's play space required from windfalls unable to be provided on site = 1404m$^2$ in a strategic location. This equates to 1 Neighbourhood Equipped Area for Play and 1 Local Equipped Area for Play. Appropriate locations which serve the Penarth area are:

- Paget Road Play Area
- Cosmeston Country Park
- Cliff Walk Open Space
- Alexandra Gardens
- Cogan Playing Fields

### Penllyn

Total Children's play space required from windfalls unable to be provided on site = 139m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

Total outdoor sport space required from allocated sites and windfalls unable to be provided on site = 891m$^2$ equates to a skatepark or equivalent to be provided in a strategic location.

### Peterston Super-Ely

Total Children's play space required from windfalls unable to be provided on site = 151m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

### Rhoose

Total Children's play space required from windfalls unable to be provided on site = 278m$^2$. This equates to 3 Local Areas for Play or equivalent to be provided in a strategic location.

Total outdoor sport space required from allocated sites and windfalls unable to be provided on site = 1782m$^2$. This equates to a skatepark and tennis court or equivalent to be provided in a strategic location e.g. Ceri Road playing fields.

### St Athan

Total Children's play space required from windfalls unable to be provided on site = 278m$^2$. This equates to 3 Local Areas for Play or equivalent to be provided in a strategic location e.g. Glyndwr Avenue playing fields.

### St. Brides Major

Total Children's play space required from windfalls unable to be provided on site = 151m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

### Sully

Total Children's play space required from windfalls unable to be provided on site = 278m$^2$. This equates to 3 Local Areas for Play or equivalent to be provided in a strategic location e.g. Smithies Avenue play area.

### Sigingstone

Total Children's play space required from windfalls unable to be provided on site = 139m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

Total outdoor sport space required from windfalls unable to be provided on site = 891m$^2$. This equates to a skatepark or equivalent to be provided in a strategic location.

### Southerndown

Total Children's play space required from windfalls unable to be provided on site = 139m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

### Treoes

Total Children's play space required from windfalls unable to be provided on site = 139m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

Total outdoor sport space required from windfalls unable to provide on site = 891m$^2$. This equates to a basketball court or equivalent to be provided in a strategic location.

### Wenvoe

Total Children's play space required from windfalls unable to provide on site = 278m$^2$ equates to 3 Local Areas for Play or equivalent to be provided in a strategic location.

### Wick

Total Children's play space required from windfalls unable to provide on site = 151m$^2$. This equates to 1½ Local Areas for Play or equivalent to be provided in a strategic location.

## 11.6 Open Space Facilities in the Local Development Plan

11.6.1 To ensure the LDP makes appropriate provision for Open Space Facilities, the Plan will include a Policy identifying new and improved open space facilities that will be provided throughout the plan period in accordance with the conclusions of this paper. In addition to meeting the needs created by new housing developments identified in this paper, the Policy also includes proposals to extend the Country Parks at Cosmeston in Penarth and Porthkerry in Barry.

11.6.2 It is recommended that the Policy require the 'Provision of Public Open Space and Recreational Facilities' as follows: -

LAND IS ALLOCATED FOR THE PROVISION OF OPEN SPACE AND RECREATIONAL FACILITIES AT: -

1. COSMESTON LAKES COUNTRY PARK (27HA)
2. PORTHKERRY COUNTRY PARK (42HA)
3. BARRY WATERFRONT (7.83HA)
4. WHITE FARM (6.9HA)
5. LAND ADJOINING YSGOL MAES DYFAN (0.16HA)
6. HEADLANDS SCHOOL, ST.AUGUSTINE'S ROAD, PENARTH (0.24HA)
7. LAND TO THE NORTH OF THE RAILWAY LINE, RHOOSE (3.60HA)
8. LAND TO THE EAST OF BONVILSTON (0.55HA)
9. ITV WALES, CULVERHOUSE CROSS (1.03HA)
10. LAND TO THE EAST OF ST.NICHOLAS (0.48HA); AND
11. LAND OFF SANDY LANE, YSTRADOWEN (0.43HA).

IN ADDITION, IN AREAS OF NEED, OPEN SPACE WILL BE PROVIDED OR ENHANCED TO MEET ADDITIONAL DEMAND THAT CANNOT BE CATERED FOR ON DEVELOPMENT SITES DURING THE PLAN PERIOD.

11.6.3 The supporting text to this Policy will add further clarification of the needs, supported by the evidence in this Background Paper.

## 11.7 Delivery Mechanisms

11.7.1 Historically the Vale of Glamorgan Council has used planning obligations within Section 106 legal agreements to secure either financial contributions for open space facilities or where practical actual provision of open space facilities on larger development sites.

11.7.2 The Community Infrastructure Levy Regulations 2010 came into force in April 2010 and allows local authorities to raise funds from developers undertaking new building projects in their area. The money raised from the levy (CIL) must be used to fund infrastructure to support the development of the local authority's area, which includes open space facilities. In addition, the Regulations restrict the use of planning obligations through section 106 agreements and in particular prevent pooling financial contributions.

11.7.3 The Council is working towards introducing a Community Infrastructure Levy (CIL) for its area to deliver strategic infrastructure improvements to support the development of the area in accordance with the Local Development Plan (LDP). In the future, development will need to contribute to site-related and broader community infrastructure through a combination of planning conditions, planning obligations (e.g. Section 106 Agreements), and CIL receipts. Given that open space facilities, and in particular strategic open space facilities, are often required as a result of the cumulative impacts of several developments, it is considered that following the adoption of the LDP and CIL for the Vale of Glamorgan, open space facilities should mainly be provided through CIL receipts. The exception will be children's play facilities which should, by their very nature, and in the interest of proper planning, be integrated into new residential developments. In addition, in some cases outdoor sport facilities will need to be provided on site to meet the needs arising from those developments due to their scale and level of existing provision in the area; where this is the case these have been identified in this Paper. In the interim, the Council will continue to negotiate section 106 contributions on a site by site basis.

## 11.8 Conclusions

11.8.1 The projected increase in population and the level of proposed new housing will result in the need for new open space provision in the Vale of Glamorgan throughout the plan period of 2011-2026, as evidenced within this Paper. This will include both enhancement of existing facilities and the provision of new facilities. This need will be provided for through a new Policy within the 'Managing Growth' section of the LDP which will allocate land for the development of new and improved open space and recreational facilities.

# Appendices

# Public Parks and Gardens

## Country Park

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| CP/2 | Illtyd | Barry | Porthkerry Country Park | 82.51 | Vale of Glamorgan Council | W01001098 |
| CP/1 | Plymouth | Penarth | Cosmeston Lakes Country Park | 85.66 | Vale of Glamorgan Council | W01001115 |
| CP/3 | Wenvoe | Rural Vale | Duffryn House and Gardens | 28.79 | Vale of Glamorgan Council | W01001135 |

**Total Sites: 3** **Total Area (Ha): 196.96**

## Formal Garden

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| FG/6 | Baruc | Barry | Knap Gardens, Lakeside | 6.02 | Vale of Glamorgan Council | W01001059 |
| FG/7 | Baruc | Barry | Parade Gardens, The Parade | 1.49 | Vale of Glamorgan Council | W01001061 |
| FG/5 | Buttrills | Barry | Gladstone Gardens, Gladstone Road | 1.51 | Vale of Glamorgan Council | W01001063 |
| FG/54 | Cadoc | Barry | Victoria Gardens, Main Street | 0.20 | Vale of Glamorgan Council | W01001069 |
| FG/472 | Cowbridge | Rural Vale | Sensory Garden, Church Street, Cowbridge | 0.18 | Vale of Glamorgan Council | W01001082 |
| FG/15 | Cowbridge | Rural Vale | Old Hall Gardens, High Street | 0.41 | Vale of Glamorgan Council | W01001082 |
| FG/49 | Dyfan | Barry | Coronation Gardens, Colcot Road | 0.53 | Vale of Glamorgan Council | W01001091 |
| FG/12 | Plymouth | Penarth | Italian Gardens, The Esplanade | 0.09 | Vale of Glamorgan Council | W01001116 |
| FG/13 | Plymouth | Penarth | Windsor Gardens, Bridgeman Road | 1.37 | Vale of Glamorgan Council | W01001116 |
| FG/78 | St. Augustine's | Penarth | The Kymin, Beach Road | 1.63 | Vale of Glamorgan Council | W01001123 |

**Total Sites: 10** **Total Area (Ha): 13.43**

## Urban Park

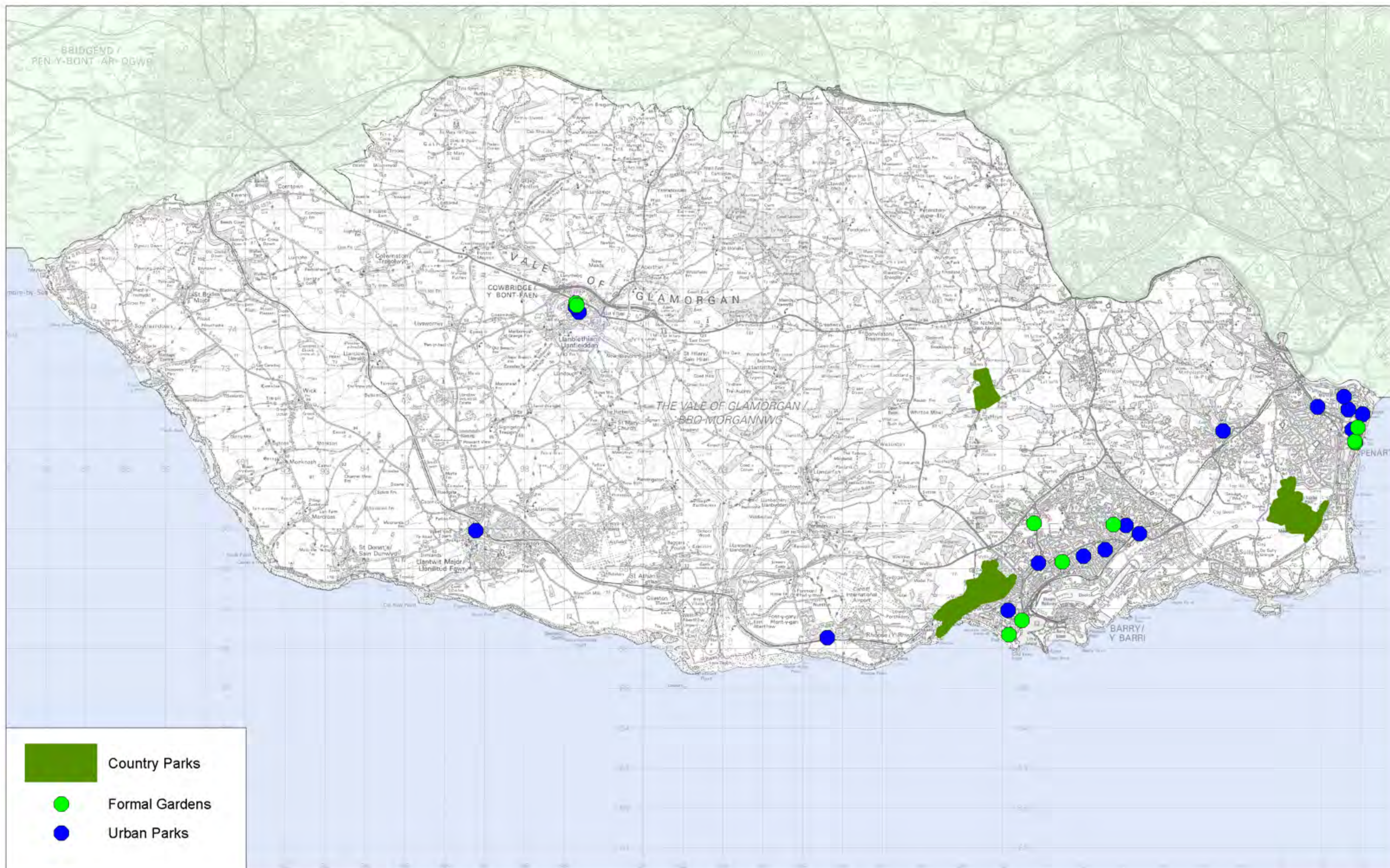
| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| UP/8 | Baruc | Barry | Romilly Park, Romilly Park Road | 7.03 | Vale of Glamorgan Council | W01001059 |
| UP/4 | Buttrills | Barry | Central Park, Wyndham Street | 0.63 | Vale of Glamorgan Council | W01001065 |
| UP/45 | Buttrills | Barry | Alexandra Gardens, Jenner Road | 0.76 | Vale of Glamorgan Council | W01001064 |
| UP/9 | Cadoc | Barry | Victoria Park, Victoria Park Road | 2.28 | Vale of Glamorgan Council | W01001071 |
| UP/473 | Cadoc | Barry | Churchill Terrace / Cardiff Road, Cadoxton | 0.21 | Vale of Glamorgan Council | W01001071 |
| UP/46 | Court | Barry | Bassett Park, Bassett Street, Barry Dock | 0.17 | Vale of Glamorgan Council | W01001079 |
| UP/73 | Cowbridge | Rural Vale | Poplars Park, The Limes | 1.52 | Vale of Glamorgan Council | W01001082 |
| UP/81 | Cowbridge | Rural Vale | Southgate Park, Town Mill Road | 0.05 | Cowbridge with Llanblethian Town Council | W01001082 |
| UP/79 | Dinas Powys | Rural Vale | Old Scout Field, Greenfield Avenue | 0.11 | Dinas Powys Community Council | W01001086 |
| UP/334 | Llantwit Major | Rural Vale | Lorna Hughes Park | 0.30 | Vale of Glamorgan Council | W01001111 |
| UP/14 | Rhoose | Rural Vale | Milburn Park, Fontygary Road | 0.70 | Vale of Glamorgan Council | W01001117 |
| UP/10 | St. Augustine's | Penarth | Alexandra Park, Beach Road | 2.75 | Vale of Glamorgan Council | W01001123 |
| UP/11 | St. Augustine's | Penarth | Belle Vue Park, Albert Road | 0.51 | Vale of Glamorgan Council | W01001124 |
| UP/720 | St. Augustine's | Penarth | Paget Terrace | 0.68 | Vale of Glamorgan Council | W01001126 |
| UP/68 | St. Augustine's | Penarth | Penarth Head Open Space, Penarth Head Lane | 0.17 | Vale of Glamorgan Council | W01001123 |
| UP/26 | St. Augustine's | Penarth | The Dingle, Windsor Road, Penarth | 1.71 | Vale of Glamorgan Council | W01001125 |

**Total Sites: 16** **Total Area (Ha): 19.58**

**Sites Total: 29** **Grand Total of Typology (Ha): 229.97**

Open Space Assessment

Distribution of Parks and Gardens



# Natural and Semi-Natural Greenspaces

## Coastal Land

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| CL/58 | Baruc | Barry | Cold Knap Point, Barry Island | 1.39 | Vale of Glamorgan Council | W01001059 |
| CL/60 | Baruc | Barry | Nell's Point, Barry Island | 6.04 | Vale of Glamorgan Council | W01001061 |
| CL/61 | Baruc | Barry | Promenade, Barry Island | 2.53 | Vale of Glamorgan Council | W01001061 |
| CL/298 | Baruc | Barry | Marine Drive | 9.69 | Vale of Glamorgan Council | W01001060 |
| CL/593 | Baruc | Barry | Little Island | 4.77 | Vale of Glamorgan Council | W01001061 |

**Total Sites: 5** **Total Area (Ha): 24.42**

## Common Land

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Comm/207 | Cowbridge | Rural Vale | Llanblethian Common | 4.60 | Vale of Glamorgan Council | W01001083 |
| Comm/847 | Cowbridge | Rural Vale | South of St.Hilary Church | 0.04 | Vale of Glamorgan Council | W01001084 |
| Comm/202 | Cowbridge | Rural Vale | St Hilary Common | 12.77 | Llanfair Investments | W01001084 |
| Comm/217 | Cowbridge | Rural Vale | Stalling Down (South of A48) | 8.14 | Vale of Glamorgan Council | W01001084 |
| Comm/216 | Cowbridge | Rural Vale | Craig Penllyne | 0.29 | Penllyne Community Council | W01001085 |
| Comm/210 | Cowbridge | Rural Vale | Stalling Down Common | 51.95 | Vale of Glamorgan Council | W01001084 |
| Comm/215 | Cowbridge | Rural Vale | Land at St Hilary | 0.01 | Cowbridge / Llanblethian Town Council | W01001084 |
| Comm/218 | Cowbridge | Rural Vale | Stalling Down (West of St Hilary's Common) | 7.89 | Vale of Glamorgan Council | W01001084 |
| Comm/208 | Dinas Powys | Rural Vale | Land on outskirts of Dinas Powys | 0.09 | Dinas Powys Community Council | W01001086 |
| Comm/206 | Dinas Powys | Rural Vale | Cross Common | 3.29 | Dinas Powys Community Council | W01001089 |
| Comm/205 | Dinas Powys | Rural Vale | Dinas Powys Common | 10.50 | Dinas Powys CC | W01001086 |
| Comm/209 | Dinas Powys | Rural Vale | Gower Common | 2.16 | Michaelston le Pit Community Council | W01001090 |
| Comm/227 | Llandow/Ewenny | Rural Vale | St Brides Road, Ewenny | 0.06 | Ogwr Council | W01001105 |
| Comm/211 | Llandow/Ewenny | Rural Vale | Mynydd Ruthin | 28.92 | Llanfair Court / Ruthin Quarry | W01001105 |
| Comm/212 | Llandow/Ewenny | Rural Vale | St Mary Hill | 0.82 | Llanfair Court | W01001105 |
| Comm/220 | Llantwit Major | Rural Vale | Monknash Green | 0.10 | Blaen y Cwm | W01001110 |
| Comm/221 | Llantwit Major | Rural Vale | Land at Monknash | 0.10 | Unknown | W01001110 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Comm/223 | Llantwit Major | Rural Vale | Land SE of Monknash | 0.08 | Unknown | W01001110 |
| Comm/225 | Llantwit Major | Rural Vale | Land east of Broughton | 0.13 | Unknown | W01001110 |
| Comm/222 | Llantwit Major | Rural Vale | Land at Monkton | 0.55 | Unknown | W01001110 |
| Comm/203 | St. Brides Major | Rural Vale | Ogmore Commons & Old Castle Down | 402.46 | Dunraven Estates | W01001127 |
| Comm/213 | St. Brides Major | Rural Vale | Green Uchaf, Trepit, Beacon Tower | 1.67 | Duchy of Lancaster | W01001128 |
| Comm/219 | St. Brides Major | Rural Vale | Green Isaf Common, Wick | 1.33 | Duchy of Lancaster | W01001128 |
| Comm/204 | Wenvoe | Rural Vale | St Lythans Down | 11.42 | Traherne Estates | W01001135 |

**Total Sites: 24** **Total Area (Ha): 549.37**

## Grasslands

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Grass/48 | Cadoc | Barry | Churchfields, Brookfield Drive | 2.03 | Vale of Glamorgan Council | W01001072 |
| Grass/47 | Cadoc | Barry | Cassy Hill Open Space, Church Terrace | 0.97 | Vale of Glamorgan Council | W01001072 |
| Grass/56 | Court | Barry | Stream Field, Dyfan Road | 2.47 | Vale of Glamorgan Council | W01001080 |
| Grass/687 | Cowbridge | Rural Vale | Land to the North and West of Llanblethian Castle | 4.57 | Private | W01001083 |
| Grass/823 | Llantwit Major | Rural Vale | Paddock at College Street, Llantwit Major | 0.26 | Private | W02000247 |
| Grass/824 | Llantwit Major | Rural Vale | Paddock at College Gardens | 0.23 | Private | W02000247 |
| Grass/818 | St. Brides Major | Rural Vale | Land between Slon Lane and B4265 | 1.00 | | W01001127 |
| Grass/66 | Stanwell | Penarth | St.Cyres Open Space, St Davids Crescent | 3.04 | Vale of Glamorgan Council | W01001129 |

**Total Sites: 8** **Total Area (Ha): 14.57**

## Scrubland

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Scrub/641 | Cadoc | Barry | Scrubland to the east of Bastian Close | 0.36 | Vale of Glamorgan Council | W01001069 |
| Scrub/675 | Cowbridge | Rural Vale | Scrubland surrounding River Thaw south of A48 | 1.83 | Private ownership | W01001084 |
| Scrub/676 | Cowbridge | Rural Vale | Scrubland to the rear of Cowbridge Leisure Centre | 3.19 | Vale of Glamorgan Council / Private | W01001084 |
| Scrub/688 | Cowbridge | Rural Vale | Land South of Bear Field adjacent to River Thaw | 7.02 | Private | W01001083 |
| Scrub/678 | Cowbridge | Rural Vale | Scrubland in front of Limes Court Cemetery | 0.12 | Private | W01001082 |
| Scrub/651 | Gibbonsdown | Barry | Scrubland South of Bryn Hafren Comprehensive School | 3.10 | Vale of Glamorgan Council | W01001094 |
| Scrub/616 | Illtyd | Barry | Scruband at the South of Ysgol Gyfun Bro Morgannwg | 0.67 | Vale of Glamorgan Council | W01001103 |
| Scrub/673 | Llantwit Major | Rural Vale | Scrubland south of St Illtud's Church | 1.51 | Private | W01001107 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Scrub/665 | Llantwit Major | Rural Vale | Land between B4265 and Gaskell Close | 2.56 | Vale of Glamorgan Council / Private | W01001106 |
| Scrub/330 | Llantwit Major | Rural Vale | Land behind 9 - 19 Ham Lane South | 0.28 | Vale of Glamorgan Council | W01001109 |
| Scrub/74 | Rhoose | Rural Vale | Rhoose Point | 31.62 | Vale of Glamorgan Council | W01001118 |
| Scrub/860 | Stanwell | Penarth | Scrubland to the rear of Cedar Way | 2.49 | Vale of Glamorgan Council | W01001129 |

**Total Sites: 12** **Total Area (Ha): 54.75**

## Woodland

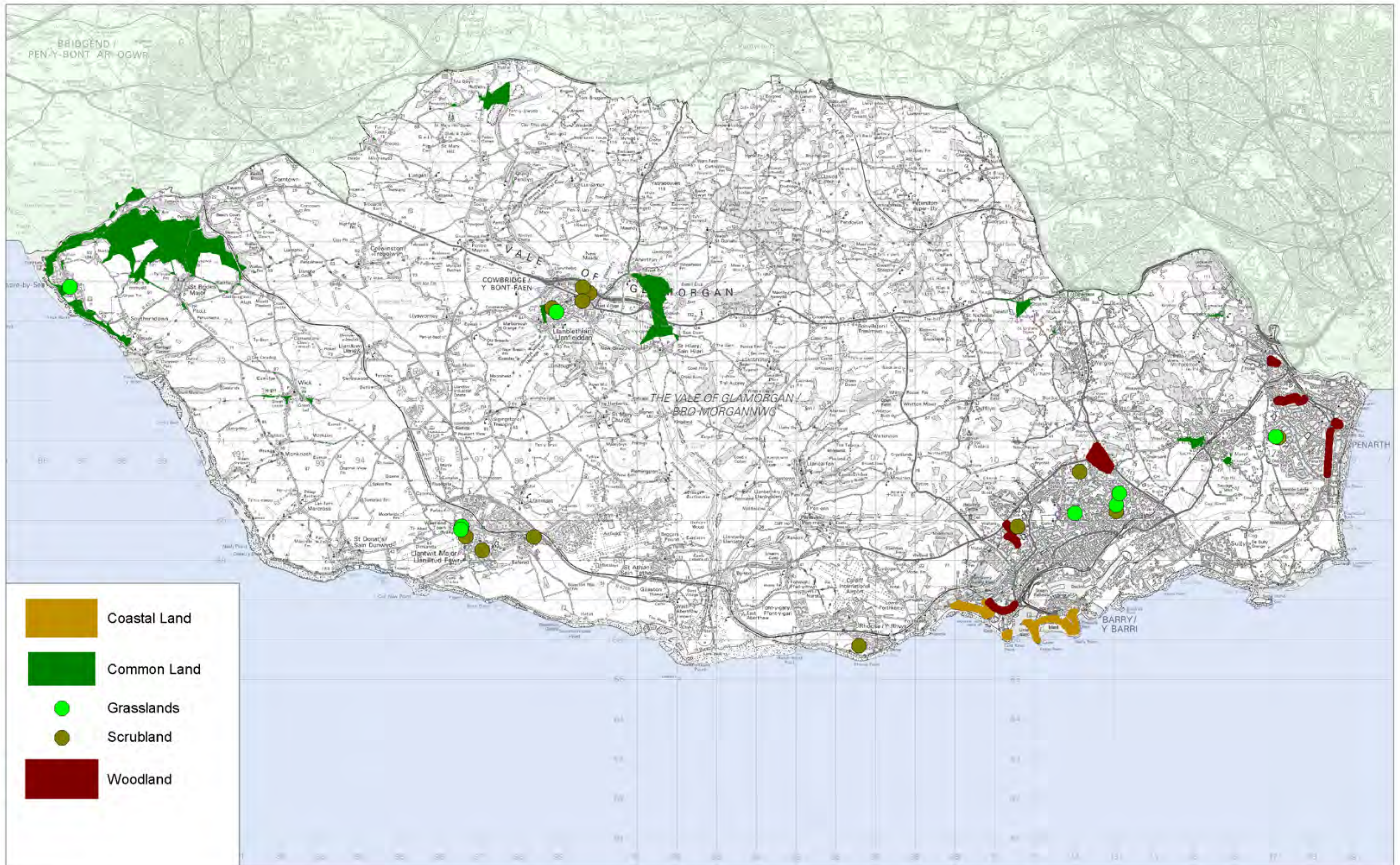
| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Wood/597 | Baruc | Barry | Woodland adjoining railway line at Romilly Park | 2.54 | Network Rail | W01001059 |
| Wood/658 | Cadoc | Barry | Pencoedtre Wood | 16.41 | Private | W01001072 |
| Wood/711 | Cornerswell | Penarth | Woodland North of Tennyson Road | 4.64 | | W01001076 |
| Wood/610 | Illtyd | Barry | Woodland Adjacent to Severn Avenue Playing Fields | 0.57 | Vale of Glamorgan Council | W01001099 |
| Wood/611 | Illtyd | Barry | Woodland North of Cwm Talwg on Severn Avenue | 1.26 | Vale of Glamorgan Council | W01001103 |
| Wood/615 | Illtyd | Barry | Woodland to the rear of 1 Usk Way | 0.19 | Vale of Glamorgan Council | W01001103 |
| Wood/614 | Illtyd | Barry | Woodland to the South West of Barry Comprehensive | 0.48 | Vale of Glamorgan Council | W01001103 |
| Wood/71 | Llandough | Rural Vale | Cogan Pill, Cogan Pill Road | 1.07 | Vale of Glamorgan Council | W01001104 |
| Wood/359 | Plymouth | Penarth | Disused railway track between Westbourne Rd & Plymouth Rd | 2.00 | Vale of Glamorgan Council | W01001116 |
| Wood/716 | St. Augustine's | Penarth | Woodland behind Glendale Hotel, Plymouth Road | 1.23 | Vale of Glamorgan Council / Private | W01001025 |
| Wood/870 | Wenvoe | Rural Vale | Woodland adjacent to Mary Immaculate High School | 3.81 | Vale of Glamorgan Council | W01001136 |

**Total Sites: 11** **Total Area (Ha): 34.20**

**Sites Total: 60** **Grand Total of Typology (Ha): 677.31**

Open Space Assessment

Distribution of Natural and Semi Natural Greenspaces



# Outdoor Sports Facilities

## Bowling Greens

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Bowl/463 | Baruc | Barry | Barry Athletic Bowls Club, Paget Road, Barry Island | 0.19 | Earl of Plymouth Estates | W01001061 |
| Bowl/462 | Baruc | Barry | Barry Romilly Bowling Club, Romilly Park | 0.26 | Vale of Glamorgan Council | W01001059 |
| Bowl/191 | Buttrills | Barry | Barry Central Bowls Club, Gladstone Gardens | 0.27 | Vale of Glamorgan Council | W01001063 |
| Bowl/464 | Cadoc | Barry | Cadoxton Bowling Club, Victoria Park Road, Cadoxton | 0.19 | Vale of Glamorgan Council | W01001071 |
| Bowl/192 | Cowbridge | Rural Vale | Cowbridge Bowling Green, The Broadshoard | 0.26 | Vale of Glamorgan Council | W01001084 |
| Bowl/468 | Dinas Powys | Rural Vale | Sunnycroft Lane, The Murch, Dinas Powys | 0.20 | Vale of Glamorgan Council | W01001087 |
| Bowl/465 | Dinas Powys | Rural Vale | Dinas Powys Bowls Club, St Andrews Road | 0.29 | Private | W01001086 |
| Bowl/190 | Illtyd | Barry | Millwood Bowling Green, Ffordd Cwm Cidi | 0.23 | Vale of Glamorgan Council | W01001100 |
| Bowl/193 | Llantwit Major | Rural Vale | Llantwit Major Bowling Club, Boverton Road | 0.22 | Private | W01001109 |
| Bowl/469 | Plymouth | Penarth | Windsor Bowling Club, Robinswood Crescent | 0.42 | Private | W01001116 |
| Bowl/461 | Rhoose | Rural Vale | Rhoose Bowling Club, Celtic Way, Fontygary | 0.24 | Vale of Glamorgan Council | W01001120 |
| Bowl/471 | St. Augustine's | Rural Vale | Belle Vue Bowling Club, Albert Crescent | 0.17 | Vale of Glamorgan Council | W01001124 |
| Bowl/470 | St. Augustine's | Penarth | Penarth Bowling Club, Rectory Road | 0.32 | Penarth Bowling Club | W01001125 |
| Bowl/466 | Sully | Rural Vale | Smithies Avenue, Sully | 0.20 | Vale of Glamorgan Council | W01001133 |
| Bowl/830 | Sully | Rural Vale | Sully Sports and Social Club | 0.21 | Private | W01001133 |

**Total Sites: 15** **Total Area (Ha): 3.67**

## Cricket Pitch

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| CR/594 | Baruc | Barry | Barry Athletic Club Cricket Ground, Barry Island | 1.85 | Earl of Plymouth Estates | W01001061 |
| CR/838 | Llandow/Ewenny | Rural Vale | Ewenny & Corntown Cricket Club, Corntown | 3.81 | Leased to the Vale of Glamorgan Council | W01001105 |
| CR/886 | St. Brides Major | Rural Vale | Southerndown Cricket Pitch | 1.14 |  | W01001127 |
| CR/865 | Sully | Rural Vale | Sully Centurions Cricket Pitch, Glebe Field, Sully | 3.44 | Private | W01001133 |

**Total Sites: 4** **Total Area (Ha): 10.24**

## Golf Course

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Golf/734 | Dinas Powys | Rural Vale | Dinas Powys Golf Club | 43.11 | Private | W01001086 |
| Golf/738 | Dinas Powys | Rural Vale | St Andrew's Major Golf club | 33.08 | Private | W01001086 |
| Golf/732 | Dyfan | Rural Vale | Brynhill Golf Club, Port Road, Barry | 50.02 | Private | W01001091 |
| Golf/839 | Llandow/Ewenny | Rural Vale | Bridgend Golf Complex, A48 Crack Hill | 9.87 | Private | W01001105 |
| Golf/739 | Llandow/Ewenny | Rural Vale | St Mary's Hotel Golf Club, Ruthin | 47.95 | Private | W01001105 |
| Golf/735 | Peterston-super-Ely | Rural Vale | The Vale Hotel, Golf and Spa Resort | 96.57 | Private | W01001113 |
| Golf/698 | Plymouth | Penarth | Glamorganshire Golf Course, Lavernock Road, Penarth | 45.24 | Private | W01001114 |
| Golf/697 | Plymouth | Penarth | Miniature Golf Course, Cliff Walk, Penarth | 3.24 | Vale of Glamorgan Council | W01001114 |
| Golf/740 | St. Athan | Rural Vale | St Athan Golf Club | 22.84 | Ministry of Defence | W01001122 |
| Golf/741 | St. Brides Major | Rural Vale | Southerndown Golf Club | 94.19 | Private | W01001127 |
| Golf/737 | Wenvoe | Rural Vale | Wenvoe Castle Golf Course | 61.80 | Private | W01001135 |
| Golf/733 | Wenvoe | Rural Vale | Cottrell Park Golf Club | 111.73 | Private | W01001135 |

**Total Sites: 12** **Total Area (Ha): 619.64**

## School Playing Fields

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| School/603 | Baruc | Barry | All Saints Church in Wales Primary School, Cwm Parc | 0.48 | Vale of Glamorgan Council | W01001098 |
| School/606 | Buttrills | Barry | Ysgol Sant Cyrig, College Road, Barry | 0.38 | Vale of Glamorgan Council | W01001064 |
| School/608 | Buttrills | Barry | Gladstone County Schools, Gladstone Road | 0.86 | Vale of Glamorgan Council | W01001064 |
| School/627 | Cadoc | Barry | Education Centre, Palmerston Road | 0.19 | Vale of Glamorgan Council | W01001071 |
| School/774 | Cadoc | Barry | Cadoxton Nursery, Victoria Park Road | 0.08 | Vale of Glamorgan Council | W01001069 |
| School/628 | Cadoc | Barry | Community Centre at Edmund Place, Barry | 0.20 | Vale of Glamorgan Council | W01001071 |
| School/773 | Cornerswell | Penarth | Cogan Nursery, Cawnpore Street, Cogan | 0.05 | Vale of Glamorgan Council | W01001076 |
| School/714 | Cornerswell | Penarth | Ysgol Gymraeg Pen-y-Garth, Sully Road, Penarth | 0.95 | Vale of Glamorgan Council | W01001077 |
| School/713 | Cornerswell | Penarth | St Cyres County Comprehensive, St Cyres Road | 5.42 | Vale of Glamorgan Council | W01001077 |
| School/712 | Cornerswell | Penarth | Ashgrove School | 1.11 | Vale of Glamorgan Council | W01001077 |

| | | | | | | |
|---|---|---|---|---|---|---|
| School/709 | Cornerswell | Penarth | Fairfield County Primary School | 0.67 | Vale of Glamorgan Council | W01001075 |
| School/648 | Court | Barry | Ysgol Maes Dyfan | 0.89 | Vale of Glamorgan Council | W01001081 |
| School/695 | Cowbridge | Rural Vale | Cowbridge School | 2.59 | Vale of Glamorgan Council | W01001084 |
| School/681 | Cowbridge | Rural Vale | Y Bont Faen Primary School | 1.77 | Vale of Glamorgan Council | W01001082 |
| School/780 | Cowbridge | Rural Vale | Llan-fair County Primary School | 0.30 | Vale of Glamorgan Council | W01001083 |
| School/770 | Dinas Powys | Rural Vale | St Richard Gwyn R/C High School | 3.75 | Vale of Glamorgan Council | W01001086 |
| School/771 | Dinas Powys | Rural Vale | St Cyres Comprehensive | 4.76 | Vale of Glamorgan Council | W01001088 |
| School/775 | Dinas Powys | Rural Vale | Dinas Powys Infants School, Cardiff Road | 1.80 | Vale of Glamorgan Council | W01001087 |
| School/776 | Dinas Powys | Rural Vale | Murch County Junior School | 1.49 | Vale of Glamorgan Council | W01001087 |
| School/861 | Dinas Powys | Rural Vale | Dinas Powys Church in Wales Primary School | 0.80 | Vale of Glamorgan Council | |
| School/642 | Dyfan | Barry | St Helens RC Junior School | 0.30 | Vale of Glamorgan Council | W01001093 |
| School/649 | Gibbonsdown | Barry | Bryn Hafren Comprehensive School | 8.88 | Vale of Glamorgan Council | W01001097 |
| School/647 | Gibbonsdown | Barry | Oakfield Primary School, Gibbonsdown | 1.47 | Vale of Glamorgan Council | W01001096 |
| School/777 | Gibbonsdown | Barry | Colcot Primary School | 0.29 | Vale of Glamorgan Council | W01001097 |
| School/622 | Gibbonsdown | Barry | Colcot County Primary School | 0.94 | Vale of Glamorgan Council | W01001097 |
| School/617 | Illtyd | Barry | Ysgol Gyfun Bro Morgannwg | 2.51 | Vale of Glamorgan Council | W01001103 |
| School/618 | Illtyd | Barry | Barry Comprehensive School | 7.19 | Vale of Glamorgan Council | W01001103 |
| School/600 | Illtyd | Barry | Romilly Junior School | 0.52 | Vale of Glamorgan Council | W01001101 |
| School/715 | Llandough | Penarth | Llandough County Primary School | 0.75 | Vale of Glamorgan Council | W01001104 |
| School/843 | Llandow/Ewenny | Rural Vale | Llangan Primary School | 0.28 | Vale of Glamorgan Council | W01001105 |
| School/785 | Llandow/Ewenny | Rural Vale | St David's Church in Wales Primary School | 0.28 | Vale of Glamorgan Council | W01001105 |
| School/674 | Llantwit Major | Rural Vale | St Illtyd Junior and Infant Schools | 1.82 | Vale of Glamorgan Council | W01001110 |
| School/669 | Llantwit Major | Rural Vale | Llanilltud Fawr County Infants' School | 0.74 | Vale of Glamorgan Council | W01001107 |
| School/668 | Llantwit Major | Rural Vale | Llanilltud Fawr Comprehensive High School | 6.75 | Vale of Glamorgan Council | W01001106 |
| School/659 | Llantwit Major | Rural Vale | Eagleswell County Primary School | 1.65 | Vale of Glamorgan Council | W01001106 |
| School/887 | Peterston-super-Ely | Rural Vale | Pendoylan Church in Wales Primary School | 0.48 | Vale of Glamorgan council | W01001113 |
| School/781 | Peterston-super-Ely | Rural Vale | Peterston-super-Ely C/W | 0.64 | Vale of Glamorgan Council | W01001113 |
| School/700 | Plymouth | Penarth | Evenlode Primary School | 0.99 | Vale of Glamorgan Council | W01001115 |
| School/779 | Rhoose | Rural Vale | Llancarfan Primary School | 0.13 | Vale of Glamorgan Council | W01001119 |
| School/782 | Rhoose | Rural Vale | Rhws County Primary School | 0.68 | Vale of Glamorgan Council | W01001117 |
| School/783 | St. Athan | Rural Vale | St Athan County Junior and Infants School | 0.76 | Vale of Glamorgan Council | W01001121 |
| School/772 | St. Augustine's | Penarth | Bute Cottage Nursery, Bute Lane, Off Grove Place | 0.13 | Vale of Glamorgan Council | W01001125 |
| School/784 | St. Brides Major | Rural Vale | St Bride's Major Church in Wales Primary School | 0.47 | Vale of Glamorgan Council | W01001128 |

| | | | | | | |
|---|---|---|---|---|---|---|
| School/789 | St. Brides Major | Rural Vale | Wick and Marcross Church in Wales Primary School | 0.39 | Vale of Glamorgan Council | W01001128 |
| School/786 | Stanwell | Penarth | St Joseph's Roman Catholic Primary School | 0.80 | Vale of Glamorgan Council | W01001129 |
| School/704 | Stanwell | Penarth | Stanwell Comprehensive School | 4.10 | Vale of Glamorgan Council | W01001131 |
| School/788 | Sully | Rural Vale | Sully County Primary School | 0.40 | Vale of Glamorgan Council | W01001133 |
| School/778 | Wenvoe | Rural Vale | Gwenfo Church in Wales Primary School | 0.41 | Vale of Glamorgan Council | W01001136 |
| School/787 | Wenvoe | Rural Vale | St Nicholas Church in Wales Primary School | 1.01 | Vale of Glamorgan Council | W01001135 |

**Total Sites: 49** **Total Area (Ha): 74.30**

## Sports Pitch

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| SP/17 | Baruc | Barry | Maslin Park, Plymouth Road | 1.17 | Vale of Glamorgan Council | W01001061 |
| SP/794 | Buttrills | Rural Vale | Jenner Park Stadium | 0.97 | Vale of Glamorgan Council | W01001065 |
| SP/21 | Cornerswell | Penarth | Cogan Recreation Ground, Andrew Road | 5.61 | Vale of Glamorgan Council | W01001076 |
| SP/27 | Cornerswell | Penarth | Wordsworth Avenue Playing Field, Wordsworth Avenue | 0.65 | Vale of Glamorgan Council | W01001077 |
| SP/25 | Cornerswell | Penarth | Victoria Park, Coleridge Avenue | 1.03 | Vale of Glamorgan Council | W01001075 |
| SP/19 | Court | Barry | Pencoedtre Park Playing Fields, St Brides Way | 6.36 | Vale of Glamorgan Council | W01001081 |
| SP/532 | Cowbridge | Rural Vale | Graig Penllyne | 1.26 | Private | W01001085 |
| SP/44 | Cowbridge | Rural Vale | Llanblethian Playing Fields | 0.57 | Cowbridge with Llanblethian Town Council | W01001083 |
| SP/305 | Cowbridge | Rural Vale | West Village Playing Field, nr Westgate | 1.08 | Vale of Glamorgan Council | W01001084 |
| SP/28 | Cowbridge | Rural Vale | Bear Field | 4.55 | Vale of Glamorgan Council | W01001084 |
| SP/693 | Cowbridge | Rural Vale | Playing Fields at Cowbridge Leisure Centre | 2.10 | Vale of Glamorgan Council | W01001082 |
| SP/34 | Dinas Powys | Rural Vale | Murch Recreation Ground, Sunnycroft Lane, Dinas Powys | 1.65 | Vale of Glamorgan Council | W01001087 |
| SP/35 | Dinas Powys | Rural Vale | Parc Bryn y Don, Dinas Powys | 9.19 | Vale of Glamorgan Council | W01001089 |
| SP/619 | Dyfan | Barry | Colcot Sports Centre | 4.75 | Vale of Glamorgan Council | W01011091 |
| SP/16 | Dyfan | Barry | Buttrills Playing Field, Woodham Park | 9.85 | Vale of Glamorgan Council | W01001092 |
| SP/18 | Gibbonsdown | Barry | Merthyr Dyfan Recreation Ground, Merthyr Dyfan Road, Barry | 5.77 | Vale of Glamorgan Council | W01001095 |
| SP/52 | Gibbonsdown | Barry | Meggitt Road, Colcot | 1.19 | Vale of Glamorgan council | W01001097 |
| SP/20 | Illtyd | Barry | Severn Avenue Playing Fields, Severn Avenue | 2.68 | Vale of Glamorgan Council | W01001099 |
| SP/23 | Llandough | Penarth | King George V Playing Fields, Lewis Road, Llandough | 2.92 | Vale of Glamorgan Council | W01001104 |
| SP/32 | Llandow/Ewenny | Rural Vale | Colwinston Playing Fields | 1.21 | Vale of Glamorgan Council | W01001105 |
| SP/33 | Llandow/Ewenny | Rural Vale | Corntown Recreation Ground, Corntown Road | 2.56 | Leased to Vale of Glamorgan Council | W01001105 |
| SP/85 | Llandow/Ewenny | Rural Vale | George V Memorial Field, Treoes | 0.67 | Llangan Community Council | W01001105 |

| | | | | | | |
|---|---|---|---|---|---|---|
| SP/43 | Llantwit Major | Rural Vale | Llantwit Major Rugby Club, Boverton Road, Llantwit Major | 3.25 | Llantwit Major Town Council | W01001107 |
| SP/41 | Llantwit Major | Rural Vale | Windmill Lane Recreation Ground, Llantwit Major | 10.31 | Vale of Glamorgan Council | W01001112 |
| SP/793 | Peterston-super-Ely | Rural Vale | Playing Fields west of St Peter's Church | 1.64 | Vale of Glamorgan Council | W01001113 |
| SP/39 | Peterston-super-Ely | Rural Vale | Welsh St. Donats Playing Field, Welsh St. Donats | 1.94 | Vale of Glamorgan Council | W01001113 |
| SP/22 | Plymouth | Penarth | Cwrt y Vil Playing Field | 5.12 | Vale of Glamorgan Council | W01001115 |
| SP/24 | Plymouth | Penarth | Penarth Athletic Field, Lavernock Road | 4.96 | Vale of Glamorgan Council | W01001114 |
| SP/30 | Rhoose | Rural Vale | Celtic Way Recreation Ground, Celtic Way | 2.37 | Vale of Glamorgan Council | W01001120 |
| SP/31 | Rhoose | Rural Vale | Ceri Road Sports Ground, Rhoose | 3.35 | Leased / Owned by Vale of Glamorgan Council | W01001118 |
| SP/826 | St. Athan | Rural Vale | RAF Sports field at Cowbridge Road, St Athan | 1.68 | Private | W01001122 |
| SP/37 | St. Athan | Rural Vale | St.Athan Recreation Ground, Higher End, St. Athan | 3.04 | Vale of Glamorgan Council | W01001121 |
| SP/38 | St. Brides Major | Rural Vale | St.Brides Playing Fields, Heol-y-Slough, St. Brides Major | 1.83 | Vale of Glamorgan Council | W01001128 |
| SP/40 | St. Brides Major | Rural Vale | Wick Rugby Field, Cwrt-yr-Felin, Wick | 1.32 | Vale of Glamorgan Council | W01001128 |
| SP/29 | Sully | Rural Vale | Burnham Avenue Playing Fields, Burnham Avenue, Sully | 3.22 | Vale of Glamorgan Council | W01001133 |
| SP/727 | Sully | Rural Vale | Sully Sports and Social Club | 11.97 | Private | W01001133 |
| SP/747 | Wenvoe | Rural Vale | Football Ground, Station Road | 0.64 | Wenvoe Community Council | W01001136 |
| SP/746 | Wenvoe | Rural Vale | Sports Pitches South of Station Road | 3.97 | Vale of Glamorgan Council | W01001136 |

**Total Sites: 38** **Total Area (Ha): 128.40**

## Tennis Court

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| TC/742 | Baruc | Barry | Barry Athletic Club | 0.16 | Barry Athletic Club | W01001061 |
| TC/752 | Baruc | Barry | Romilly Park | 0.17 | Vale of Glamorgan Council | W01001059 |
| TC/730 | Buttrills | Barry | Tennis Courts, Alexandra Gardens | 0.15 | Vale of Glamorgan Council | W01001064 |
| TC/753 | Buttrills | Rural Vale | Gladstone Gardens | 0.12 | Vale of Glamorgan Council | W01001066 |
| TC/694 | Cowbridge | Rural Vale | Cowbridge Leisure Centre | 0.22 | Vale of Glamorgan Council | W01001082 |
| TC/836 | Cowbridge | Rural Vale | Tennis Courts at Graig Penllyne | 0.11 | Private | W01001085 |
| TC/743 | Dinas Powys | Rural Vale | Tennis Courts, St Andrews Road, Dinas Powys | 0.65 | Dinas Powys Lawn Tennis Club | W01001086 |
| TC/745 | Dinas Powys | Rural Vale | Parc Bryn y Don, Dinas Powys | 0.12 | Vale of Glamorgan Council | W01001089 |
| TC/749 | Dinas Powys | Rural Vale | Sunnycroft Lane Adjacent to Sports Pitch and Bowling Green | 0.11 | Vale of Glamorgan Council | W01101087 |
| TC/801 | Illtyd | Barry | Tennis Courts at Ffordd Cwm Cidi | 0.11 | Vale of Glamorgan Council | W01001100 |
| TC/853 | Llandough | Penarth | Tennis Courts near Greenway Close, Llandough | 0.13 | Vale of Glamorgan Council | |

| TC/750 | Llandow/Ewenny | Rural Vale | Colwinston Playing Fields | 0.06 | Vale of Glamorgan Council | W01001105 |
|---|---|---|---|---|---|---|
| TC/696 | Llantwit Major | Rural Vale | 4 Courts at Llantwit Major Rugby Club | 0.21 | Llantwit Major Rugby Club | W01001109 |
| TC/744 | Peterston-super-Ely | Rural Vale | Peterston-super-Ely Playing Fields | 0.15 | Vale of Glamorgan Council | W01001113 |
| TC/795 | Plymouth | Penarth | 6 Tennis Courts at Penarth Athletic Field | 0.30 | Vale of Glamorgan Council | W01001114 |
| TC/702 | Plymouth | Penarth | Courts adjacent to Windsor Bowling Green | 0.38 | Private | W01001116 |
| TC/701 | Plymouth | Penarth | Courts at Evenlode Primary School | 0.22 | Vale of Glamorgan Council | W01001115 |
| TC/751 | Rhoose | Rural Vale | Celtic Way Recreation Ground | 0.11 | Vale of Glamorgan Council | W01001120 |
| TC/805 | St. Athan | Rural Vale | Tennis Court at Flemingston Road | 0.22 | Defence Estates? | W01001122 |
| TC/717 | St. Augustine's | Penarth | Rectory Road | 0.57 | Penarth Tennis Club | W01001125 |
| TC/748 | Wenvoe | Rural Vale | Station Road | 0.11 | Vale of Glamorgan Council | W01001136 |

**Total Sites: 21** **Total Area (Ha): 4.38**

## Athletics Track

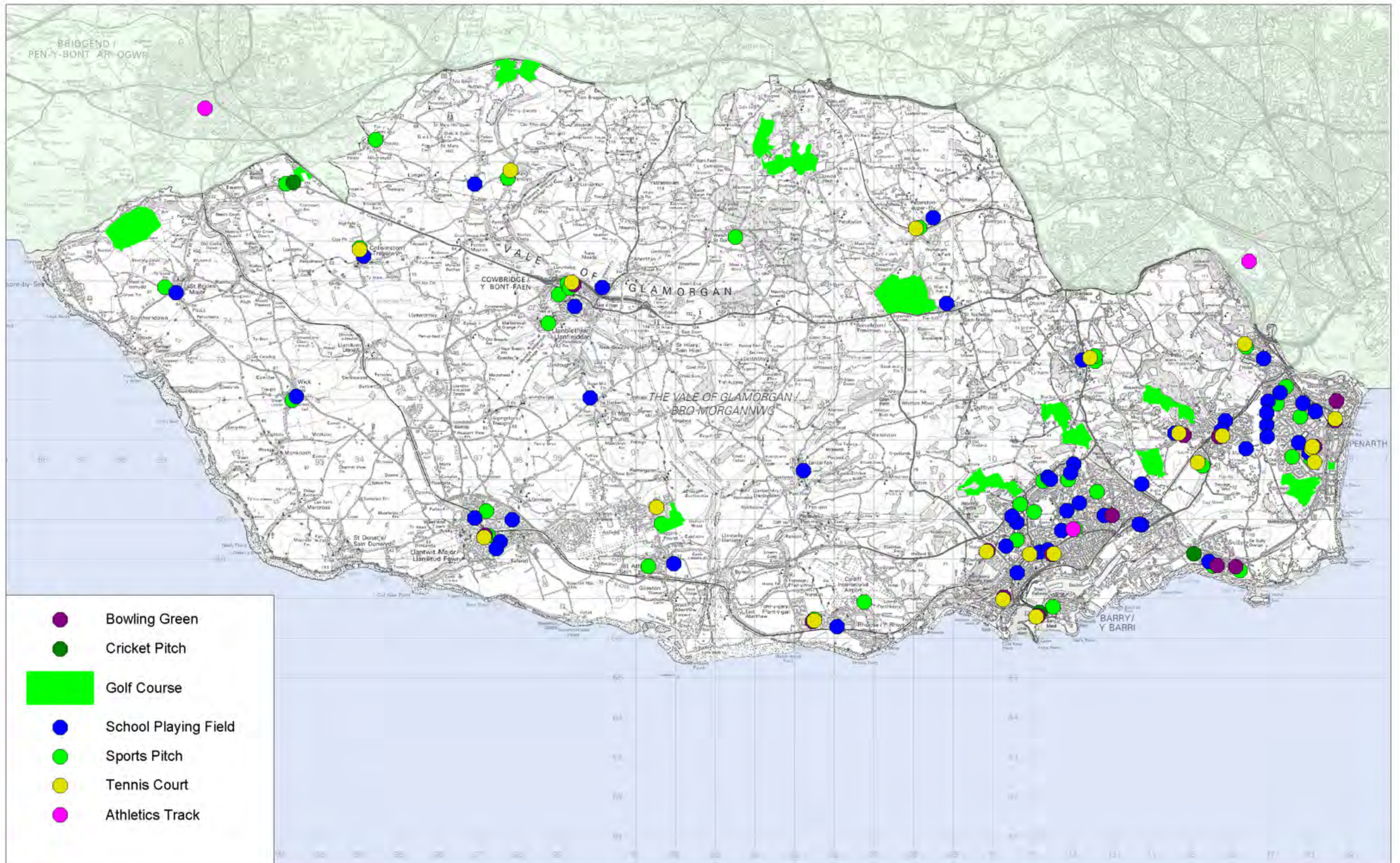
| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Track/519 | Buttrills | Barry | Jenner Park Stadium | 1.44 | Vale of Glamorgan Council | W01001065 |

**Total Sites: 1** **Total Area (Ha): 1.44**

**Sites Total: 140** **Grand Total of Typology (Ha): 842.07**

Open Space Assessment

Distribution of Outdoor Sports Facilities



# Amenity Greenspace

## Greenspace in and around housing and other premises

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Green/493 | Baruc | Barry | Land adj to 53 Amherst Crescent, Barry Island | 0.07 | Vale of Glamorgan Council | W01001061 |
| Green/433 | Baruc | Barry | Land east of Mc Quade Place | 0.07 | Vale of Glamorgan Council | W01001061 |
| Green/643 | Buttrills | Barry | Land in front of 41-47 Southey Street | 0.09 | | W01001065 |
| Green/267 | Buttrills | Barry | Jenner Park, Gladstone Road, Barry | 0.30 | Vale of Glamorgan Council | W01001065 |
| Green/269 | Buttrills | Barry | Site of Woodlands House, Woodlands Road, Barry Dock | 0.25 | Vale of Glamorgan Council | W01001063 |
| Green/282 | Buttrills | Barry | Land north of Maes-yr-Ysgol | 0.37 | | W01001064 |
| Green/636 | Cadoc | Barry | Land Surrounding Cold Brook | 1.66 | | W01001072 |
| Green/632 | Cadoc | Barry | Strip of Land Running from Oldmill Road to Fouracres Close | 0.57 | | W01001067 |
| Green/629 | Cadoc | Barry | Strip of land running north from Langlands Road | 0.34 | | W01001067 |
| Green/487 | Cadoc | Barry | Land adj to 31 Heol Fioled, Pencoedtre | 0.03 | | W01001072 |
| Green/484 | Cadoc | Barry | West side of Heol Gwerthyd, Pencoedtre | 0.06 | Vale of Glamorgan Council | W01001072 |
| Green/638 | Cadoc | Barry | Avon Close | 0.09 | | W01001067 |
| Green/639 | Cadoc | Barry | Stratford Green | 0.15 | | W01001067 |
| Green/640 | Cadoc | Barry | Hathaway Place | 0.08 | | W01001067 |
| Green/637 | Cadoc | Barry | Land to the west of 31 Ffordd Elin | 0.06 | | W01001068 |
| Green/257 | Cadoc | Barry | Land at corner of Caradoc Crescent and Cardiff Road, Cadoxton | 0.11 | Vale of Glamorgan Council | W01001071 |
| Green/250 | Cadoc | Barry | Greenway Court, Palmerston | 0.06 | Vale of Glamorgan Council | W01001068 |
| Green/256 | Cadoc | Barry | Land Adjacent to Education Centre, Cardiff Road | 0.16 | Vale of Glamorgan Council | W01001071 |
| Green/857 | Cadoc | Barry | Dow Corning (1), Cardiff Road, Barry | 0.12 | Dow Corning | |
| Green/858 | Cadoc | Barry | Dow Corning (2), Cardiff Road, Barry | 0.24 | Dow Corning | |
| Green/248 | Castleland | Barry | Land adj to Waverley Court, Dock View Road, Barry Dock | 0.13 | Vale of Glamorgan Council | W01001073 |
| Green/494 | Castleland | Barry | Land at junction of Fryatt Street & Coronation Street | 0.03 | Vale of Glamorgan Council | W01001073 |
| Green/492 | Castleland | Barry | Land adj to Cwrt Trem yr Ynys, Thompson Street | 0.02 | Housing Association | W01001073 |
| Green/294 | Castleland | Barry | Gladstone Road Bridge Approach West | 0.71 | Vale of Glamorgan Council | W01001074 |
| Green/474 | Castleland | Barry | Gladstone Road Bridge Approach East | 0.50 | Vale of Glamorgan Council | W01001074 |
| Green/432 | Castleland | Barry | Barry Docks Office | 0.37 | Vale of Glamorgan Council / ABP | W01001073 |
| Green/435 | Castleland | Barry | Land within Thompson Street Flats Complex | 0.16 | Housing Association | W01001073 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Green/354 | Cornerswell | Penarth | Mountjoy Crescent | 0.18 | Vale of Glamorgan Council | W01001078 |
| Green/845 | Cornerswell | Penarth | Wordsworth Avenue, Penarth | 0.05 | Vale of Glamorgan Council | W01001075 |
| Green/759 | Court | Barry | Land adj to 17 Dyfnallt Road, Cadoxton | 0.02 | | W01001081 |
| Green/443 | Court | Barry | Land adj to 24 O'Donnell Road | 0.02 | Vale of Glamorgan Council | W01001081 |
| Green/790 | Court | Barry | Land at Elfed Way | 0.06 | | W01001081 |
| Green/446 | Court | Barry | Land adj to 3 Dyfnallt Road | 0.04 | Vale of Glamorgan Council | W01001081 |
| Green/447 | Court | Barry | Land behind 1 - 3 Cynan Close | 0.07 | Vale of Glamorgan Council | W01001081 |
| Green/441 | Court | Barry | Land behind 25 - 37 O'Donnell Road | 0.09 | Vale of Glamorgan Council | W01001081 |
| Green/252 | Court | Barry | Aneurin Road, Barry Dock | 0.33 | Vale of Glamorgan Council | W01001080 |
| Green/449 | Court | Barry | Land adj to 46 Dylan Crescent | 0.02 | Vale of Glamorgan Council | W01001081 |
| Green/445 | Court | Barry | Land opp Hafren Treharne, Ar-y-Nant | 0.05 | Vale of Glamorgan Council | W01001081 |
| Green/758 | Cowbridge | Rural Vale | Land adj 43 The Verlands, Cowbridge | 0.07 | Private | W01001083 |
| Green/430 | Cowbridge | Rural Vale | Church Crescent | 0.05 | Vale of Glamorgan Council | W01001084 |
| Green/760 | Cowbridge | Rural Vale | Land in front of 18 St Owains Crescent | 0.03 | | W01001085 |
| Green/692 | Cowbridge | Rural Vale | Land at end of River Walk | 0.28 | | W01001082 |
| Green/685 | Cowbridge | Rural Vale | Primrose View, Quentin's Close | 0.05 | Vale of Glamorgan Council | W01001082 |
| Green/499 | Dinas Powys | Rural Vale | Longmeadow Drive / Laburnum Way | 0.15 | Vale of Glamorgan Council | W01001089 |
| Green/325 | Dinas Powys | Rural Vale | Land adj to 50 Caerleon Road | 0.12 | | W01001088 |
| Green/804 | Dinas Powys | Rural Vale | Land at Heol Y Frenhines, Dinas Powys | 0.05 | Vale of Glamorgan Council | W01001089 |
| Green/320 | Dinas Powys | Rural Vale | Ca'r Pwll / Drylla | 0.15 | Vale of Glamorgan Council | W01001088 |
| Green/321 | Dinas Powys | Rural Vale | Land between 49 - 51 Cae'r Odyn, Southra Park | 0.19 | Vale of Glamorgan Council | W01001089 |
| Green/285 | Dyfan | Barry | Land behind Beaumont Close and Sherbourne Close | 0.22 | Vale of Glamorgan Council | W01001091 |
| Green/283 | Dyfan | Barry | Land north of Coed Mawr, Highlight Park | 0.44 | Vale of Glamorgan Council / Private | W01001091 |
| Green/626 | Dyfan | Barry | Land to the South West of 15 Sandringham Close | 0.11 | | W01001091 |
| Green/609 | Dyfan | Barry | Land behind 42 Barrians Way | 0.05 | Vale of Glamorgan Council | W01001093 |
| Green/624 | Dyfan | Barry | Land to the west of 9 Cambourne Close | 0.07 | | W01001091 |
| Green/625 | Dyfan | Barry | Griffin Close | 0.07 | | W01001091 |
| Green/855 | Dyfan | Barry | Land at Awbrey House (1), Barry | 0.22 | Vale of Glamorgan Council | |
| Green/856 | Dyfan | Barry | Land at Awbrey House (2), Barry | 0.10 | Vale of Glamorgan Council | |
| Green/273 | Gibbonsdown | Barry | Merioneth Place | 0.03 | | W01001096 |
| Green/276 | Gibbonsdown | Barry | Land west of Caldy Close | 0.17 | Vale of Glamorgan Council | W01001095 |
| Green/272 | Gibbonsdown | Barry | Carmarthen Close | 0.03 | | W01001096 |
| Green/271 | Gibbonsdown | Barry | Radnor Green | 0.16 | | W01001096 |

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|---|---|---|---|---|---|---|
| Green/655 | Gibbonsdown | Barry | Land to the rear of 16 Coychurch Rise | 0.03 | | W01001094 |
| Green/654 | Gibbonsdown | Barry | Land on the Corner of Michaelston Close and St Brides Way | 0.08 | | W01001094 |
| Green/653 | Gibbonsdown | Barry | Land on the corner of Pendoylan Way and St Brides Close | 0.07 | | W01001094 |
| Green/652 | Gibbonsdown | Barry | Land to the rear of 51 Michaelston Close | 0.03 | | W01001094 |
| Green/299 | Gibbonsdown | Barry | Land at Port Road East/Merthyr Dyfan Road Junction | 0.58 | Vale of Glamorgan Council (part) | W01001097 |
| Green/656 | Gibbonsdown | Barry | Land to the South of Coychurch Rise | 0.04 | | W01001094 |
| Green/450 | Gibbonsdown | Barry | Manorbier Court | 0.05 | Vale of Glamorgan Council | W01001095 |
| Green/453 | Gibbonsdown | Barry | Land at the Corner of Cook Road and Francis Road | 0.10 | Vale of Glamorgan Council | W01001094 |
| Green/278 | Gibbonsdown | Barry | Dryden Terrace / Milton Road, Colcot | 0.31 | Vale of Glamorgan Council | W01001097 |
| Green/280 | Gibbonsdown | Barry | South of Port Road East | 1.66 | Vale of Glamorgan Council | W01001097 |
| Green/275 | Gibbonsdown | Barry | Land to the West of Neyland Court | 0.46 | Vale of Glamorgan Council | W01001095 |
| Green/286 | Illtyd | Barry | Enfield Drive | 0.16 | Vale of Glamorgan Council | W01001103 |
| Green/289 | Illtyd | Barry | Land between Stradling Close and Heol Sirhwi, Cwm Talwg, Barry | 0.62 | Vale of Glamorgan Council | W01001098 |
| Green/292 | Illtyd | Barry | Claude Road / Woodstock Close / Severn Avenue | 0.27 | Vale of Glamorgan Council | W01001099 |
| Green/601 | Illtyd | Barry | Land at the end of Dudley Place | 0.02 | | W01101101 |
| Green/287 | Illtyd | Barry | Land between Conway Drive and Brenig Close, Cwm Talwg, Barry | 0.44 | Vale of Glamorgan Council | W01001098 |
| Green/602 | Illtyd | Barry | Land in front of 1 - 23 Dudley Place | 0.09 | | W01001101 |
| Green/800 | Illtyd | Barry | Land between Hawthorn Road and Rhodfa Felin | 0.04 | | W01001100 |
| Green/288 | Illtyd | Barry | Land between Dovey Close and Heol Sirhwi, Cwm Talwg | 0.29 | Vale of Glamorgan Council | W01001098 |
| Green/293 | Illtyd | Barry | Land between Peterswell Road and Afan Close, Barry | 0.52 | Vale of Glamorgan Council | W01001100 |
| Green/295 | Illtyd | Barry | Ffordd Cwm Cidi | 0.15 | | W01001100 |
| Green/351 | Llandough | Penarth | Spencer Drive | 0.12 | | W01001104 |
| Green/820 | Llantwit Major | Rural Vale | Land at Greys Drive | 0.03 | Vale of Glamorgan Council | |
| Green/821 | Llantwit Major | Rural Vale | Land at Crayshaw Drive/Eagleswell Road | 0.12 | Vale of Glamorgan Council | |
| Green/791 | Llantwit Major | Rural Vale | Land in between the B4265 and Monmouth Way | 0.38 | | W01001112 |
| Green/768 | Llantwit Major | Rural Vale | Land in front of 6 Rees Court | 0.03 | | W01001111 |
| Green/767 | Llantwit Major | Rural Vale | Land in front of 1 Allen Court | 0.01 | | W01001111 |
| Green/766 | Llantwit Major | Rural Vale | Nicholl Court, Llantwit Major | 0.16 | | W01001111 |
| Green/819 | Llantwit Major | Rural Vale | Land at Bedford Rise | 0.03 | Vale of Glamorgan Council | |
| Green/671 | Llantwit Major | Rural Vale | Land in front of 27 - 28 Stallcourt Avenue | 0.07 | | W01001109 |
| Green/844 | Llantwit Major | Rural Vale | Windsor Close, Llantwit Major | 0.18 | | W01001111 |
| Green/333 | Llantwit Major | Rural Vale | Caer Mead Close | 0.08 | Vale of Glamorgan Council | W01001111 |

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|---|---|---|---|---|---|---|
| Green/337 | Llantwit Major | Rural Vale | Berry Court | 0.06 | Vale of Glamorgan Council | W01001111 |
| Green/335 | Llantwit Major | Rural Vale | Adj to 1 - 12 Carne Court | 0.10 | Vale of Glamorgan Council | W01001111 |
| Green/764 | Llantwit Major | Rural Vale | Land in front of 1 Andrews Court | 0.01 | | W01001107 |
| Green/672 | Llantwit Major | Rural Vale | Land Adjacent to St Clairs, Colhugh Street | 0.09 | | W01001109 |
| Green/765 | Llantwit Major | Rural Vale | Land in front of 15 Vachell Court | 0.02 | | W01001111 |
| Green/336 | Llantwit Major | Rural Vale | Adj to 15 - 26 Carne Court | 0.06 | Vale of Glamorgan Council | W01001111 |
| Green/664 | Llantwit Major | Rural Vale | Glanymor | 0.07 | | W01001106 |
| Green/661 | Llantwit Major | Rural Vale | Land in between Windsor Close and Caer Mead Close | 0.10 | | W01001111 |
| Green/340 | Llantwit Major | Rural Vale | Shakespeare Drive | 0.10 | Vale of Glamorgan Council | W01001106 |
| Green/660 | Llantwit Major | Rural Vale | Crawshay Court | 0.12 | | W01001111 |
| Green/409 | Peterston-super-Ely | Rural Vale | Heol St Cattwg | 0.12 | Vale of Glamorgan Council | W01001113 |
| Green/410 | Peterston-super-Ely | Rural Vale | Heol St Cattwg | 0.17 | Vale of Glamorgan Council | W01001113 |
| Green/372 | Plymouth | Penarth | Land south of 1 Heol y Brenin | 0.36 | | W01001115 |
| Green/822 | Plymouth | Penarth | Grounds of Evenlode Primary School | 0.72 | Vale of Glamorgan Council | W02000244 |
| Green/381 | Rhoose | Rural Vale | Land on west side of Readers Way | 0.14 | Vale of Glamorgan Council | W01001118 |
| Green/380 | Rhoose | Rural Vale | Mayflower Way | 0.03 | Vale of Glamorgan Council | W01001120 |
| Green/379 | Rhoose | Rural Vale | Land between 112 -116 Fontygary Road | 0.08 | Vale of Glamorgan Council | W01001120 |
| Green/378 | Rhoose | Rural Vale | Kenson Close | 0.12 | Vale of Glamorgan Council | W01001120 |
| Green/374 | Rhoose | Rural Vale | Adj to 1 - 21 Fonmon Park Road | 0.05 | Vale of Glamorgan Council | W01001117 |
| Green/812 | St. Athan | Rural Vale | Land at Lime Grove St Athan | 0.10 | | W01001122 |
| Green/300 | St. Athan | Rural Vale | Housing Estate Situated Between Clive Road and Flemingston Road | 1.24 | Vale of Glamorgan Council | W01001122 |
| Green/302 | St. Athan | Rural Vale | Lougher Place | 0.12 | Vale of Glamorgan Council | W01001121 |
| Green/814 | St. Athan | Rural Vale | Land at Ash Lane St Athan | 0.07 | | W01001122 |
| Green/475 | St. Athan | Rural Vale | Glyndwr Avenue | 0.02 | Vale of Glamorgan Council | W01001121 |
| Green/301 | St. Athan | Rural Vale | Berkrolles Avenue | 0.09 | Vale of Glamorgan Council | W01001121 |
| Green/813 | St. Athan | Rural Vale | Land at Chestnut Avenue St Athan | 0.18 | | W01001122 |
| Green/811 | St. Athan | Rural Vale | Land at Eglwys Brewys Road | 0.26 | | W01001122 |
| Green/807 | St. Athan | Rural Vale | Land at St Athan Road | 0.66 | | W01001122 |
| Green/808 | St. Athan | Rural Vale | Land at Pinewood Square St Athan | 0.29 | | W01001122 |
| Green/809 | St. Athan | Rural Vale | Land at Oak Grove St Athan | 0.19 | | W01001122 |
| Green/810 | St. Athan | Rural Vale | Land at Walnut Grove | 0.17 | | W01001122 |
| Green/815 | St. Athan | Rural Vale | Land at Cedar Road St Athan | 0.08 | | W01001122 |

| Green/76 | St. Augustine's | Penarth | St Augustine's Triangle | 0.30 | | W01001123 |
|---|---|---|---|---|---|---|
| Green/77 | St. Augustine's | Penarth | West House - Front Grounds | 0.11 | Penarth Town Council | W01001125 |
| Green/360 | St. Augustine's | Penarth | Stanwell Crescent | 0.14 | Vale of Glamorgan Council | W01001123 |
| Green/397 | St. Brides Major | Rural Vale | Seaview Drive | 0.15 | | W01001127 |
| Green/852 | St. Brides Major | Rural Vale | Land at St.Brides Church in Wales Primary School | 0.35 | Vale of Glamorgan Council | |
| Green/362 | Stanwell | Penarth | Hawthorne Avenue | 0.07 | Vale of Glamorgan Council | W01001131 |
| Green/707 | Stanwell | Penarth | Land in front of 7 Willow Close | 0.04 | | W01001129 |
| Green/708 | Stanwell | Penarth | Land in front of 7 Hawthorne Avenue | 0.03 | | W01001129 |
| Green/513 | Stanwell | Penarth | Land Adjacent to 64 St David's Crescent | 0.04 | | W01001129 |
| Green/512 | Stanwell | Penarth | Land in front of 105 - 111 St David's Crescent | 0.06 | | W01001129 |
| Green/706 | Stanwell | Penarth | Land in front of 51 Laburnham Way | 0.03 | | W01001129 |
| Green/509 | Stanwell | Barry | Land in Front of 24 Glyndwr Road | 0.07 | | W01001129 |
| Green/721 | Sully | Rural Vale | Wimborne Crescent, Sully | 0.22 | | W01001132 |
| Green/722 | Sully | Rural Vale | Land behind 43 South Road | 0.20 | | W01001132 |
| Green/723 | Sully | Rural Vale | Daniell Close | 0.15 | | W01001133 |
| Green/725 | Sully | Rural Vale | Breaksea Close | 0.07 | | W01001133 |
| Green/388 | Sully | Rural Vale | Cog Road | 0.17 | | W01001133 |
| Green/726 | Sully | Rural Vale | Land in front of 14 Dunster Drive | 0.12 | | W01001133 |
| Green/505 | Wenvoe | Rural Vale | Maes-y-Ffynnon | 0.29 | Vale of Glamorgan Council | W01001135 |

**Total Sites: 143** **Total Area (Ha): 26.36**

## Informal Recreation Space

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| IRS/439 | Baruc | Barry | Land adj to Maslin Park, Plymouth Road, Barry Island | 0.87 | Vale of Glamorgan Council | W01001061 |
| IRS/434 | Baruc | Barry | Amherst Crescent, Barry Island | 0.22 | | W01001061 |
| IRS/284 | Buttrills | Barry | Somerset Road | 0.50 | Vale of Glamorgan Council | W01001064 |
| IRS/605 | Buttrills | Barry | Land off College Road, Opposite Ysgol Sant Cyrig | 0.53 | | W01001066 |
| IRS/488 | Cadoc | Barry | Land south of Trem Mapgoll, Pencoedtre | 0.48 | Vale of Glamorgan Council | W01001072 |
| IRS/50 | Cadoc | Barry | Hatch Quarry, Cowbridge Street, Cadoxton | 0.35 | | W01001069 |
| IRS/803 | Cadoc | Barry | Junction of Suran y Gog and Coed Criafol | 0.33 | | W01001072 |
| IRS/260 | Cadoc | Barry | Palmerston Play Area and Fields, Dobbins Road, Palmerston | 2.95 | Vale of Glamorgan Council | W01001068 |
| IRS/259 | Cadoc | Barry | Land at Cadoc Crescent, Cadoxton | 0.16 | Vale of Glamorgan Council | W01001071 |

| | | | | | | |
|---|---|---|---|---|---|---|
| IRS/258 | Cadoc | Barry | Lennox Green, Cardiff Road | 0.09 | Vale of Glamorgan Council | W01001071 |
| IRS/485 | Cadoc | Barry | East side of Heol Gwerthyd, Pencoedtre | 0.25 | Vale of Glamorgan Council | W01001072 |
| IRS/631 | Cadoc | Barry | Runcorn Close | 0.09 | | W01001067 |
| IRS/489 | Cadoc | Barry | Land behind 3 Trem Mapgoll, Pencoedtre | 0.18 | Vale of Glamorgan Council | W01001072 |
| IRS/251 | Cadoc | Barry | Land rear of Ewbank Close, Little Coldbrook | 0.12 | Vale of Glamorgan Council | W01001068 |
| IRS/62 | Cadoc | Barry | Myrtle Grove, Cadoxton, Barry | 0.13 | | W01001071 |
| IRS/264 | Cadoc | Barry | Little Hill, Cadoxton | 0.28 | Vale of Glamorgan Council | W01001069 |
| IRS/249 | Cadoc | Barry | Greenacres, Palmerston | 0.22 | Vale of Glamorgan Council | W01001068 |
| IRS/486 | Cadoc | Barry | Land west of Trem Magpoll, Pencoedtre | 0.25 | Vale of Glamorgan Council | W01001072 |
| IRS/537 | Cadoc | Barry | Junction of Suran y Gog and Coed Criafol | 0.75 | | W01001072 |
| IRS/491 | Castleland | Barry | Land between Belvedere Crescent and Kingsland Crescent | 0.08 | Vale of Glamorgan Council | W01001073 |
| IRS/352 | Cornerswell | Penarth | Adj to Golden Gates Play Area, Wordsworth Avenue | 0.19 | Vale of Glamorgan Council | W01001075 |
| IRS/361 | Cornerswell | Penarth | Redlands Avenue, Penarth | 0.15 | Vale of Glamorgan Council | W01001077 |
| IRS/270 | Court | Barry | Glebe Street, Cadoxton | 1.15 | Vale of Glamorgan Council - Leasehold/Freehold | W01001081 |
| IRS/444 | Court | Barry | Land at O'Donnell & Iolo Place | 0.25 | Vale of Glamorgan Council | W01001081 |
| IRS/442 | Court | Barry | Land south of Ysgol Maes Dyfan | 0.76 | Vale of Glamorgan Council | W01001080 |
| IRS/646 | Court | Barry | Land Surrounding Hall off Dyfan Road | 0.33 | | W01001080 |
| IRS/890 | Cowbridge | Rural Vale | Behind Ystradown Community Centre | 0.74 | Vale of Glamorgan Council | W01001085 |
| IRS/406 | Cowbridge | Rural Vale | St Owains Crescent - Land Surrounding Badgers Brook Play Area | 0.12 | Vale of Glamorgan Council | W01001085 |
| IRS/313 | Cowbridge | Rural Vale | Millfield Drive | 0.08 | Vale of Glamorgan Council / Private | W01001084 |
| IRS/837 | Cowbridge | Rural Vale | Graig Penllyne | 0.32 | | |
| IRS/322 | Dinas Powys | Rural Vale | Land east of Caerleon Road | 0.18 | | W01001088 |
| IRS/848 | Dinas Powys | Rural Vale | Caerleon Road, The Murch, Dinas Powys | 0.36 | | |
| IRS/326 | Dinas Powys | Rural Vale | Behind George's Row, Eastbrook | 0.12 | Vale of Glamorgan Council | W01001090 |
| IRS/36 | Dinas Powys | Rural Vale | Seel Park, Highfield Close, Dinas Powys | 1.71 | Vale of Glamorgan Council | W01001090 |
| IRS/849 | Dinas Powys | Rural Vale | Caerleon Road, The Murch, Dinas Powys | 0.16 | | |
| IRS/315 | Dinas Powys | Rural Vale | Land east of Rhuddlan Way, The Murch | 0.27 | | W01001088 |
| IRS/281 | Dyfan | Barry | Land south of Whitewell Road, Colcot | 0.89 | Vale of Glamorgan Council | W01001092 |
| IRS/520 | Dyfan | Barry | Kent Green | 0.21 | Vale of Glamorgan Council | W01001093 |
| IRS/279 | Gibbonsdown | Barry | Land adjacent to White Farm and Tennyson Road, Colcot | 0.42 | Vale of Glamorgan Council | W01001097 |
| IRS/274 | Gibbonsdown | Barry | Land south of Skomer Road | 2.79 | Vale of Glamorgan Council | W01001095 |
| IRS/277 | Gibbonsdown | Barry | Land between Skomer Road and Heol Leubren, Pencoedtre | 2.74 | Vale of Glamorgan Council | W01001094 |

| | | | | | | |
|---|---|---|---|---|---|---|
| IRS/55 | Gibbonsdown | Barry | Smithies Field, Merthyr Dyfan Road | 2.33 | Vale of Glamorgan Council | W01001095 |
| IRS/452 | Gibbonsdown | Barry | Land north and east of Holm View Leisure Centre | 0.90 | Vale of Glamorgan Council | W01001095 |
| IRS/290 | Illtyd | Barry | Land between St. Lythans Road and Plas Cleddau, Cwm Talwg | 0.63 | Vale of Glamorgan Council | W01001098 |
| IRS/53 | Illtyd | Barry | Chickenwood, Porthkerry Road | 0.76 | Vale of Glamorgan Council | W01001101 |
| IRS/296 | Illtyd | Barry | Lon Fferm Felin / Cwm Barry Way | 0.33 | Vale of Glamorgan Council | W01001100 |
| IRS/455 | Llandow/Ewenny | Rural Vale | Land Surrounding Playground at Fferm Goch | 0.58 | Vale of Glamorgan Council | W01001105 |
| IRS/338 | Llantwit Major | Rural Vale | Flint Avenue | 0.20 | Vale of Glamorgan Council | W01001112 |
| IRS/342 | Llantwit Major | Rural Vale | Tre-Beferad (two sites) | 0.31 | Vale of Glamorgan Council | W01001108 |
| IRS/339 | Llantwit Major | Rural Vale | Whiteways | 0.23 | Vale of Glamorgan Council | W01001111 |
| IRS/343 | Llantwit Major | Rural Vale | Land opposite Nos 1 - 7 Tre-Beferad | 0.49 | Vale of Glamorgan Council | W01001108 |
| IRS/345 | Llantwit Major | Rural Vale | Land west of Heol Pentre Cwrt | 0.83 | Vale of Glamorgan Council | W01001112 |
| IRS/331 | Llantwit Major | Rural Vale | Seaview Park | 1.84 | | W01001107 |
| IRS/329 | Llantwit Major | Rural Vale | Stradling Place | 0.33 | Vale of Glamorgan Council | W01001109 |
| IRS/662 | Llantwit Major | Rural Vale | Land to the west of 121 Boverton Road | 0.18 | | W01001106 |
| IRS/851 | Llantwit Major | Rural Vale | Llanmaes Playing Fields | 0.52 | Vale of Glamorgan Council | |
| IRS/341 | Llantwit Major | Rural Vale | Boverton Court | 0.82 | Vale of Glamorgan Council | W01001106 |
| IRS/64 | Plymouth | Penarth | Railway Walk, Penarth | 1.33 | Vale of Glamorgan Council | W01001114 |
| IRS/67 | Plymouth | Penarth | Cliff Walk, Cliff Road | 6.55 | Vale of Glamorgan Council | W01001114 |
| IRS/375 | Rhoose | Rural Vale | Fonmon Park Road | 0.09 | Vale of Glamorgan Council | W01001117 |
| IRS/376 | Rhoose | Rural Vale | Smeaton Close | 0.32 | Vale of Glamorgan Council | W01001120 |
| IRS/69 | Rhoose | Rural Vale | Bucknell Park, Readers Way, Rhoose | 1.18 | | W01001120 |
| IRS/523 | Rhoose | Rural Vale | Nurston Close | 0.17 | | W01001117 |
| IRS/825 | St. Athan | Rural Vale | Disused sports ground at Burley Place, St.Athan | 2.10 | Private | |
| IRS/864 | St. Athan | Rural Vale | Land at Burley Place | 0.99 | Private | |
| IRS/862 | St. Athan | Rural Vale | Land off Cowbridge Road | 0.97 | Private | |
| IRS/863 | St. Athan | Rural Vale | Land at Ringwood Crescent | 0.41 | Private | |
| IRS/358 | St. Augustine's | Penarth | Land between to Marconi Ave and Terra Nova Way | 4.55 | | W01001126 |
| IRS/65 | St. Augustine's | Penarth | Plassey Square, Plassey Street | 0.84 | Vale of Glamorgan Council | W01001125 |
| IRS/398 | St. Brides Major | Rural Vale | Craig-yr-Eos Road, Ogmore by Sea | 0.53 | Vale of Glamorgan Council | W01001127 |
| IRS/506 | St. Brides Major | Rural Vale | Marine Drive, Ogmore-by-Sea | 0.87 | Vale of Glamorgan Council | W01001127 |
| IRS/369 | Sully | Penarth | Land behind Althorp Drive, Cosmeston | 0.21 | Vale of Glamorgan Council | W01001134 |
| IRS/389 | Sully | Rural Vale | Land off Bridgewater Road | 0.15 | Vale of Glamorgan Council | W01001133 |
| IRS/390 | Sully | Rural Vale | Westminster Drive / Dulverton Drive | 0.88 | Vale of Glamorgan Council | W01001132 |

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| IRS/391 | Sully | Rural Vale | Brean Close | 0.26 | | W01001132 |
| IRS/80 | Wenvoe | Rural Vale | Recreation Ground, Sea View Terrace, Twyn-y-Odyn | 0.62 | | W01001135 |
| IRS/874 | Wenvoe | Rural Vale | Heol Collen 2, Brooklands Terrace | 0.07 | Vale of Glamorgan Council | W01001136 |
| IRS/875 | Wenvoe | Rural Vale | Heol Collen 3, Brooklands Terrace | 0.42 | Vale of Glamorgan council | W01001136 |
| IRS/873 | Wenvoe | Rural Vale | Heol Collen 1, Brooklands Terrace | 0.29 | Vale of Glamorgan Council | W01001136 |

**Total Sites: 79** **Total Area (Ha): 57.85**

## Private Domestic Gardens and Grounds

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Private/666 | Llantwit Major | Rural Vale | Boverton Place | 1.30 | | W01001106 |

**Total Sites: 1** **Total Area (Ha): 1.30**

## Roadside Verge

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Verge/598 | Baruc | Barry | Junction at Romilly Park Road and Park Avenue | 0.04 | Vale of Glamorgan Council | W01001059 |
| Verge/297 | Baruc | Barry | Romilly Park Road T-Junction | 0.20 | Vale of Glamorgan Council | W01001059 |
| Verge/596 | Baruc | Barry | Roundabout at end of Westward Rise | 0.07 | | W01001060 |
| Verge/268 | Buttrills | Barry | Grass Verges at Devon Avenue, Dorset Avenue and Somerset Road East | 0.18 | Vale of Glamorgan Council | W01001065 |
| Verge/630 | Cadoc | Barry | Verge in front of 16 Philadelphia Close on Langlands Road | 0.12 | | W01001067 |
| Verge/495 | Cadoc | Barry | Land at Weston Square, Cadoxton | 0.10 | Vale of Glamorgan Council | W01001070 |
| Verge/266 | Cadoc | Barry | Land at junc of Courtney Road and Gladstone Road, Cadoxton | 0.02 | Vale of Glamorgan Council | W01001070 |
| Verge/265 | Cadoc | Barry | Land at junc of Church Road and Bridge Street, Cadoxton | 0.11 | Vale of Glamorgan Council | W01001069 |
| Verge/263 | Cadoc | Barry | Land at junc of Cowbridge Street and Church Road, Cadoxton | 0.06 | Vale of Glamorgan Council | W01001069 |
| Verge/262 | Cadoc | Barry | Land in front of St. Cadoc's Church, Cadoxton | 0.06 | Vale of Glamorgan Council | W01001072 |
| Verge/633 | Cadoc | Barry | Junction at Coldbrook Road East and Barry Docks Link Road | 0.11 | | W01001068 |
| Verge/261 | Cadoc | Barry | Land north & south of lower Gladstone Road, Cadoxton | 0.59 | Vale of Glamorgan Council | W01001069 |
| Verge/634 | Cadoc | Barry | Junction of Coldbrook Road East and Dobbins Road | 0.04 | | W01001068 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Verge/635 | Cadoc | Barry | Verge running along Barry Docks Link Road | 0.60 | | W01001068 |
| Verge/500 | Cornerswell | Penarth | Junc of Mountyjoy Avenue and Redlands Avenue | 0.11 | Vale of Glamorgan Council | W01001078 |
| Verge/350 | Cornerswell | Penarth | Junction of Sully Road and Redlands Road | 0.26 | Vale of Glamorgan Council | W01001077 |
| Verge/710 | Cornerswell | Penarth | Land in front of 21 Tennyson Road | 0.05 | | W01001075 |
| Verge/253 | Court | Barry | Land adj to 108 - 118 Morel Street | 0.09 | Vale of Glamorgan Council | W01001080 |
| Verge/645 | Court | Barry | Land in front of 1-3 Herbert Street | 0.02 | | W01001080 |
| Verge/82 | Cowbridge | Rural Vale | Emms Cottage, Llanblethian | 0.01 | | W01001083 |
| Verge/308 | Cowbridge | Rural Vale | Land opp 2 - 10 Tyla Rhosyr | 0.13 | Vale of Glamorgan Council/Private ownership | W01001082 |
| Verge/307 | Cowbridge | Rural Vale | Land opp 1 - 9 Bowman's Well | 0.21 | | W01001082 |
| Verge/882 | Cowbridge | Rural Vale | Downs View 1, Aberthin | 0.02 | Vale of Glamorgan Council | W01001084 |
| Verge/883 | Cowbridge | Rural Vale | Downs View 2, Aberthin | 0.02 | Vale of Glamorgan Council | W01001084 |
| Verge/314 | Cowbridge | Rural Vale | Cae Rex | 0.07 | | W01001082 |
| Verge/682 | Cowbridge | Rural Vale | Junction at Brookfield Park Road and St Athan Road | 0.03 | | W01001084 |
| Verge/686 | Cowbridge | Rural Vale | Junction of Mill Park and Constitution Hill | 0.04 | Vale of Glamorgan Council | W01001083 |
| Verge/496 | Cowbridge | Rural Vale | Land opp 1 - 2 Bowman's Way | 0.11 | Vale of Glamorgan / Private | W01001082 |
| Verge/498 | Cowbridge | Rural Vale | Borough Close | 0.07 | Vale of Glamorgan Council | W01001082 |
| Verge/684 | Cowbridge | Rural Vale | Land adjacent to 1 Windmill Lane | 0.02 | | W01001082 |
| Verge/476 | Cowbridge | Rural Vale | Land opp 2 - 10 Tyla Rhosyr | 0.05 | Private | W01001082 |
| Verge/424 | Cowbridge | Rural Vale | Downs View Close | 0.04 | Vale of Glamorgan Council | W01001084 |
| Verge/411 | Cowbridge | Rural Vale | Corner of Roman Road at Pentre Meyrick | 0.11 | Vale of Glamorgan Council | W01001085 |
| Verge/690 | Cowbridge | Rural Vale | Junction of Llantwit Major Road and Darren Close | 0.05 | | W01001082 |
| Verge/683 | Cowbridge | Rural Vale | Land in front of 66 Broadway | 0.06 | | W01001082 |
| Verge/680 | Cowbridge | Rural Vale | Verge on the corner of Cae Stumiy and Aubrey Terrace | 0.01 | | W01001082 |
| Verge/679 | Cowbridge | Rural Vale | Verge on the corner of Cae Stumiy and Aubrey Terrace | 0.02 | | W01001082 |
| Verge/677 | Cowbridge | Rural Vale | Druids Green | 0.03 | | W01001082 |
| Verge/761 | Cowbridge | Rural Vale | Land at Junction of Cowbridge Road and St Owains Crescent, Ystradowen | 0.07 | | W01001085 |
| Verge/691 | Cowbridge | Rural Vale | Junction of Llantwit Major Road and Darren Close | 0.06 | | W01001082 |
| Verge/328 | Dinas Powys | Rural Vale | Manorbier Close, The Murch | 0.06 | | W01001087 |
| Verge/317 | Dinas Powys | Rural Vale | Plas Essyllt / Sir Ivor Place, The Murch | 0.13 | Housing Association | W01001088 |
| Verge/318 | Dinas Powys | Rural Vale | Greenmeadow Close / Sunnycroft Lane, The Murch | 0.04 | Vale of Glamorgan Council | W01001088 |
| Verge/319 | Dinas Powys | Rural Vale | Sunnycroft Lane / Plas Essyllt, The Murch | 0.08 | Vale of Glamorgan Council | W01001088 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Verge/507 | Dinas Powys | Rural Vale | Mount Road, Dinas Powys | 0.45 | Vale of Glamorgan Council | W01001086 |
| Verge/413 | Dinas Powys | Rural Vale | The Green, Leckwith Road | 0.14 | Vale of Glamorgan Council | W01001090 |
| Verge/621 | Dyfan | Barry | Land at Roundabout Junction of Colcot Road and Port Road West | 0.07 | | W01001092 |
| Verge/623 | Dyfan | Barry | Verge Between Tesco and Lakin Drive | 0.09 | | W01001091 |
| Verge/620 | Dyfan | Barry | Land at Junction of Duffryn Place and Colcot Road | 0.03 | | W01001091 |
| Verge/657 | Gibbonsdown | Barry | Land South of Skomer Road at Carn-Yr-Ebol Roundabout | 0.06 | | W01001094 |
| Verge/490 | Gibbonsdown | Barry | Land at Aberaeron Close / Skomer Road | 0.05 | Vale of Glamorgan Council | W01001094 |
| Verge/644 | Gibbonsdown | Barry | Land in front of 10 Cornwall Road | 0.03 | | W01001096 |
| Verge/650 | Gibbonsdown | Barry | Corner of Port Road East and Merthyr Dyfan Road | 0.03 | | W01001097 |
| Verge/291 | Illtyd | Barry | Claude Road West | 1.02 | Vale of Glamorgan Council | W01001099 |
| Verge/612 | Illtyd | Barry | Land at Severn Avenue Subway | 0.06 | | W01001103 |
| Verge/613 | Illtyd | Barry | Verge at Alwen Drive | 0.05 | | W01001098 |
| Verge/425 | Llandow/Ewenny | Rural Vale | Land Adjacent to The Great Barn, Llanmihangel | 0.04 | Vale of Glamorgan Council | W01001105 |
| Verge/428 | Llandow/Ewenny | Rural Vale | Junction of Tyle Mali, Heol Y Cawl and Church Street | 0.03 | Vale of Glamorgan Council | W01001105 |
| Verge/419 | Llandow/Ewenny | Rural Vale | Llangan, South of Mount Pleasant Farm | 0.06 | Vale of Glamorgan Council | W01001105 |
| Verge/332 | Llantwit Major | Rural Vale | Land in front of 53 - 63 Eagleswell Road | 0.05 | Vale of Glamorgan Council | W01001106 |
| Verge/347 | Llantwit Major | Rural Vale | Land east of Sampson Street | 0.24 | Vale of Glamorgan Council/Private | W01001110 |
| Verge/348 | Llantwit Major | Rural Vale | Land west of Sampson Street | 0.13 | Vale of Glamorgan Council | W01001112 |
| Verge/670 | Llantwit Major | Rural Vale | Corner of Ham Lane East and Lon-od-nant | 0.06 | | W01001107 |
| Verge/415 | Llantwit Major | Rural Vale | Church View, Marcross | 0.05 | Vale of Glamorgan Council | W01001110 |
| Verge/663 | Llantwit Major | Rural Vale | Land in front of 14 Leigh Close | 0.03 | | W01001106 |
| Verge/414 | Llantwit Major | Rural Vale | Channel View, Marcross | 0.05 | Vale of Glamorgan Council | W01001110 |
| Verge/346 | Llantwit Major | Rural Vale | Land east of Heol Pentre Cwrt | 0.12 | Vale of Glamorgan Council | W01001112 |
| Verge/456 | Peterston-super-Ely | Rural Vale | Castlegreen  Nr. Bickleigh House, St Georges | 0.04 | Vale of Glamorgan Council | W01001113 |
| Verge/502 | Plymouth | Penarth | Land west of 63 Dinas Road | 0.04 | | W01001115 |
| Verge/477 | Plymouth | Penarth | Verge B, Dinas Road | 0.05 | Vale of Glamorgan Council | W01001115 |
| Verge/482 | Plymouth | Penarth | Verge G, Dinas Road | 0.06 | Vale of Glamorgan Council | W01001115 |
| Verge/481 | Plymouth | Penarth | Verge F, Dinas Road | 0.03 | Vale of Glamorgan Council | W01001115 |
| Verge/363 | Plymouth | Penarth | Verge A, Dinas Road | 0.06 | Vale of Glamorgan Council | W01001115 |
| Verge/480 | Plymouth | Penarth | Verge E, Dinas Road | 0.10 | Vale of Glamorgan Council | W01001115 |
| Verge/478 | Plymouth | Penarth | Verge C, Dinas Road | 0.10 | Vale of Glamorgan Council | W01001115 |
| Verge/364 | Plymouth | Penarth | Land in front of 117 Plymouth Road | 0.04 | | W01001114 |
| Verge/373 | Plymouth | Penarth | Adj to 157 - 163 Lavernock Road | 0.23 | | W01001114 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Verge/479 | Plymouth | Penarth | Verge D, Dinas Road | 0.10 | Vale of Glamorgan Council | W01001115 |
| Verge/385 | Rhoose | Rural Vale | South View | 0.15 | Vale of Glamorgan Council | W01001117 |
| Verge/382 | Rhoose | Rural Vale | Rhoose Road | 0.12 | Vale of Glamorgan Council | W01001118 |
| Verge/383 | Rhoose | Rural Vale | Porthkerry Road | 0.38 | | W01001118 |
| Verge/483 | Rhoose | Rural Vale | Land on east side of Readers Way, Rhoose | 0.11 | Vale of Glamorgan Council | W01001118 |
| Verge/303 | St. Athan | Rural Vale | Llantwit Road | 0.11 | Vale of Glamorgan Council | W01001122 |
| Verge/304 | St. Athan | Rural Vale | St. Johns View | 0.04 | Private | W01001121 |
| Verge/368 | St. Augustine's | Penarth | Coronation Terrace / Lord Street | 0.04 | Vale of Glamorgan Council | W01001124 |
| Verge/367 | St. Augustine's | Penarth | Catherine Meazey Flats, Coronation Terrace | 0.06 | Vale of Glamorgan Council | W01001126 |
| Verge/366 | St. Augustine's | Penarth | Queen's Road / Lord Street, | 0.07 | Vale of Glamorgan Council | W01001126 |
| Verge/400 | St. Brides Major | Rural Vale | Junc of Ewenny Road and Southerndown Road | 0.03 | Vale of Glamorgan Council | W01001128 |
| Verge/878 | St. Brides Major | Rural Vale | St Brides Road 1, Wick | 0.01 | Vale of Glamorgan Council | W01001128 |
| Verge/401 | St. Brides Major | Rural Vale | Heol Sant Bridget/Lon Eglwys | 0.03 | | W01001128 |
| Verge/877 | St. Brides Major | Rural Vale | Blaen Dewi 2, Wick | 0.02 | Vale of Glamorgan Council | W01001128 |
| Verge/879 | St. Brides Major | Rural Vale | St Brides Road 2, Wick | 0.03 | Vale of Glamorgan Council | W01001128 |
| Verge/880 | St. Brides Major | Rural Vale | St Brides Road 3, Wick | 0.01 | Vale of Glamorgan Council | W01001128 |
| Verge/881 | St. Brides Major | Rural Vale | St Brides Road 4, Wick | 0.03 | Vale of Glamorgan Council | W01001128 |
| Verge/405 | St. Brides Major | Rural Vale | B4524, Adjacent to The Three Golden Cups | 0.26 | Vale of Glamorgan Council | W01001127 |
| Verge/876 | St. Brides Major | Rural Vale | Blaen Dewi 1, Wick | 0.02 | Vale of Glamorgan Council | W01001128 |
| Verge/705 | Stanwell | Penarth | Land at the end of Willow Close | 0.09 | | W01001129 |
| Verge/503 | Stanwell | Penarth | Opp 9 - 45 Lavernock Road | 0.20 | Vale of Glamorgan Council | W01001131 |
| Verge/510 | Stanwell | Penarth | Land in front of 1-19 St David's Crescent | 0.40 | | W01001129 |
| Verge/511 | Stanwell | Penarth | Land in front of 53 St David's Crescent | 0.04 | | W01001129 |
| Verge/514 | Stanwell | Penarth | Land on corner of Elfed Avenue | 0.06 | | W01001129 |
| Verge/515 | Stanwell | Penarth | Land at Junction of Glyndwr Road and Elfed Avenue | 0.05 | | W01001129 |
| Verge/524 | Sully | Rural Vale | Nailsea Ct | 0.11 | | W01001132 |
| Verge/394 | Wenvoe | Rural Vale | Land adj to War Memorial | 0.05 | | W01001136 |
| Verge/396 | Wenvoe | Rural Vale | Adj to 2 - 8 and 9 - 11 Rectory Close | 0.07 | Vale of Glamorgan Council | W01001135 |
| Verge/504 | Wenvoe | Rural Vale | Junc of A48 / Maes y Ffynnon | 0.08 | Vale of Glamorgan Council | W01001135 |

**Total Sites: 106** **Total Area (Ha): 10.83**

## Village Green

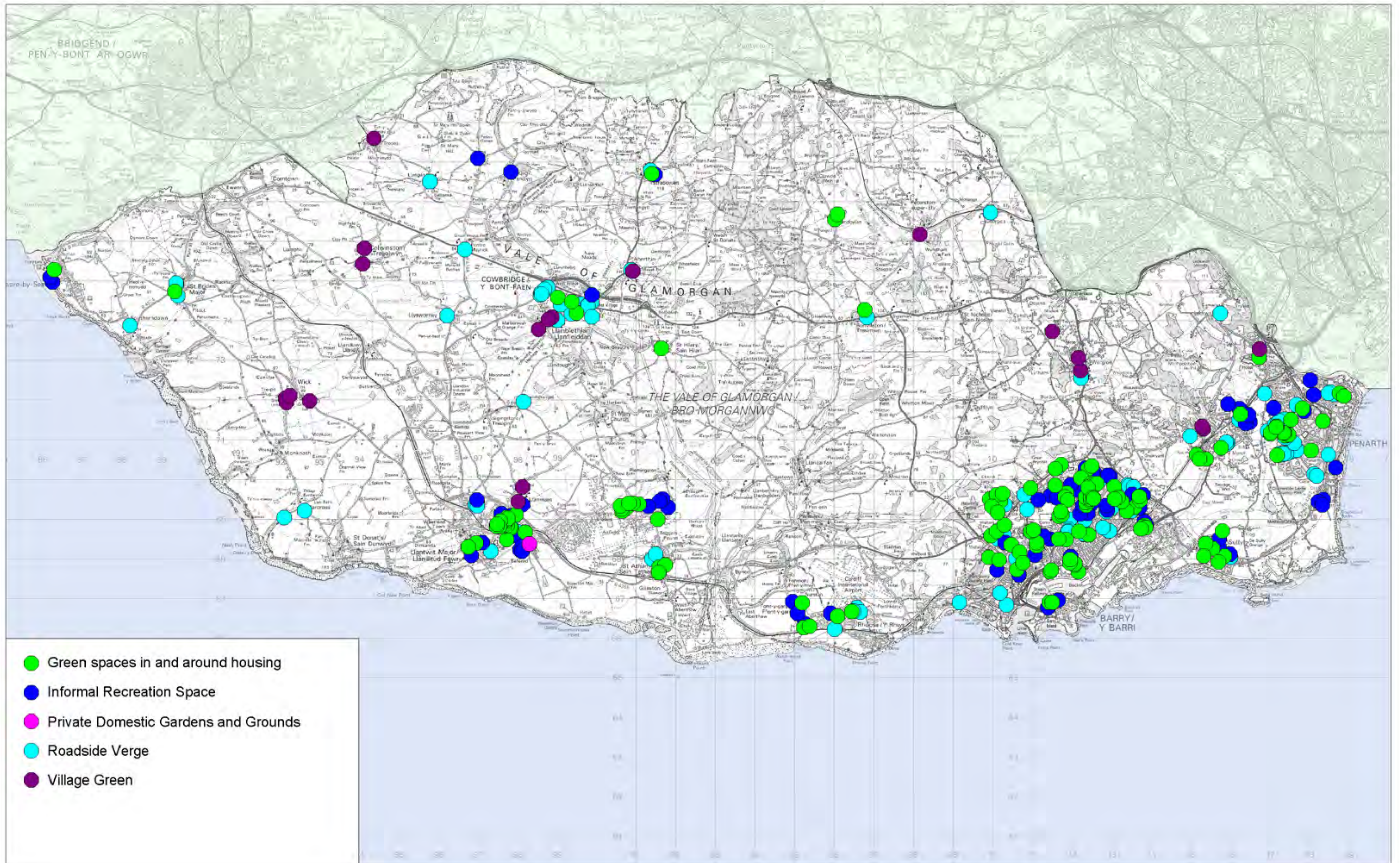
| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Village/237 | Cowbridge | Rural Vale | Footpath between Aberthin House and Sweetings, Aberthin | 0.04 | Cowbridge / Llanblethian Town Council | W01001084 |
| Village/235 | Cowbridge | Rural Vale | Land to the North of Old Factory House, Factory Road | 0.05 | Cowbridge / Llanblethian Town Council | W01001083 |
| Village/234 | Cowbridge | Rural Vale | Old Baptist Schoolroom Piccadilly, Cowbridge | 0.01 | Cowbridge / Llanblethian Town Council | W01001083 |
| Village/233 | Cowbridge | Rural Vale | Entrance to Footpath in between The Firs and The Mill | 0.01 | Cowbridge / Llanblethian Town Council | W01001083 |
| Village/230 | Dinas Powys | Rural Vale | Land in front of 2 - 10 Highwalls Road, Dinas Powys | 0.07 | Dinas Powys Community Council | W01001086 |
| Village/229 | Dinas Powys | Rural Vale | Land Surrounding War Memorial, The Square, Dinas Powys | 0.04 | Dinas Powys Community Council | W01001086 |
| Village/245 | Llandough | Rural Vale | Land in Front of St Dochdwys Church, Llandough | 0.10 | Llandough Community Council | W01001104 |
| Village/231 | Llandow/Ewenny | Rural Vale | School Green, Coed Marsarnen, Colwinston | 0.03 | Colwinston Community Council | W01001105 |
| Village/232 | Llandow/Ewenny | Rural Vale | Maesybryn LA housing, Colwinston | 0.07 | Colwinston Community Council | W01001105 |
| Village/241 | Llandow/Ewenny | Rural Vale | Recreation ground, Llangan | 0.42 | Llangan Community Council | W01001105 |
| Village/238 | Llantwit Major | Rural Vale | Land South of Ash Barton, Llanmaes | 0.12 | Llanmaes Community Council | W01001108 |
| Village/239 | Llantwit Major | Rural Vale | Village Green, South of Ty Ffynnon, Gadlys, Llanmaes | 0.18 | Llanmaes Community Council | W01001108 |
| Village/755 | Peterston-super-Ely | Rural Vale | The Green, Peterston super Ely | 0.23 | | W01001113 |
| Village/840 | St. Brides Major | Rural Vale | Green Uchaf South of 1 - 21 Tre Pit Road, Wick | 0.17 | | W01001128 |
| Village/841 | St. Brides Major | Rural Vale | Green Uchaf South of 1 - 21 Tre Pit Road, Wick | 0.13 | | W01001128 |
| Village/404 | St. Brides Major | Rural Vale | B4265, Opposite Amberly House. | 1.04 | | W01001128 |
| Village/243 | St. Brides Major | Rural Vale | Green Uchaf, South of 1 - 21 Tre-Pit Road, Wick | 1.36 | | W01001128 |
| Village/240 | Wenvoe | Rural Vale | Recreation Ground/Village Green, Grange Avenue, Wenvoe | 0.48 | Wenvoe Community Council | W01001136 |
| Village/242 | Wenvoe | Rural Vale | Recreation ground, Wenvoe | 0.62 | Wenvoe Community Council | W01001135 |
| Village/228 | Wenvoe | Rural Vale | Land at Wenvoe | 0.05 | Wenvoe Community Council | W01001136 |

**Total Sites: 20** **Total Area (Ha): 5.22**

**Sites Total: 349** **Grand Total of Typology (Ha): 101.56**

Open Space Assessment

Distribution of Amenity Green Spaces



# Provision for Children and Young People

## Local Equipped Area for Play

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| LEAP/534 | Buttrills | Barry | Heol Gwendoline, Barry | 0.03 | Vale of Glamorgan Council | W01001066 |
| LEAP/536 | Cadoc | Rural Vale | Junction of Suran y Gog and Coed Criafol | 0.03 | Vale of Glamorgan Council | W01001072 |
| LEAP/125 | Cadoc | Barry | Weston Square Play Area, | 0.13 | | W01001070 |
| LEAP/113 | Castleland | Barry | R/O George Street Play Area, George Street | 0.09 | | W01001074 |
| LEAP/828 | Cornerswell | Penarth | Play area at Cawnpore Street | 0.21 | Vale of Glamorgan Council | W01001076 |
| LEAP/531 | Cowbridge | Rural Vale | Craig Penllyne Play Area | 0.01 | | W01001085 |
| LEAP/153 | Cowbridge | Rural Vale | Millfield Drive Play Area, Millfield Drive, Cowbridge | 0.11 | | W01001084 |
| LEAP/137 | Cowbridge | Rural Vale | Brookfield Play Area, Brookfield Park Road, Cowbridge | 0.08 | | W01001084 |
| LEAP/135 | Cowbridge | Rural Vale | Badgers Brook Play Area, Badgers Brook Drive, Ystradowen | 0.01 | Vale of Glamorgan Council | W01001085 |
| LEAP/158 | Dinas Powys | Rural Vale | Seal Park Play Area, Seal Park, Dinas Powys | 0.10 | Vale of Glamorgan Council | W01001090 |
| LEAP/528 | Dyfan | Barry | Awberry House, Barry | 0.05 | | W01001093 |
| LEAP/112 | Gibbonsdown | Barry | Dryden Terrace Play Area, Dryden Terrace | 0.04 | | W01001097 |
| LEAP/535 | Gibbonsdown | Barry | Heol Leubren, Barry | 0.03 | Vale of Glamorgan Council | W01001094 |
| LEAP/117 | Illtyd | Barry | Stirling Road, Highlight Park Play Area | 0.02 | | W01001103 |
| LEAP/167 | Llantwit Major | Rural Vale | Windmill Lane Play Area, Windmill Lane, Llantwit Major | 0.03 | Vale of Glamorgan Council | W01001112 |
| LEAP/128 | Plymouth | Penarth | Cosmeston Lakes Country Park Play Area | 0.38 | | W01001115 |
| LEAP/127 | Plymouth | Penarth | Cliff Parade Play Area, Penarth | 0.08 | | W01001114 |
| LEAP/530 | Rhoose | Rural Vale | Celtic Way Recreation Ground, Celtic Way | 0.06 | Vale of Glamorgan Council | W01001120 |
| LEAP/156 | Rhoose | Rural Vale | Maes Lindys Play Area, Rhoose | 0.09 | Vale of Glamorgan Council | W01001117 |
| LEAP/850 | Rhoose | Rural Vale | Nurston Close Play Area, Rhoose | 0.17 | Vale of Glamorgan Council | |
| LEAP/152 | St. Athan | Rural Vale | Lougher Place Play Area, Lougher Place, St. Athan | 0.07 | | W01001121 |
| LEAP/529 | St. Augustine's | Penarth | Belle Vue Park, Albert Road | 0.01 | Vale of Glamorgan Council | W01001124 |
| LEAP/132 | Stanwell | Penarth | St. Cyres Play Area, St. Davids Crescent | 0.05 | | W01001129 |
| LEAP/533 | Wenvoe | Rural Vale | Duffryn House and Gardens Play Area | 0.05 | Vale of Glamorgan Council | W01001135 |

**Total Sites: 24** **Total Area (Ha): 1.93**

## Multi Use Games Area

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Multi/866 | Baruc | Barry | Adizone, Paget Road, Barry Island | 0.08 | Vale of Glamorgan Council | |
| Multi/437 | Castleland | Barry | Kingsland Crescent | 0.12 | Vale of Glamorgan Council | W01001073 |
| Multi/833 | Court | Barry | Pencoedtre Park Playing Fields, St Brides Way | 0.06 | Vale of Glamorgan Council | |
| Multi/889 | Cowbridge | Rural Vale | Behind Ystradowen Community Centre | 0.08 | Vale of Glamorgan Council | W01001085 |
| Multi/842 | Cowbridge | Rural Vale | West Village Playing Field, Cowbridge | 0.03 | Vale of Glamorgan Council | |
| Multi/176 | Illtyd | Barry | Chickenwood, Porthkerry Road, Barry | 0.01 | Vale of Glamorgan Council | W01001102 |
| Multi/180 | Llantwit Major | Rural Vale | Windmill Lane Playing Fields, Windmill Lane, Llantwit Major | 0.03 | Vale of Glamorgan Council | W01001112 |
| Multi/177 | Plymouth | Penarth | Cwrt Y Vil Playing Field, St Marks Road | 0.03 | Vale of Glamorgan Council | W01001115 |
| Multi/178 | St. Augustine's | Penarth | Paget Road, Penarth | 0.03 | Vale of Glamorgan Council | W01001126 |
| Multi/832 | Wenvoe | Rural Vale | Sports pitches south of Station Road, Wenvoe. | 0.06 | Vale of Glamorgan Council | |

**Total Sites: 10** **Total Area (Ha): 0.53**

## Neighbourhood Equipped Area for Play

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| NEAP/119 | Baruc | Barry | Maslin Park Play Area, Maslin Park | 0.11 | | W01001061 |
| NEAP/538 | Buttrills | Barry | Central Park, Wyndham Street | 0.04 | Vale of Glamorgan Council | W01001063 |
| NEAP/114 | Buttrills | Barry | Gladstone Gardens Play Area, Gladstone Road | 0.08 | | W01001063 |
| NEAP/121 | Cadoc | Barry | Pencoedtre Park Play Area, Pencoedtre Road | 0.23 | | W01001081 |
| NEAP/539 | Cadoc | Barry | Victoria Park, Sea View Terrace | 0.10 | | W01001071 |
| NEAP/108 | Castleland | Barry | Belvedere Crescent Play Area, Belvedere Crescent | 0.01 | | W01001073 |
| NEAP/175 | Court | Barry | Iolo Place off Treharne Road, Barry | 0.39 | Vale of Glamorgan Council | W01001081 |
| NEAP/508 | Plymouth | Penarth | Children's Play Area, St Marks Road | 0.04 | Vale of Glamorgan Council | W01001115 |
| NEAP/134 | St. Augustine's | Penarth | Paget Road | 0.04 | | W01001126 |

**Total Sites: 9** **Total Area (Ha): 1.04**

## Play Area

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Play/107 | Baruc | Barry | Amherst Crescent Play Area, Amherst Crescent | 0.01 | | W01001061 |
| Play/762 | Baruc | Barry | Romilly Park | 0.14 | Vale of Glamorgan Council | W01001059 |
| Play/731 | Buttrills | Barry | Alexandra Gardens, Jenner Road | 0.03 | Vale of Glamorgan Council | W01001064 |
| Play/116 | Cadoc | Barry | Hatch Quarry Play Area, Cowbridge Street, Cadoxton | 0.01 | | W01001069 |
| Play/729 | Cadoc | Barry | Myrtle Grove, Cadoxton, Barry | 0.01 | | W01001071 |
| Play/109 | Castleland | Barry | Bendrick Road Play Area, Bendrick Road | 0.07 | | W01001073 |
| Play/110 | Castleland | Barry | R/O Coigne Terrace & Jewel Street, Barry Dock | 0.07 | | W01001074 |
| Play/118 | Castleland | Barry | Hunt Place Play Area, Hunt Place, Barry Dock | 0.14 | | W01001073 |
| Play/133 | Cornerswell | Penarth | Wordsworth Avenue Play Area, Wordsworth Avenue | 0.03 | | W01001077 |
| Play/130 | Cornerswell | Penarth | Golden Gates Play Area , Coleridge Avenue | 0.05 | | W01001075 |
| Play/827 | Cornerswell | Penarth | Playground at Coleridge Avenue | 0.02 | Vale of Glamorgan Council | W01001078 |
| Play/115 | Court | Barry | Glebe Street Play Area, Glebe Street | 0.01 | | W01001080 |
| Play/854 | Court | Barry | Play area at Bassett Street | 0.22 | Vale of Glamorgan Council | |
| Play/835 | Cowbridge | Rural Vale | Play Area at Graig Penllyne | 0.26 | | |
| Play/689 | Cowbridge | Rural Vale | Play Area within Llanblethian Playing Fields | 0.03 | | W01001083 |
| Play/172 | Cowbridge | Rural Vale | Twt Park and Playground | 0.40 | | W01001082 |
| Play/884 | Cowbridge | Rural Vale | The Spinney, Aberthin | 0.12 | Vale of Glamorgan Council | W01001084 |
| Play/139 | Dinas Powys | Rural Vale | Caerleon Road Play Area, Caerleon Road, Dinas Powys | 0.03 | | W01001008 |
| Play/168 | Dinas Powys | Rural Vale | Dinas Powys Common (south side) | 0.02 | | W01001086 |
| Play/162 | Dinas Powys | Rural Vale | The Green Play Area, Leckwith | 0.05 | | W01001090 |
| Play/141 | Dinas Powys | Rural Vale | Drylla, Southra Park, Dinas Powys | 0.02 | | W01001089 |
| Play/154 | Dinas Powys | Rural Vale | Murchfield, Sunnycroft Lane, Dinas Powys | 0.02 | | W01001087 |
| Play/140 | Dinas Powys | Rural Vale | George's Row | 0.03 | | W01001090 |
| Play/120 | Gibbonsdown | Barry | Meggitt Road Play Area, Meggitt Road | 0.02 | | W01001097 |
| Play/126 | Illtyd | Barry | Wye Close Play Area, Wye Close | 0.01 | | W01001098 |
| Play/111 | Illtyd | Barry | Conway Drive Play Area, Conway Drive | 0.03 | | W01001098 |
| Play/123 | Illtyd | Barry | Salisbury Road Play Area | 0.02 | | W01001102 |
| Play/122 | Illtyd | Barry | Chickenwood, Porthkerry Road | 0.01 | | W01001102 |
| Play/604 | Illtyd | Barry | Land at the end of Peterswell Road | 0.02 | Vale of Glamorgan Council | W01001100 |
| Play/124 | Illtyd | Barry | Plas Cleddau, Cwm Talwg | 0.02 | | W01001098 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Play/148 | Llandough | Rural Vale | Lewis Road Play Area, Lewis Road, Llandough | 0.06 | | W01001104 |
| Play/151 | Llandow/Ewenny | Rural Vale | Opposite the Pump House, Llysworney | 0.05 | | W01001105 |
| Play/149 | Llandow/Ewenny | Rural Vale | Llandow Play Area, Grove Road, Llandow | 0.08 | | W01001105 |
| Play/155 | Llandow/Ewenny | Rural Vale | Nant Canna Play Area, Nant Canna, Treoes | 0.06 | | W01001105 |
| Play/163 | Llandow/Ewenny | Rural Vale | The Meadows Play Area, The Meadows, Corntown | 0.30 | | W01001105 |
| Play/166 | Llandow/Ewenny | Rural Vale | Wick Road Play Area, Wick Road, Ewenny | 0.09 | | W01001105 |
| Play/540 | Llandow/Ewenny | Rural Vale | Colwinston Play Area, Colwinston Village Hall | 0.10 | Vale of Glamorgan Council | W01001105 |
| Play/144 | Llandow/Ewenny | Rural Vale | Ferm Goch, Llangan | 0.02 | | W01001105 |
| Play/138 | Llantwit Major | Rural Vale | Caer Worgan Play Area, Caer Worgan, Llantwit Major | 0.02 | Vale of Glamorgan Council | W01001112 |
| Play/136 | Llantwit Major | Rural Vale | Bedford Rise Play Area, Bedford Rise, Boverton | 0.17 | Vale of Glamorgan Council | W01001107 |
| Play/164 | Llantwit Major | Rural Vale | Trebeferad Play Area, Trebeferad, Boverton | 0.25 | | W01001108 |
| Play/885 | Llantwit Major | Rural Vale | Malifant House Play Area, Llanmaes | 0.01 | Vale of Glamorgan Council | W01001108 |
| Play/174 | Llantwit Major | Rural Vale | Old Mill Play Area, Llanmaes | 0.08 | | W01001108 |
| Play/171 | Llantwit Major | Rural Vale | Llantwit Major Rugby Club, Llantwit Major | 0.01 | | W01001109 |
| Play/170 | Llantwit Major | Rural Vale | Boverton Road, Llantwit Major | 0.05 | | W01001109 |
| Play/159 | Llantwit Major | Rural Vale | Dyfrig Court, Eagleswell Estate, Llantwit Major | 0.03 | | W01001111 |
| Play/150 | Llantwit Major | Rural Vale | Llys Steffan Play Area, Llys Steffan, Llantwit Major | 0.02 | | W01001112 |
| Play/157 | Peterston-super-Ely | Rural Vale | Pendoylan Play Area, Heol St. Cattwg, Pendoylan | 0.12 | | W01001113 |
| Play/792 | Peterston-super-Ely | Rural Vale | Playground west of St Peter's Church | 0.06 | | W01001113 |
| Play/829 | Plymouth | Penarth | Play Area Penarth Athletic Field | 0.01 | Vale of Glamorgan Council | |
| Play/160 | Rhoose | Rural Vale | Smeaton Close Play Area, Smeaton Close, Rhoose | 0.01 | | W01001120 |
| Play/161 | Rhoose | Rural Vale | Stewart Road Play Area, Stewart Road, Rhoose | 0.08 | | W01001117 |
| Play/142 | Rhoose | Rural Vale | Burton Terrace, East Aberthaw | 0.05 | | W01001120 |
| Play/386 | Rhoose | Rural Vale | Heol Y Pentir | 0.04 | | W01001118 |
| Play/834 | Rhoose | Rural Vale | Ceri Road Sports Ground, Rhoose | 0.03 | Vale of Glamorgan Council | |
| Play/868 | Rhoose | Rural Vale | Play Area at Rhodfa'r Mor, Rhoose Point | 0.05 | Vale of Glamorgan Council | |
| Play/888 | St. Athan | Rural Vale | Pinewood Square Play Area, St Athan | 0.04 | W01001122 | |
| Play/806 | St. Athan | Rural Vale | Playground at Celyn Close, St Athan | 0.15 | | W01001122 |
| Play/131 | St. Augustine's | Penarth | Plassey Square Play Area, Plassey Street | 0.02 | | W01001125 |
| Play/169 | St. Augustine's | Penarth | Pembroke Terrace Children's Play Area | 0.06 | | W01001124 |
| Play/867 | St. Brides Major | Rural Vale | Play Area at Slon Lane | 0.06 | Vale of Glamorgan Council | W01001127 |
| Play/165 | St. Brides Major | Rural Vale | Wick Green Play Area, Broughton Road, Wick | 0.08 | | W01001128 |
| Play/147 | St. Brides Major | Rural Vale | Heol St. Bridget, St. Brides Major | 0.07 | | W01001128 |

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Play/831 | Sully | Rural Vale | Sully Sports and Social Club | 0.14 | Private | |
| Play/143 | Sully | Rural Vale | Elworthy Play Area, Conybeare Road, Sully | 0.02 | | W01001132 |
| Play/173 | Sully | Rural Vale | Jubilee Hall, Smithies Avenue, Sully | 0.04 | | W01001133 |
| Play/146 | Wenvoe | Rural Vale | The Grange Play Area, Grange Avenue, Wenvoe | 0.02 | | W01001136 |
| Play/872 | Wenvoe | Rural Vale | Bonvilston Village Hall Play Area | 0.10 | | W01001135 |
| Play/871 | Wenvoe | Rural Vale | Heol Collen Play Area, Brooklands Terrace | 0.02 | Vale of Glamorgan Council | W01001136 |

**Total Sites: 69** **Total Area (Ha): 4.59**

## Skate Park

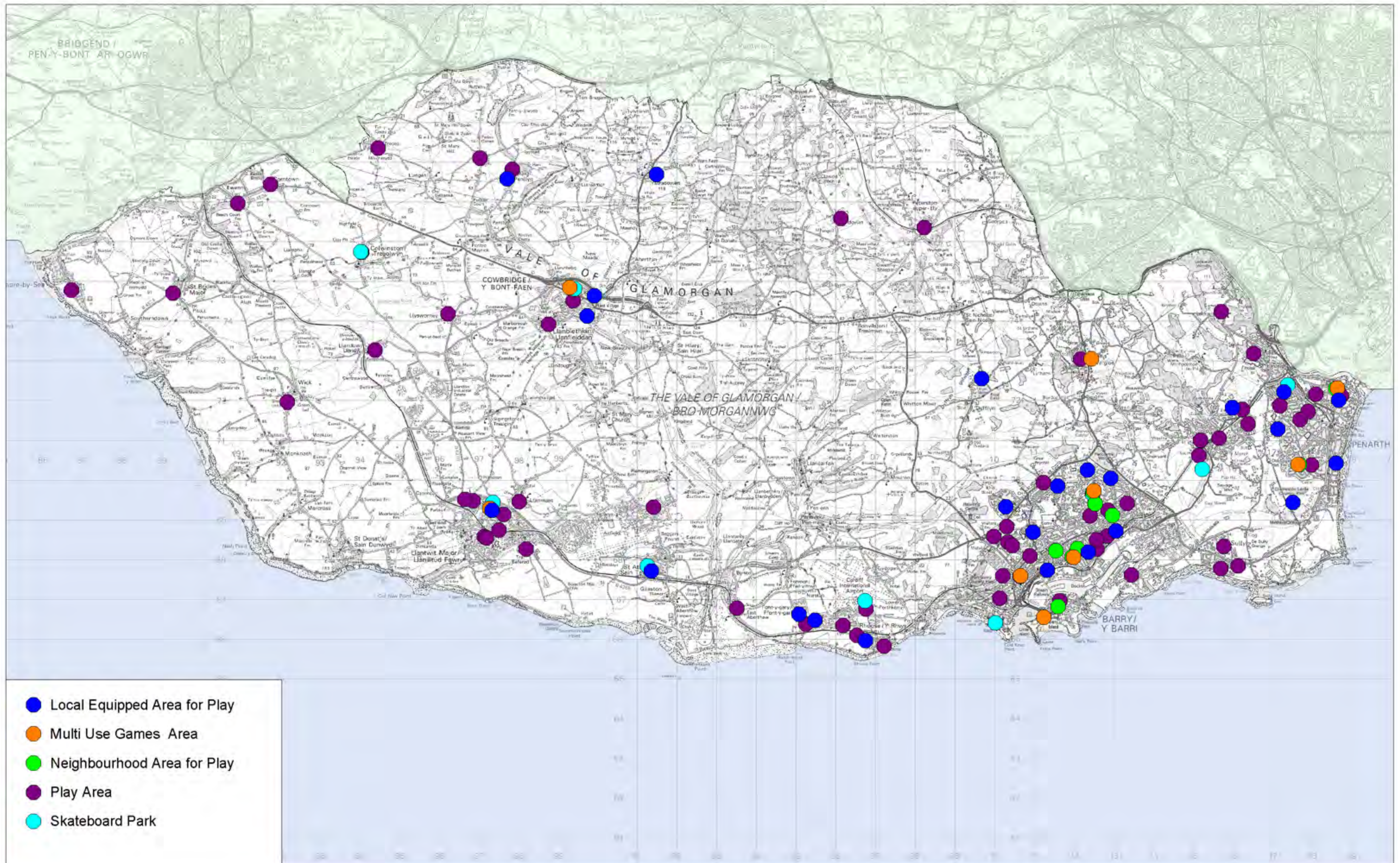
| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Skate/181 | Baruc | Barry | Knap Gardens, The Knap, Barry | 0.07 | | W01001059 |
| Skate/182 | Cadoc | Barry | Pencoedtre Park, Gibbonsdown, Barry | 0.08 | | W01001081 |
| Skate/183 | Cornerswell | Penarth | Cogan Leisure Centre, Cogan, Penarth | 0.04 | | W01001076 |
| Skate/184 | Cowbridge | Rural Vale | Bear Field, The Broad Shoard, Cowbridge | 0.02 | | W01001082 |
| Skate/185 | Dinas Powys | Rural Vale | Parc Bryn Y Don, Cardiff Road, Dinas Powys | 0.10 | | W01001089 |
| Skate/189 | Llandow/Ewenny | Rural Vale | Colwinston Skateboard Park | 0.02 | Vale of Glamorgan Council | W01001105 |
| Skate/869 | Llantwit Major | Rural Vale | Windmill Lane Skateboard Park, Frampton Lane | 0.03 | Vale of Glamorgan Council | |
| Skate/186 | Rhoose | Rural Vale | Ceri Road Sports Ground, Rhoose | 0.03 | | W01001118 |
| Skate/187 | St. Athan | Rural Vale | St. Athan Recreation Ground, Glyndwr Avenue, St. Athan | 0.03 | | W01001121 |

**Total Sites: 9** **Total Area (Ha): 0.42**

**Sites Total: 121** **Grand Total of Typology (Ha): 8.51**

Open Space Assessment

Distribution of Provision for Children and Young People



# Allotments, Community Gardens and City (Urban) Farms

## Allotment

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Allot/92 | Buttrills | Barry | St. Paul's Allotments, Montgomery Road | 0.27 | Vale of Glamorgan Council | W01001066 |
| Allot/90 | Cadoc | Barry | Palmerston Allotments, Dobbins Road | 2.65 | Vale of Glamorgan Council | W01001068 |
| Allot/93 | Castleland | Barry | Weston Hill Allotments, Wilfred Street | 0.36 | Vale of Glamorgan Council | W01001073 |
| Allot/94 | Cornerswell | Penarth | Cogan Allotments, Pill Street, Cogan, Penarth | 0.85 | Plymouth Estates / Vale of Glamorgan Council | W01001076 |
| Allot/97 | Cornerswell | Penarth | Windsor Road, Penarth | 0.20 | Penarth Town Council | W01001076 |
| Allot/91 | Court | Barry | Slaughterhouse Allotments, Gladstone Road / Court Road | 0.39 | Vale of Glamorgan Council | W01001080 |
| Allot/89 | Court | Barry | Old Pencoedtre, Dyfnallt Road | 0.81 | Vale of Glamorgan Council | W01001081 |
| Allot/106 | Cowbridge | Rural Vale | Cae Rex Allotments | 0.25 | Cowbridge / Llanblethian Town Council | W01001082 |
| Allot/95 | Cowbridge | Rural Vale | Aberthin Road Allotments, Aberthin Road, Cowbridge | 0.09 | Vale of Glamorgan Council | W01001084 |
| Allot/763 | Dinas Powys | Rural Vale | St Andrews Road, adjacent to St Andrews Cemetery | 0.56 | Dinas Powys Community Council | W01001086 |
| Allot/87 | Gibbonsdown | Barry | Merthyr Dyffan Allotments, Slade Road | 0.89 | Vale of Glamorgan Council | W01001096 |
| Allot/86 | Gibbonsdown | Barry | Cemetery Road, Barry | 1.60 | Vale of Glamorgan Council | W01001096 |
| Allot/88 | Illtyd | Barry | Beggarswell, Severn Avenue | 4.23 | Vale of Glamorgan Council | W01001099 |
| Allot/100 | Llandough | Rural Vale | Corbett Road, Llandough | 1.19 | Llandough Community Council | W01001104 |
| Allot/101 | Llandough | Rural Vale | Lewis Road, Llandough | 0.44 | Llandough Community Council | W01001104 |
| Allot/859 | Llandow/Ewenny | Rural Vale | Treoes Allotments | 0.29 | Llangan Community Council | W01001105 |
| Allot/104 | Llantwit Major | Rural Vale | Llanmaes Road | 0.89 | Llantwit Major Town Council | W01001107 |
| Allot/102 | Peterston-super-Ely | Rural Vale | Ael y Bryn / Heol Llanbedr | 0.14 | Peterston-super-Ely Community Council | W01001113 |
| Allot/699 | Plymouth | Penarth | Sully Terrace Allotments Association, Westbourne Road, Penarth | 0.74 | Earl of Plymouth Estates | W01001114 |
| Allot/96 | Rhoose | Rural Vale | Ceri Road, Rhoose | 0.72 | Vale of Glamorgan Council | W01001118 |
| Allot/99 | St. Augustine's | Penarth | Paget Terrace, Penarth | 0.09 | Penarth Town Council | W01001126 |
| Allot/98 | St. Augustine's | Penarth | Harbourview Road, Penarth | 0.49 | Penarth Town Council | W01001126 |
| Allot/105 | Wenvoe | Rural Vale | St. Lythans Road, Twyn-yr-Odyn | 0.62 | Wenvoe Community Council | W01001135 |

**Total Sites: 23** **Total Area (Ha): 18.76**

**Sites Total: 23** **Grand Total of Typology (Ha): 18.76**

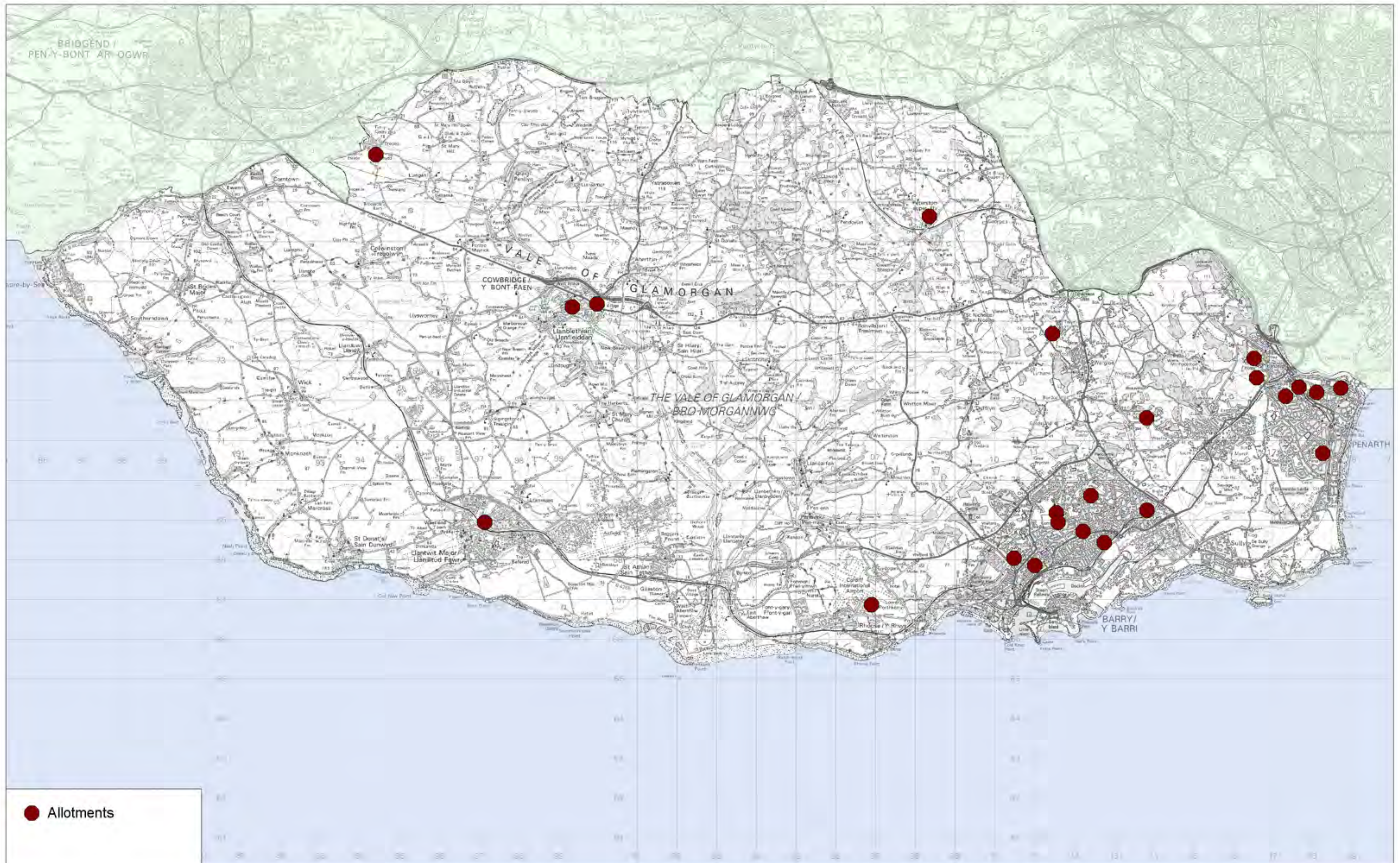
**Allotments** **Appendix 12**

| | | | | | | | Recommended provision against each standard. | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Ward** | **Population** | **No of Plots** | **Area (Ha)** | **Unavailable Plots** | **Total Plots** | **Waiting List** | **NSALG 1 plot / 120 people** | | **Thorpe 0.2Ha/000 (Ha)** | | **EAS 15 plots / 1000 h'holds** | | **FOA 1998 0.25Ha / 1000 popn** | |
| Buttrills | 6357 | 8 | 0.27 | 6 | 14 | 37 | 53 | -39 | 1.27 | -1.00 | 41 | -27 | 1.59 | -1.32 |
| Cadoc | 10002 | 106 | 2.65 | 9 | 115 | 127 | 83 | 32 | 2.00 | 0.65 | 65 | 50 | 2.50 | 0.15 |
| Castleland | 4852 | 13 | 0.36 | 0 | 13 | 30 | 40 | -27 | 0.97 | -0.61 | 31 | -18 | 1.21 | -0.85 |
| Cornerswell | 5353 | 61 | 1.05 | 0 | 61 | 80 | 45 | 16 | 1.07 | -0.02 | 35 | 26 | 1.34 | -0.29 |
| Court | 4748 | 41 | 1.2 | 5 | 46 | 161 | 40 | 6 | 0.95 | 0.25 | 31 | 15 | 1.19 | 0.01 |
| Cowbridge | 6180 | 21 | 0.34 | 0 | 21 | 33 | 52 | -31 | 1.24 | -0.90 | 40 | -19 | 1.55 | -1.21 |
| Dinas Powys | 7799 | 45 | 0.56 | 0 | 45 | 18 | 65 | -20 | 1.56 | -1.00 | 50 | -5 | 1.95 | -1.39 |
| Gibbonsdown | 5895 | 76 | 2.49 | 5 | 81 | 104 | 49 | 32 | 1.18 | 1.31 | 38 | 43 | 1.47 | 1.02 |
| Illtyd | 8201 | 136 | 4.23 | 19 | 155 | 153 | 68 | 87 | 1.64 | 2.59 | 53 | 102 | 2.05 | 2.18 |
| Llandough | 1977 | 57 | 1.63 | 26 | 83 | 20 | 16 | 67 | 0.40 | 1.23 | 13 | 70 | 0.49 | 1.14 |
| llandow/ewenny | 2643 | 10 | 0.29 | 0 | 10 | 0 | 22 | -12 | 0.53 | -0.24 | 17 | -7 | 0.66 | -0.37 |
| Llantwit Major | 10621 | 63 | 0.89 | 0 | 63 | 21 | 89 | -26 | 2.12 | -1.23 | 69 | -6 | 2.66 | -1.77 |
| Peterston-s-Ely | 2289 | 12 | 0.14 | 0 | 12 | 5 | 19 | -7 | 0.46 | -0.32 | 15 | -3 | 0.57 | -0.43 |
| Plymouth | 5836 | 45 | 0.74 | 0 | 45 | 40 | 49 | -4 | 1.17 | -0.43 | 38 | 7 | 1.46 | -0.72 |
| Rhoose | 6907 | 29 | 0.72 | 1 | 30 | 65 | 58 | -28 | 1.38 | -0.66 | 45 | -15 | 1.73 | -1.01 |
| St Augustine's | 6478 | 25 | 0.58 | 0 | 25 | 50 | 54 | -29 | 1.30 | -0.72 | 42 | -17 | 1.62 | -1.04 |
| Wenvoe | 2659 | 24 | 0.62 | 0 | 24 | 10 | 22 | 2 | 0.53 | 0.09 | 17 | 7 | 0.66 | -0.04 |
| **Ward Total** | 98797 | 772 | 18.76 | 71 | 843 | 954 | | | | | | | | |
| **Vale Total** | **126336** | **772** | **18.76** | **71** | **843** | **954** | **1089** | **-246** | **25.27** | **-6.51** | **817** | **26** | **31.58** | **-12.82** |

NSALG - National Society of Allotment and Leisure Gardeners.
EAS - English Allotment Survey (1997)
FOA - Future of Allotments House of Commons Select Committee (1998)

Open Space Assessment

Distribution of Allotments



# Cemeteries and Churchyards

## Cemetery

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Cem/201 | Cowbridge | Rural Vale | Limes Cemetery, Cowbridge | 0.51 | | W01001082 |
| Cem/198 | Dinas Powys | Rural Vale | St. Andrew's Road, St. Andrews Major | 0.69 | | W01001086 |
| Cem/194 | Dyfan | Barry | Merthyr Dyfan Cemetery | 9.65 | | W01001093 |
| Cem/199 | Llantwit Major | Rural Vale | Boverton Road, Llantwit Major | 0.85 | | W01001109 |
| Cem/196 | Plymouth | Penarth | Castle Avenue, Penarth | 2.99 | | W01001114 |
| Cem/195 | Rhoose | Rural Vale | Porthkerry Cemetery | 0.43 | | W01001119 |
| Cem/200 | St. Athan | Rural Vale | Rock Road, St. Athan | 0.42 | Church in Wales | W01001121 |

**Total Sites: 7** **Total Area (Ha): 15.54**

## Churchyard

| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| Church/599 | Baruc | Barry | St Nicholas Church, Park Avenue | 0.16 | | W01001059 |
| Church/607 | Buttrills | Barry | St Paul's Church | 0.11 | | W01001066 |
| Church/590 | Cadoc | Barry | St Cadoc's Church | 0.19 | | W01001072 |
| Church/846 | Cornerswell | Penarth | St.Joseph's Roman Catholic Church, Wordworth Avenue | 0.01 | Private | W01001075 |
| Church/561 | Cowbridge | Rural Vale | St Bleddian Church, Llanblethan | 0.45 | | W01001083 |
| Church/562 | Cowbridge | Rural Vale | Church of the Holy Cross, Church Street, Cowbridge | 0.35 | | W01001082 |
| Church/554 | Cowbridge | Rural Vale | St Senewyr's Church, Llansannor | 0.14 | | W01001086 |
| Church/570 | Cowbridge | Rural Vale | Church in Ystradowen | 0.12 | | W01001085 |
| Church/563 | Cowbridge | Rural Vale | Church in Llandough | 0.08 | | W01001083 |
| Church/552 | Cowbridge | Rural Vale | Church in Penllyne | 0.09 | | W01001085 |
| Church/569 | Cowbridge | Rural Vale | St Hilary's Church, St Hilary | 0.30 | | W01001084 |
| Church/592 | Cowbridge | Rural Vale | St Brynach's Church, West of Cowbridge | 0.60 | | W01001085 |
| Church/564 | Cowbridge | Rural Vale | St Mary's Church, St Mary Church | 0.15 | | W01001083 |
| Church/585 | Dinas Powys | Rural Vale | St Peter's Church, Dinas Powys | 0.36 | | W01001086 |
| Church/586 | Dinas Powys | Rural Vale | Church at Michaelston-le-Pit | 0.09 | | W01001090 |

| | | | | | |
|---|---|---|---|---|---|
| Church/584 | Dinas Powys | Rural Vale | St Andrew's Church, St Andrews Major | 0.29 | W01001086 |
| Church/591 | Dyfan | Barry | St Dyfan and St Teilo's Church | 0.03 | W01001092 |
| Church/587 | Llandough | Rural Vale | St Dochdwy's Church, Llandough | 0.35 | W01001104 |
| Church/560 | Llandow/Ewenny | Rural Vale | St Michaels Church, Llanmihangel | 0.10 | W01001105 |
| Church/548 | Llandow/Ewenny | Rural Vale | Holy Trinity Church, Llandow | 0.11 | W01001105 |
| Church/553 | Llandow/Ewenny | Rural Vale | St Tydfil's Church, Llysworney | 0.11 | W01001105 |
| Church/551 | Llandow/Ewenny | Rural Vale | St Mary's Church, North of St Mary Hill | 0.48 | W01001105 |
| Church/549 | Llandow/Ewenny | Rural Vale | St Michael and All Angels Church, Colwinston | 0.27 | W01001105 |
| Church/756 | Llandow/Ewenny | Rural Vale | Saron Chapel | 0.07 | W01001105 |
| Church/543 | Llandow/Ewenny | Rural Vale | St Michaels Church, Ewenny Abbey | 0.19 | W01001105 |
| Church/550 | Llandow/Ewenny | Rural Vale | St Canna Church, Llangan | 0.27 | W01001105 |
| Church/547 | Llantwit Major | Rural Vale | St Donat's Church, St Donats | 0.14 | W01001110 |
| Church/545 | Llantwit Major | Rural Vale | Holy Trinity Church, Marcross | 0.12 | W01001110 |
| Church/546 | Llantwit Major | Rural Vale | St Mary's Church, Broughton | 0.15 | W01001110 |
| Church/556 | Llantwit Major | Rural Vale | Church in Llanmaes | 0.15 | W01001108 |
| Church/559 | Llantwit Major | Rural Vale | Church on Ham Lane East | 0.13 | W01001107 |
| Church/558 | Llantwit Major | Rural Vale | Church on Colhugh Street, Llantwit Major | 0.03 | W01001107 |
| Church/557 | Llantwit Major | Rural Vale | St Illtud's Church, Llantwit Major | 0.31 | W01001110 |
| Church/578 | Peterston-super-Ely | Rural Vale | Church in Pendoylan | 0.20 | W01001113 |
| Church/581 | Peterston-super-Ely | Rural Vale | St George's Churchyard | 0.29 | W01001113 |
| Church/579 | Peterston-super-Ely | Rural Vale | St Peter's Church, Peterston-super-Ely | 0.33 | W01001113 |
| Church/571 | Peterston-super-Ely | Rural Vale | St Donat's Church, Welsh St Donats | 0.33 | W01001113 |
| Church/580 | Peterston-super-Ely | Rural Vale | St Ffraid's Church, St Bride's-super-Ely | 0.18 | W01001113 |
| Church/574 | Rhoose | Rural Vale | Church of the Blessed Virgin Mary, Penmark | 0.26 | W01001119 |
| Church/573 | Rhoose | Rural Vale | St Cattwg's Church, Llancarfan | 0.49 | W01001119 |
| Church/575 | Rhoose | Rural Vale | Church in Rhoose | 0.03 | W01001118 |
| Church/576 | Rhoose | Rural Vale | St Curig's Church, Porthkerry | 0.10 | W01001119 |
| Church/572 | Rhoose | Rural Vale | St Illtyd's Church, Llantrithyd | 0.21 | W01001119 |
| Church/567 | St. Athan | Rural Vale | St Gile's Church, Gileston | 0.06 | W01001121 |
| Church/566 | St. Athan | Rural Vale | St Brewis' Church | 0.03 | W01001122 |
| Church/568 | St. Athan | Rural Vale | St Tathan's Church | 0.20 | W01001121 |
| Church/565 | St. Athan | Rural Vale | St Michael's Church, Flemingston | 0.08 | W01001122 |
| Church/719 | St. Augustine's | Penarth | St Augustine's Church | 0.84 | W01001123 |

| Church/544 | St. Brides Major | Rural Vale | St James' Church, Wick | 0.29 | | W01001128 |
|---|---|---|---|---|---|---|
| Church/542 | St. Brides Major | Rural Vale | Parish church of St Bridget, St Bridges Major | 0.54 | | W01001128 |
| Church/356 | Stanwell | Penarth | All Saint's Church, Victoria Square | 1.00 | | W01001130 |
| Church/588 | Sully | Rural Vale | St Lawrence's Church, Lavernock Point | 0.08 | | W01001134 |
| Church/589 | Sully | Rural Vale | St John the Baptist Church, Sully | 0.22 | | W01001133 |
| Church/577 | Wenvoe | Rural Vale | St Mary's Church, Bonvilston | 0.11 | | W01001135 |
| Church/395 | Wenvoe | Rural Vale | St Mary's Church, Wenvoe | 0.37 | | W01001136 |
| Church/582 | Wenvoe | Rural Vale | St Nicolas' Church, St Nicholas | 0.29 | | W01001135 |
| Church/583 | Wenvoe | Rural Vale | St Lythans Church, St Lythan | 0.27 | | W01001135 |

**Total Sites: 57** **Total Area (Ha): 13.30**

## Green Burial Land

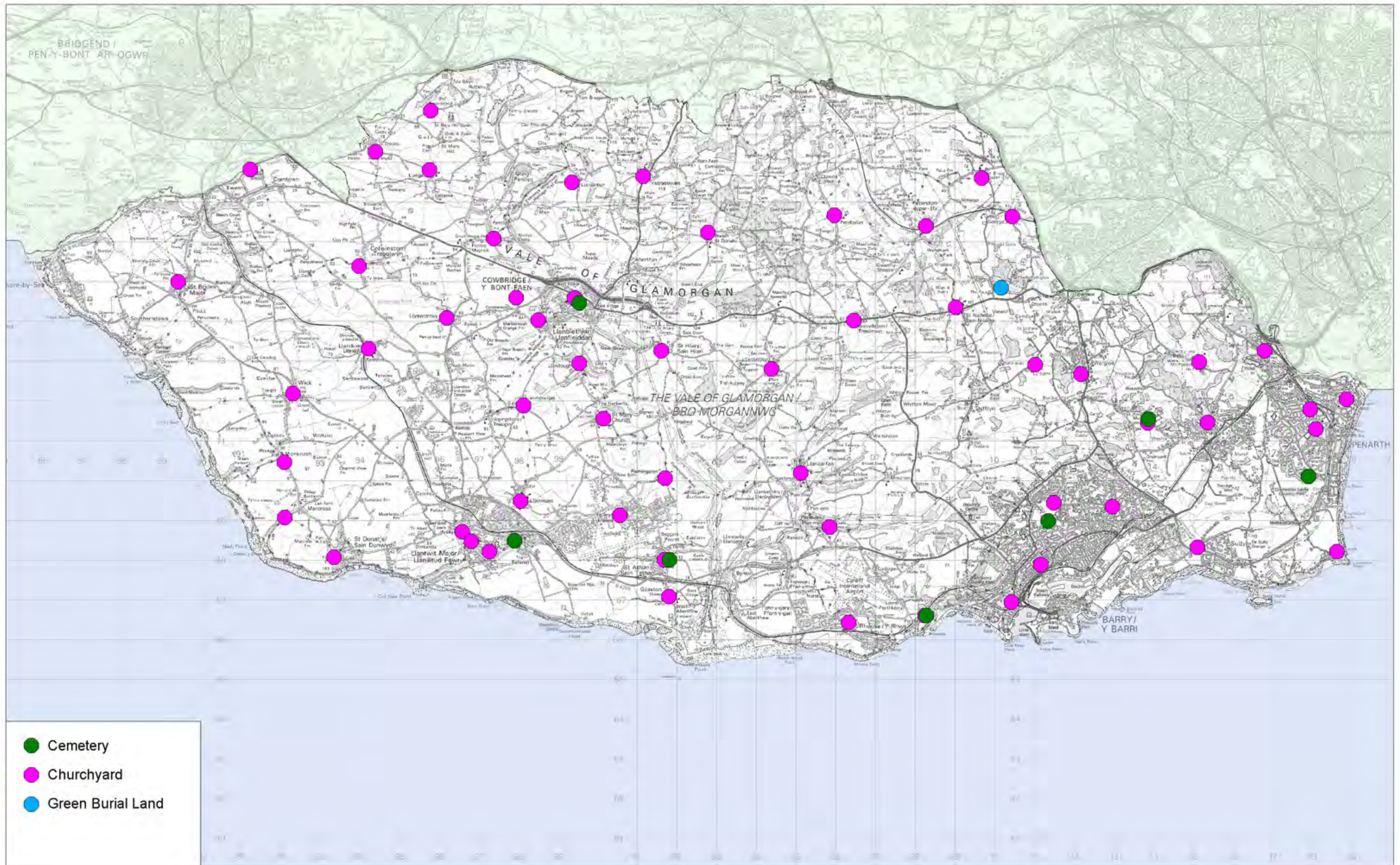
| OSID | Ward | Settlement | Location | Area (Ha) | Ownership | LSOA Code |
|---|---|---|---|---|---|---|
| GB/769 | Peterston-super-Ely | Rural Vale | Coedarhydyglyn Park | 4.45 | Treharne Farms Ltd | W01001113 |

**Total Sites: 1** **Total Area (Ha): 4.45**

**Sites Total: 65** **Grand Total of Typology (Ha): 33.29**

Open Space Assessment

Distribution of Cemeteries and Churchyards



**Noise Action Priority Area - Alexandra Park, Penarth**

**Noise Action Priority Areas - Belle Vue Gardens, Penarth**

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**Noise Action Priority Area - Penarth Head Lane, Penarth**

**Noise Action Priority Areas - Golden Gates and Victoria Playing Fields, Penarth**

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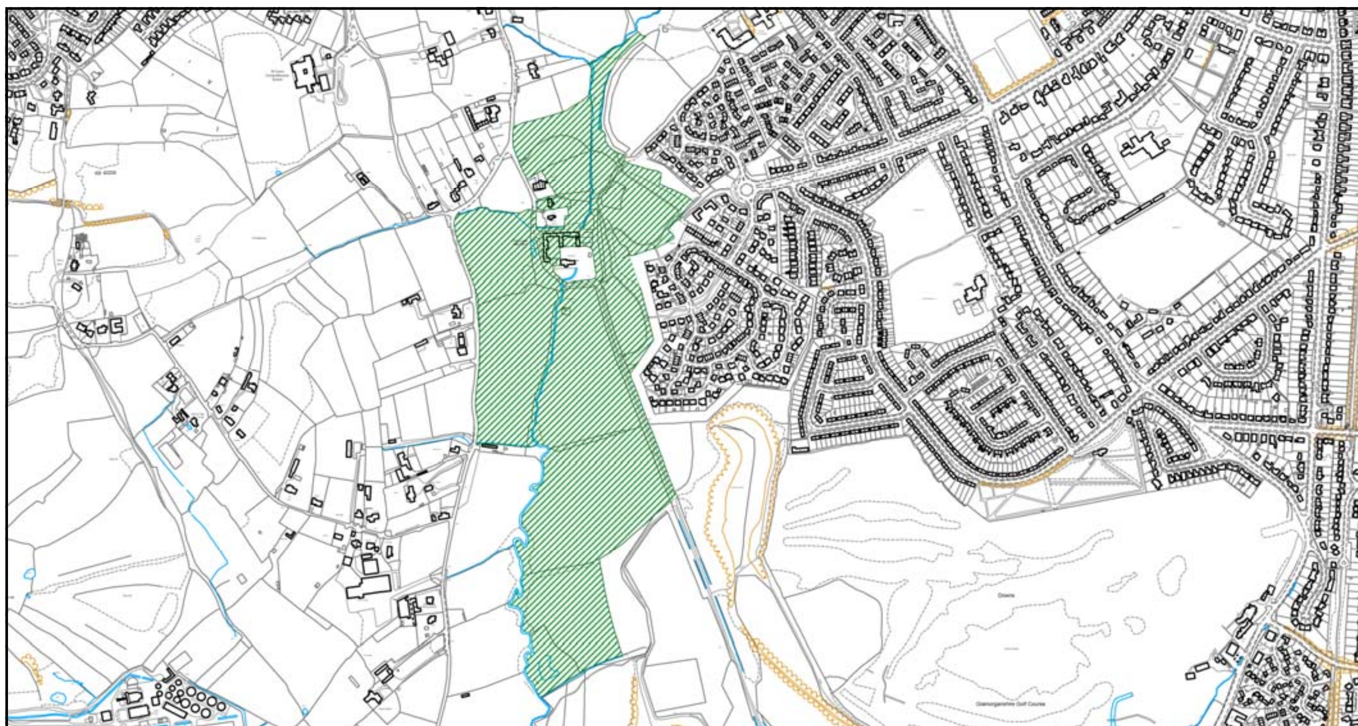
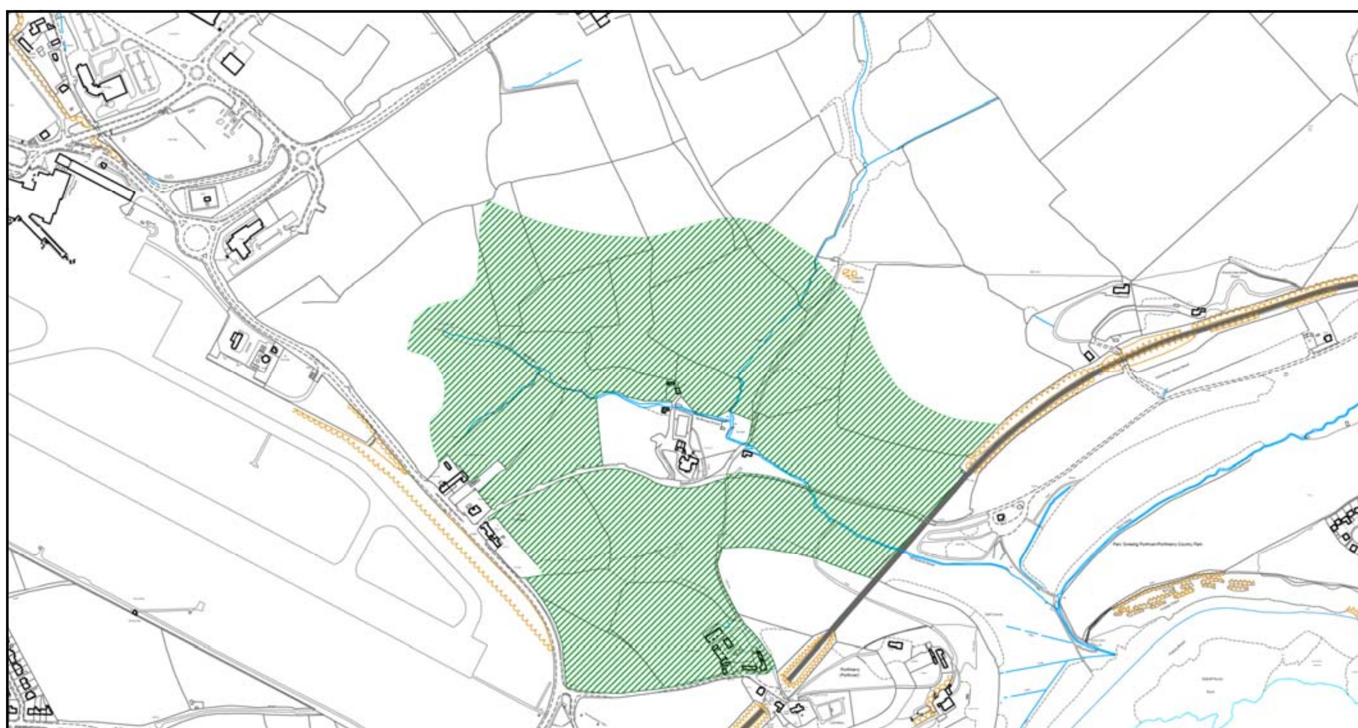
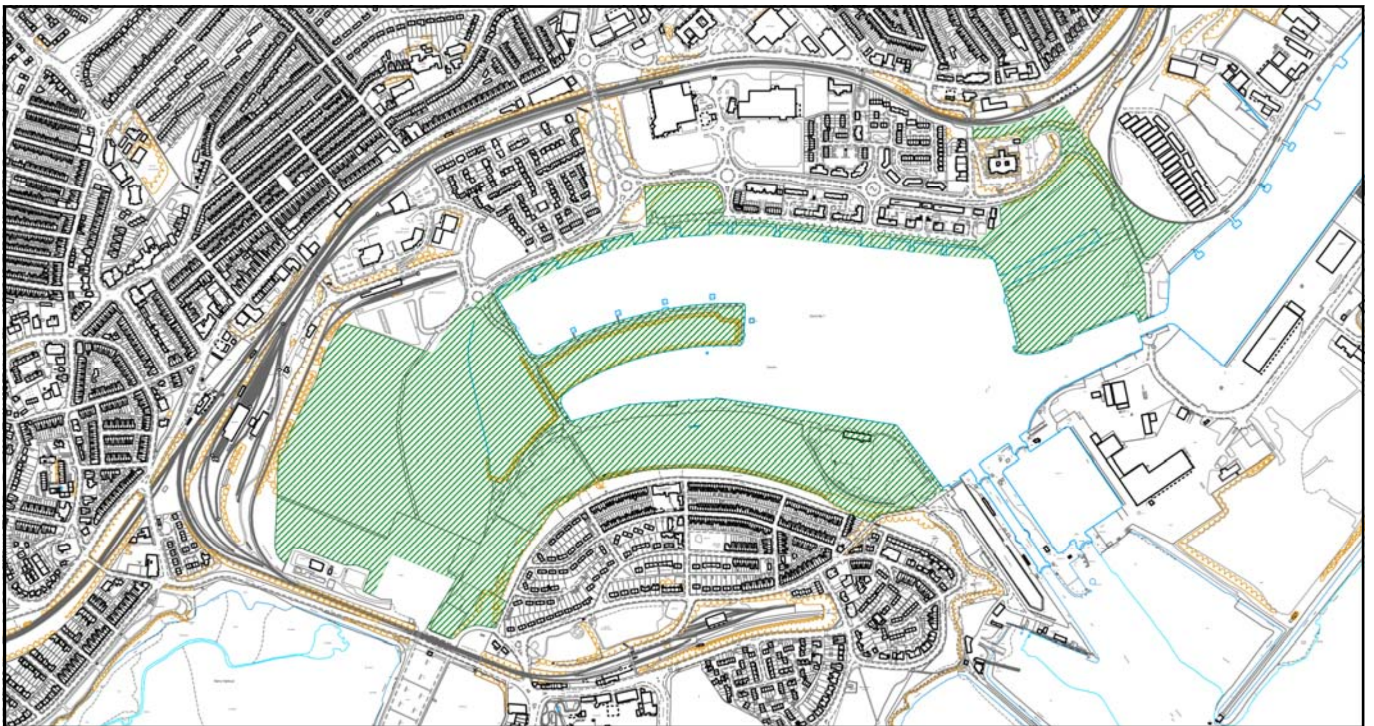
**Extension to Cosmeston Lakes Country Park** - 27ha. allocated for the provision of open space and recreational facilities



**Extension to Porthkerry Country Park** - 42ha. allocated for the provision of open space and recreational facilities



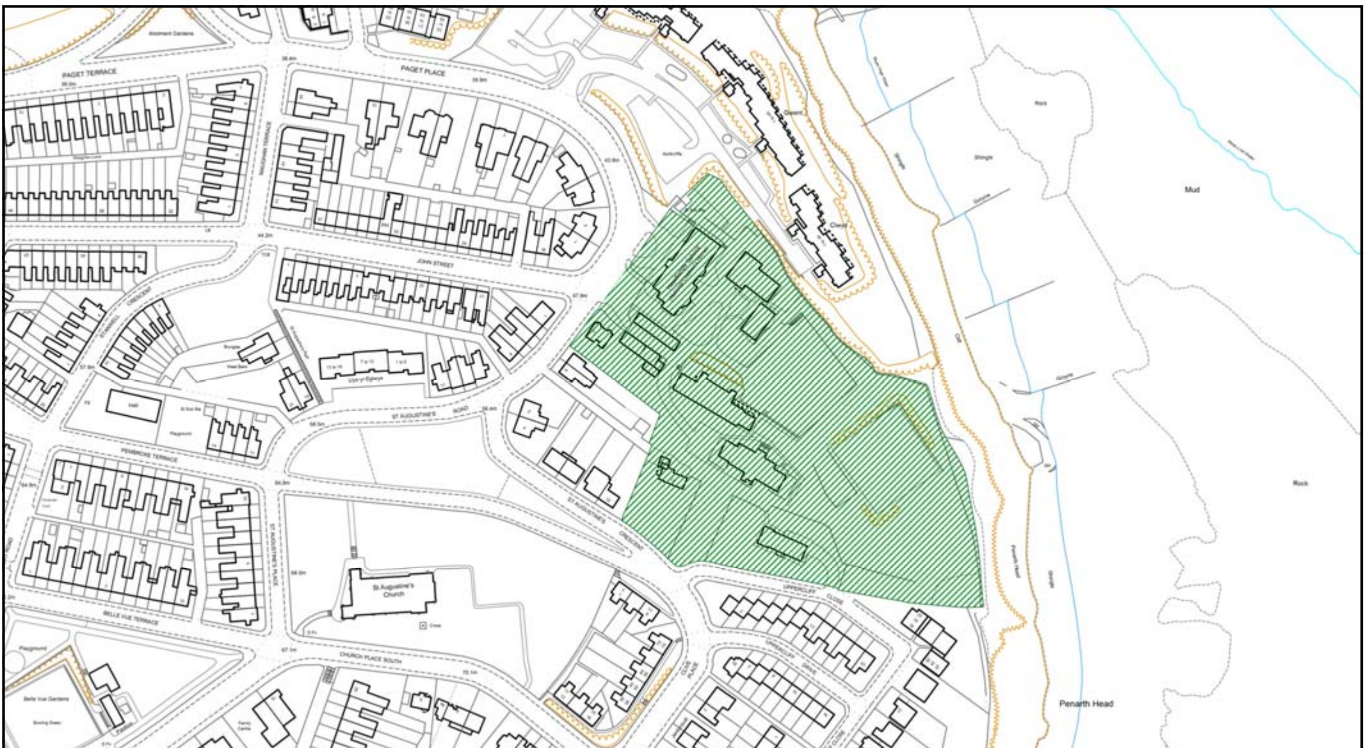
**Barry Waterfront** - 7.89ha. allocated for the provision of open space and recreational facilities



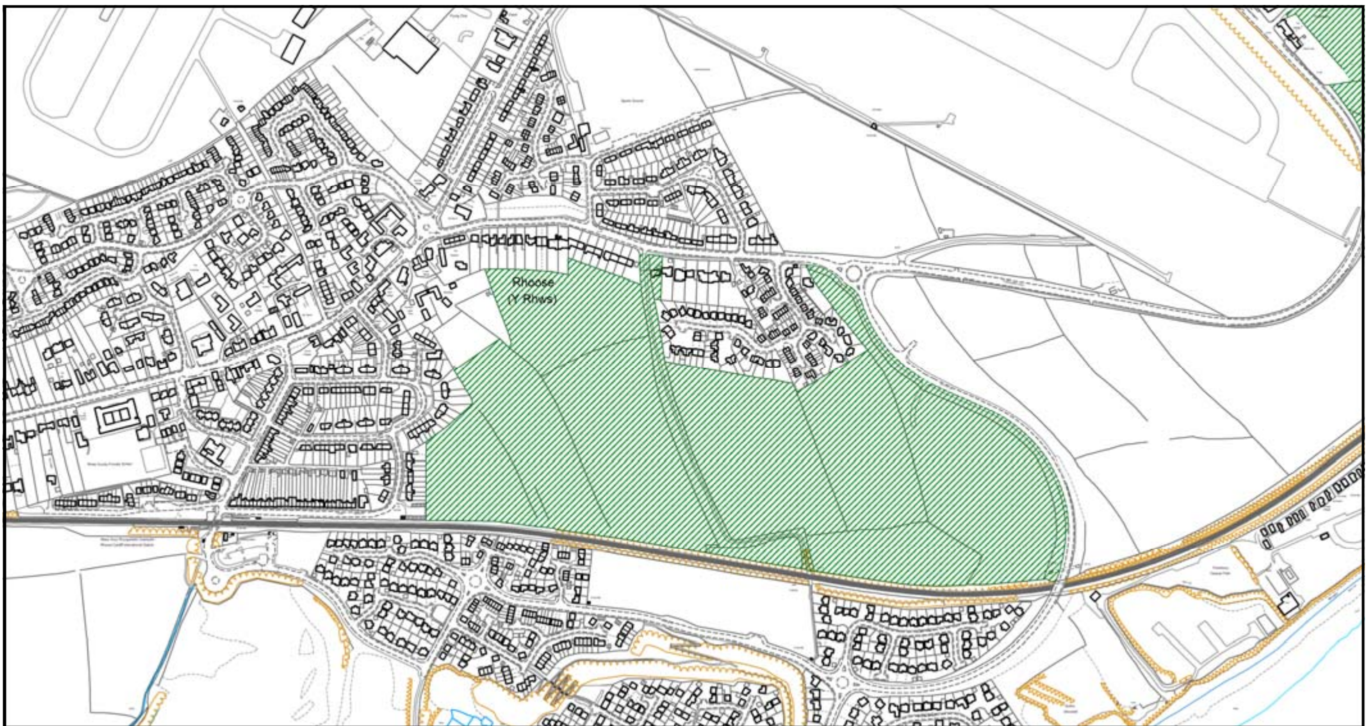
**White Farm, Barry** - 6.9ha. allocated for the provision of open space and recreational facilities

**Land adjoining Ysgol Maes Dyfan, Barry** - outdoor sports provision to be provided on existing land adjoining housing allocation (0.16ha.)

**Headlands School, St. Augustine's Road, Penarth** - of which 0.24ha. allocated for the provision of open space and recreational facilities



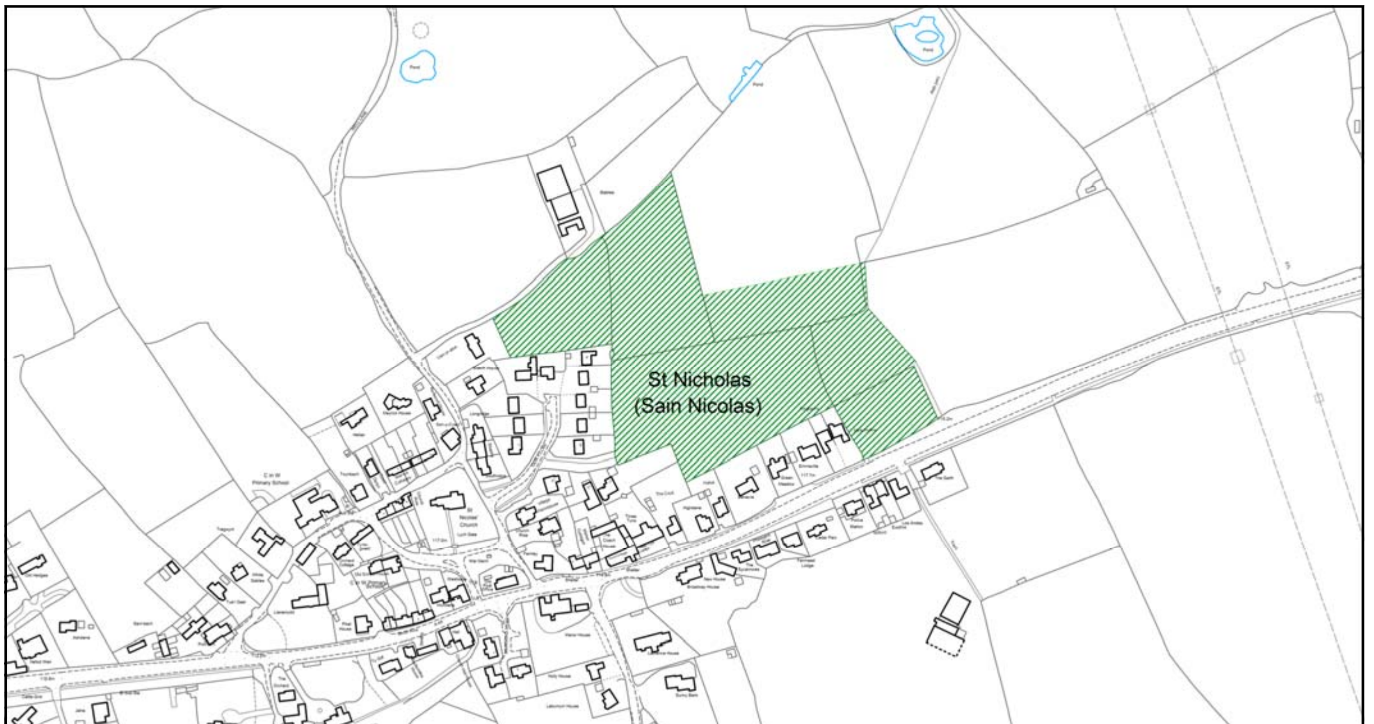
**Land to the north of railway line, Rhoose** - of which 3.60ha. allocated for the provision of open space and recreational facilities



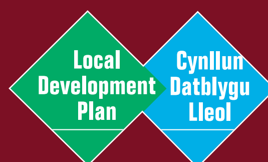

**Land to the east of Bonvilston** - of which 0.55ha. allocated for the provision of open space and recreational facilities

**ITV Wales, Culverhouse Cross** - of which 1.03ha. allocated for the provision of open space and recreational facilities

**Land to the east of St. Nicholas** - of which 0.48ha. allocated for the provision of open space and recreational facilities



**Land off Sandy Lane, Ystradowen** - of which 0.43ha. allocated for the provision of open space and recreational facilities




The Vale of Glamorgan Council
**Directorate of Development Services**
Dock Office
Barry Docks
Barry CF63 4RT

LDP@valeofglamorgan.gov.uk
www.valeofglamorgan.gov.uk

Document 2 Ringwood Crescent Village Green Application

The Land owner is,

Annington Homes
c/o 1 James Street,
London,
W1U 1DR

02/01239/OUT 'B6'

**JANE HUTT**
**Assembly Member for the**
**Vale of Glamorgan**

**Constituency Office:**
**115 High Street**
**Barry**
**Vale of Glamorgan**
**CF62 7DT**
**Tel: 01446-740981**
**Fax: 01446-747106**

**Your ref:** JME/amh/aw
**Our ref:** JH/CG

2 October 2002

Mr John Maitland Evans
Chief Executive
Vale of Glamorgan County Council
Civic Offices
Holton Road
Barry CF63 4RU

Dear John

**East Camp Community Centre, St Athan**

Thank you for your reply of 19 September. I was very pleased that Chris Fray was able to attend a number of the meetings organised to discuss the future of the services which have been provided by the East Camp Centre until this week.

As you may be aware, the Centre has now effectively closed apart from the Thrift Shop, which will continue until 16 October. Wing Commander Zam Ulhaq has identified alternative accommodation for the Thrift Shop, but there are concerns that it will not be adequate to maintain the level of service provided until now. However, a local steering group has now been set up to explore the way forward to ensure that local people continue to have access to the very important services offered at the Centre. James Dowd is the secretary of this group and I know that they have already followed up on your suggestions of contact with the Community Association about use of the St Athan Community Centre and with the Community Council.

Following our meeting of 10 September, I made further representations to Anningtons about their role in this matter. Given their reference to the provision of a Community Centre in relation to their planning application, I thought that you would be interested to read their letter. They maintain that they were not referring to the East Camp Centre but to the one at St Athan itself. I have serious concerns about whether the provision at St Athan is sufficient for civilian residents at the East and West camps as well.

02/01239/OUT 'B'

The Centre at St Athan is small and not really adequate to take on all the services currently carried out at the East Camp Community Centre. There is also a problem of transport. While the East Camp is regarded as being part of St Athan, many of the residents there do not identify with the village. A substantial number of the people who use the services at the Centre are young women with children, a significant proportion of whom are single parents and/or who do not have their own transport. There are serious concerns among the professionals providing services at the centre that these women will not go anywhere rather than go to the community centre in St Athan itself. There are dangers of increasing social isolation among this very vulnerable group.

I would ask the Council to think seriously about agreeing to further civilian housing in an area where there is already such a lack of services and oppose any application which did not also propose some plan for providing suitable facilities. I would be grateful if my comments could be taken into account in the determination of Annington's application.

However, I would also be grateful for information about whether there are any guidelines as to the level of provision needed per head of population and whether the combined civilian populations at West and East Camps and St Athan are adequately served.

Thank you again for your help in this. I look forward to hearing from you.

Yours

**JANE HUTT AM**

C Rob Quick

**02/01239/OUT** Received on 11th August, 2005

Annington Developments Ltd Unit 1, Eaglethorpe Barns, Peterborough Road, Warmington, Peterborough. PE8 6TL
(Scott Wilson, 3-4 Foxcombe Court, Wyndyke Furlong, Abingdon Business Park, Abingdon, Oxon, OX14 1DZ. )

**LAND AT RINGWOOD CRESCENT, ST. ATHAN EAST CAMP, ST. ATHAN**

Residential Development of five dwellings

SITE DESCRIPTION

The application site comprises a tree covered area of open space located on the western arm of Ringwood Crescent within the East Camp housing estate at St. Athan.

DESCRIPTION OF DEVELOPMENT

This is an outline application with all matters reserved for subsequent detailed approval for the construction of five dwellings. A sketch layout has been submitted indicating the siting of five detached houses positioned towards the eastern side of the land and with individual vehicular entrances, four of which access directly off the western arm of Ringwood Crescent with the fifth being accessed to the south.

PLANNING HISTORY

None.

CONSULTATIONS

St. Athan Community Council's comments on initial application:

"My Council strongly oppose this application on the following grounds:

(a) Over development in the rural countryside.

(b) Removal of valuable and vitally required Amenity Space for local residents.

(c) Additional housing on an already overloaded sewerage system."

Comments on revised scheme:

"My Council strongly oppose this application and reiterates its opposition on the following grounds:

(a) Over development in the rural countryside.

(b) Removal of a valuable and vitally required Amenity Space for local residents, i.e. Children's Play Area."

Environment Agency - Have submitted their "Standard Advice" Guidance Note for Developers only.

Dwr Cymru/Welsh Water – Comments on initial scheme:

"Thank you for the consultation on the above Planning Application. We act for Dwr Cymru – Welsh Water in responding to these consultations.

**Sewerage**

The proposed development would overload the existing public sewerage system. No improvements are planned within Dwr Cymru – Welsh Water's Capital Investment Programme. We consider any development prior to improvements being made to be premature and therefore OBJECT to the development. It may be possible for the Developer to fund the accelerated provision of replacement sewers or to requisition a new sewer under Sections 98–101 WIA 1991.

Reason – To prevent hydraulic overload of the Public Sewerage System and Pollution of the Environment.

We hope the above is satisfactory, however should you require further assistance please contact us."

Comments on revised applications:

"Further to the above consultation we would provide the following comments:

We would request that if you are minded to grant Planning consent for the above development that the Conditions and Advisory notes listed below are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru/Welsh Water's assets.

**Sewerage**

**Conditions**

Foul water and surface water discharges must be drained separately from the site.

Reason – To prevent hydraulic overloading of the Public Sewerage System.

No surface water shall be allowed to connect (either directly or indirectly) to the public sewerage system.

Reason – To prevent hydraulic overload of the public sewerage system and pollution of the environment.

No development shall commence until the Developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how foul water, surface water and land drainage will be dealt with and this has been agreed in writing by the Local Planning Authority in liaison with Dwr Cymru – Welsh Water's Network Development Consultant.

Reason – To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system.

**Advisory Notes**

If a connection is required to the public sewerage system, the developer is advised to contact the Dwr Cymru/Welsh Water's Network Development Consultants on Tel: 01443 331155.

We hope the above is satisfactory, however should you require further assistance please contact us on the above telephone number, quoting our reference."

Ministry of Defence – No safeguarding objections to either the original or amended scheme.

Glamorgan Gwent Archaeological Trust – No objections.

The Director of Legal and Regulatory Services (Environmental Health) – Initial comments on original scheme:

"I refer to your memorandum dated 16th instant and offer no objections in principle. However regarding the above, I would comment as follows:

1. The proposed development is not within the MOD Noise Insulation Grant Scheme criterion of 70dB(A), but it would be prudent to carry out a noise survey of the area to determine if appropriate noise attenuation measures will be required.

2. The developers should be reminded that the properties will have to have a wholesome water supply."

Comments on revised scheme:

"I refer to the above application received on 24th August, 2005. This department does not object to the application but insist on the following condition:

Any soils or similar material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation to be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

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

In addition we would confirm that a noise assessment in accordance with TAN 11 be undertaken to identify the NEC for the proposed development. The assessment should be undertaken and the finding reported to the Local Planning Authority prior to development of the site. Any noise mitigation measures required must be installed prior to beneficial occupation of the properties.

Reason - To ensure protection of residential amenity form noise arising from active airfield."

REPRESENTATIONS

The occupiers of neighbouring properties were notified of the initial scheme on 19th September, 2002 and re-notified of the amended proposal on 22nd August, 2005. In addition the original scheme was advertised on site and in the press on 30th October, 2002.

Objections to the original scheme included 112 circular letters signed by both local and wider located residents of the Vale; an objection letter from the occupier of No. 22, Drake Close; an objection from Pastor James Dowd of No. 39, Mallory Close plus a letter of objection from Jane Hutt A.M. In summary the objections relate to the principle of additional houses without adequate facilities in the area. Whilst all the representations are available on file for Committee Member inspection, a copy of the circular letter is reproduced at Appendix "A". In addition, copies of the individual representations from 22, Drake Close, Pastor Dowd and Jane Hutt A.M are reproduced at Appendix "B".

Following re-notification in relation to the amended plan, letters of objections have been submitted by the occupier of No. 1, Ringwood Crescent and Chris J. Morgan, Planning Consultant on behalf of the occupiers of Nos. 1–8 inclusive Ringwood Crescent. Copies of these letters are reproduced at Appendix "C" for Committee Members inspection, however, in summary, the concerns relate to there being no need for additional houses, loss of open space, impact on trees, unsustainable development with lack of facilities in the area, and drainage.

The applicants' agents have submitted representations in support of the amended scheme. These are reproduced at Appendix "D".

REPORT

The application site comprises an area of grassed open space with existing tree coverage. A number of the trees are protected by a group Tree Preservation Order 2003 (No.2). Whilst the site lies within an existing housing estate on the R.A.F base, nevertheless it is located within the countryside well outside the residential settlement boundary for St. Athan, as defined in the Vale of Glamorgan Unitary Development Plan 2005. As such, the following policy background is considered relevant to the determination of the application.

Strategic policies of the Vale of Glamorgan Unitary Development Plan 2005 which are considered relevant to the current application include the following:

POLICY 2

PROPOSALS WHICH ENCOURAGE SUSTAINABLE PRACTICES WILL BE FAVOURED INCLUDING:

(i) PROPOSALS WHICH CONTRIBUTE TO ENERGY CONSERVATION OR EFFICIENCY, WASTE REDUCTION OR RECYCLING; POLLUTION CONTROL; BIODIVERSITY AND THE CONSERVATION OF NATURAL RESOURCES.

(ii) PROPOSALS WHICH ARE LOCATED TO MINIMISE THE NEED TO TRAVEL, ESPECIALLY BY CAR AND HELP TO REDUCE VEHICLE MOVEMENTS OR WHICH ENCOURAGE CYCLING, WALKING AND THE USE OF PUBLIC TRANSPORT.

(III) THE RECLAMATION OF DERELICT OR DEGRADED LAND FOR APPROPRIATE BENEFICIAL USE; AND

(iv) PROPOSALS WHICH IMPROVE THE QUALITY OF THE ENVIRONMENT THROUGH THE UTILISATION OF HIGH STANDARDS OF DESIGN.

POLICY 8

DEVELOPMENTS WILL BE FAVOURED IN LOCATIONS WHICH:

(i) ARE HIGHLY ACCESSIBLE BY MEANS OF TRAVEL OTHER THAN THE PRIVATE CAR; AND

(II) MINIMISE TRAFFIC LEVELS AND ASSOCIATED UNACCEPTABLE ENVIRONMENTAL EFFECTS.

POLICY 11

TO REMEDY EXISTING DEFICIENCIES IN SPORT AND RECREATIONAL FACILITIES THE COUNCIL WILL:

(i) FAVOUR THE PROVISION OF A RANGE OF SUCH FACILITIES TO MEET EXISTING AND ANTICIPATED NEED THROUGHOUT THE VALE OF GLAMORGAN BY SECURING IN ACCESSIBLE AND APPROPRIATE LOCATIONS NEW AND IMPROVED SPORT AND RECREATIONAL OPPORTUNITIES.

(ii) PROTECT EXISTING AREAS OF OPEN SPACE AND PLAYING FIELDS FROM INAPPROPRIATE DEVELOPMENT; AND

(iii) FAVOUR THE IMPROVEMENT OF OPPORTUNITIES FOR ACCESS TO AND ENJOYMENT OF THE COUNTRYSIDE WHERE THEY DO NOT UNACCEPTABLY AFFECT IMPORTANT AREAS OF NATURE, CONSERVATION AND LANDSCAPE AND THE INTERESTS OF RESIDENTS AND / OR THOSE WHO DERIVE THEIR LIVELIHOOD FROM THE LAND.

Policy ENV1 of the Unitary Development Plan refers to development in the countryside and states:

WITHIN THE DELINEATED COUNTRYSIDE PERMISSION WILL ONLY BE GRANTED FOR:

(i) DEVELOPMENT WHICH IS ESSENTIAL FOR AGRICULTURE, HORTICULTURE, FORESTRY OR OTHER DEVELOPMENT INCLUDING MINERAL EXTRACTION, WASTE MANAGEMENT, UTILITIES OR INFRASTRUCTURE FOR WHICH A RURAL LOCATION IS ESSENTIAL.

(ii) APPROPRIATE RECREATIONAL USE.

(iii) THE RE–USE OR ADAPTATION OF EXISTING BUILDINGS PARTICULARLY TO ASSIST THE DIVERSIFICATION OF THE RURAL ECONOMY.

(iv) DEVELOPMENT WHICH IS APPROVED UNDER OTHER POLICIES OF THE PLAN.

Policy ENV10 relates to the protection of landscape features and states:

DEVELOPMENT WILL BE PERMITTED IF IT DOES NOT UNACCEPTABLY AFFECT FEATURES OF IMPORTANCE TO LANDSCAPE OR NATURE CONSERVATION INCLUDING TREES, WOODLAND, HEDGEROWS, RIVER CORRIDORS, PONDS, STONE WALLS AND SPECIES RICH GRASSLANDS.

Policy HOUS2 refers to dwellings in the countryside and states:

SUBJECT TO THE PROVISIONS OF POLICY HOUS2 THE ERECTION OF NEW DWELLINGS IN THE COUNTRYSIDE WILL BE RESTRICTED TO THOSE THAT CAN BE JUSTIFIED IN THE INTERESTS OF AGRICULTURE AND FORESTRY.

It should be noted that Policy HOUS2 provides that favourable consideration can be given to small scale development which constitutes the "rounding–off" of the edge of settlement boundaries where it can be shown to be consistent with the provisions of Policy HOUS9 and particularly criterion (i) which states that the scale, form and character of the proposed development is sympathetic to the environs of the site. It is considered that these are not relevant to the current application as the site is well removed from the defined settlement boundary for St. Athan.

Policy HOUS12 relates to residential privacy and space and is considered relevant when considering the impact of the proposal on the character of the area. This states: "Existing residential areas characterised by high standards of privacy and spaciousness will be protected against over development and insensitive or inappropriate infilling."

Policy EMP11 states:

FURTHER APPROPRIATE DEVELOPMENTS IN RESPECT OF R.A.F ACTIVITY WITHIN R.A.F ST. ATHAN BASE WILL BE FAVOURED PROVIDED THERE IS NO UNACCEPTABLE IMPACT ON LOCAL AMENITY.

Reference is also made to Policy REC1 which relates to the protection of existing recreational facilities. Whilst it is appreciated that the application has now been amended to omit the play area and kick–about ground, nevertheless the remaining area is an existing area of incidental open space.

Policy ENV22 relates to open space and states:

"THE CONSERVATION AND ENHANCEMENT OF OPEN SPACES WHICH ARE IMPORTANT FOR AMENITY, RECREATION AND/OR NATURE CONSERVATION WITHIN THE BUILT ENVIRONMENT WILL BE FAVOURED, TOGETHER WITH THE CREATION OF A NETWORK OF GREEN SPACES AND APPROPRIATE TREE PLANTING AND LANDSCAPING SCHEMES."

Finally, Policy ENV25 relates to the design of new development and is also considered relevant as it states:

PROPOSALS FOR THE NEW DEVELOPMENT MUST HAVE FULL REGARD TO THE CONTEXT OF THE LOCAL NATURAL AND BUILT ENVIRONMENT AND ITS SPECIAL FEATURES. NEW DEVELOPMENT WILL BE PERMITTED WHERE IT:

(i) COMPLEMENTS OR ENHANCES THE LOCAL CHARACTER OF BUILDINGS AND OPEN SPACE.

(ii) MEETS THE COUNCIL'S APPROVED STANDARDS OF AMENITY AND OPEN SPACE, ACCESS, CAR PARKING AND SERVICING.

(iii) ENSURES ADEQUACY OR AVAILABILITY OF UTILITY SERVICES AND ADEQUATE PROVISION FOR WASTE MANAGEMENT.

(iv) MINIMISES ANY DETRIMENTAL IMPACT ON ADJACENT AREAS.

(v) ENSURES EXISTING SOFT AND HARD LANDSCAPING FEATURES ARE PROTECTED AND COMPLEMENTED BY NEW PLANTING, SURFACE OR BOUNDARY FEATURES.

(vi) ENSURES CLEAR DISTINCTION BETWEEN PUBLIC AND PRIVATE SPACES.

(vii) PROVIDES A HIGH LEVEL OF ACCESSIBILITY, PARTICULARLY FOR PUBLIC TRANSPORT, CYCLISTS, PEDESTRIANS AND PEOPLE WITH IMPAIRED MOBILITY.

(viii) HAS REGARD TO ENERGY EFFICIENCY IN DESIGN, LAYOUT, MATERIALS AND TECHNOLOGY; AND

(ix) HAS REGARD TO MEASURES TO REDUCE THE RISK AND FEAR OF CRIME.

National guidance is contained in Planning Policy Wales March, 2002. Chapter 2 relates to planning for sustainability and identifies key policy objectives including the location of developments so as to minimise the demand for travel especially by private car. Paragraph 2.57 states:

*"Development in the countryside should be located within and adjoining those settlements where it can be best accommodated in terms of infrastructure, access and habitat and landscape conservation. Infilling or minor extensions to existing settlements may be acceptable, but new building in the open countryside away from existing settlements or areas allocated for development in U.D.P's must continue to be strictly controlled. All new development should respect the character of the surrounding area and should be of appropriate scale and design."*

Chapter 9 of P.P.W relates to housing and paragraph 9.3.2 states:

*"Sensitive infilling of small gaps within small groups of houses, or minor extensions to groups, may be acceptable, though much will depend upon the character of the surroundings and the number of such groups in the area. Significant incremental expansion of housing in villages and small towns should be avoided where this is likely to result in unacceptable expansion of travel demand to urban centres and where travel needs are unlikely to be well served by public transport. Residential development in the vicinity of existing industrial uses should be restricted if the presence of houses is likely to lead residents to try to curtail the industrial use."*

In addition, paragraph 9.3.4 states:

*"In determining applications for new housing, local planning authorities should ensure that the proposed development does not damage an area's character and amenity. Increases in density help to conserve land resources, and good design can overcome adverse effects, but where high densities are proposed, the amenity of the scheme and surrounding property should be carefully considered. High quality design and landscaping standards are particularly important to enable high density developments to fit into existing residential areas."*

In assessing the proposal against the above policies and guidance, the following points are noted.

Whilst it is accepted that Dwr Cymru/Welsh Water are no longer maintaining their earlier objections to the original scheme on the grounds of overloading of the public sewerage system, nevertheless it is still considered that the site is not a sustainable location. It is noted that the objection letters refer to the lack of facilities in the locality and that the proposal will do nothing to discourage car use with a poor bus service and a shortage of community facilities. It is recognised that Policy EMP11 does allow for new development but this is only in respect of R.A.F activity and subject to no unacceptable impact on local amenity.

The application site is considered to be an important area of incidental open space, which with its existing tree coverage, contributes significantly to the character and appearance of the area. It is noted that in contrast to the remainder of the East Camp housing to the south and west of the application site, this north eastern corner has a distinctive and separate character. The properties in this area are generally larger with spacious gardens and high standards of privacy. The amount of incidental open space is also greater and with its landscaped setting it has a closer relationship to the countryside beyond, than the much denser urban form of the housing to the south and west. Indeed, the houses immediately adjacent to the application site are "executive" in style. The application site and other areas of open space serve to give these properties a "semi–rural" quality. The proposal will result in the loss of the open space which would significantly detract from the setting and character of the area.

Whilst the submitted sketch layout suggests that the protected trees can be retained, the Council's Tree Officer has indicated that the illustrative layout will adversely affect a number of the trees with unacceptable protection zones. Even though the Tree Officer has suggested a reduced number of houses may have less impact, it is considered that the longer term impact of losing the open space to residential development will also ultimately affect the viability and future health of the trees. Indeed, the sketch layout demonstrates the inherent problems with the development of the site and protection of the trees. It will be noted that in order to avoid the protected trees, the proposed houses are sited towards the rear of the plots. This will result in a greater adverse impact on the neighbouring residential occupiers in terms of privacy and general amenity. It is also noted that the trees in question will mature and continue to grow. Despite the protection of the Tree Preservation Order, it is considered that the proximity of the trees means that pressure for lopping or removal of trees from future occupiers seeking to improve their living conditions or minimise potential damage, will prove difficult to resist. Thus the landscape setting would be further eroded along with the character and appearance of the area.

On the issue of highways, it is noted that the comments of the Council's Highway Engineer in respect of the amended scheme are still awaited. However, there were no 'in principle' objections raised to the original proposal.

Other issues include the requirement by Environmental Health that a noise assessment be carried out and any noise mitigation measures considered necessary, are installed before occupation in order to safeguard residential amenities from the noise arising from an active airfield.

In conclusion, it is considered that the proposal represent the unacceptable introduction of new housing in an unsustainable countryside location which would adversely affect the character and appearance of the area contrary to Council policy and national guidance.

In view of the above, the following recommendation is made.

04126

RECOMMENDATION (W.R.)

REFUSE

Reason(s):

1. In the opinion of the Local Planning Authority, the proposal represents the unacceptable and inappropriate introduction of new housing within the countryside, in an unsustainable location, which would result in the loss of an area of landscaped incidental open space, thereby significantly detracting from the character and appearance of the area contrary to Strategic Policies 2, 8 and 11; and Policies ENV1, ENV10, ENV22, ENV25, HOUS3 AND HOUS12 of the adopted Vale of Glamorgan Unitary Development Plan 2005; and national guidance contained in Planning Policy Wales March, 2002.

02/01239/OUT 'A'

From: 63 Scott Close
St. Athan
CF62 4JL

Head of Planning and Transportation
Vale of Glamorgan Council
Docks Office
BARRY CF63 4RT

Date: 18-09-02

**Ref: Planning Application 0201239 OUT**
**"Residential Development with associated "Village Green" open spaces area**

Dear Sir

With Reference to the above Planning Application by Annington Homes, while I have no objection **in principle** to the addition of new homes in this area I do wish to object in the strongest possible terms to such development unless adequate community facilities are also provided by Annington Homes. Their claim that such facilities are already present is erroneous. It must surely be known to their organisation that the current building used for these facilities, and so generously provided by the RAF St Athan, will close with effect from 30th September 2002.

With due respect, Sir, we urge that Planning consent be withheld until both **immediate and long term arrangements** are made for the continuation locally of the social and welfare facilities upon which the present community are so dependent.

RAF St Athan may not have yet given **written** notice to Annington Homes of their intention to close the current building and to seek permission to demolish it. This has however recently been stated on a number of occasions by the Station Commander in public meetings, the press are aware of it and indeed Annington Homes have been told in telephonic communications.

Yours faithfully,

02/01239/OUT 'B'

22 Drake Close
Sain Tathan
Y Barri
Bro Morgannwg
CF62 4JF

07-10-02

Planning Dept.
Vale of Glamorgan Council
Barry Dock
Barry

Dear Sir

**Re: Proposed Annington development at Ringwood Crescent, Sain Tathan, Ref 0201239OUT**

With the greatest respects we strongly object with the utmost severity to the proposed residential development of Ringwood Crescent and associated land, by Annington Development, for the reasons outlined below.

For clarity of points and issues raised in document 0201239OUT we make reference to section and line numbers for each objection issue raised.

1. Section 'Context', line 1, It is reasonably observed that the suggested application site lies on the edge of, as opposed to "within the relatively substantial built-up area". Further to, we query the terminology "relatively substantial built-up area".

2. Section 'Context', lines 3 -6 ("However ... Annington Property Ltd), We query the freehold ownership of this property. We had been led to believe, until recently, the land in question was under the active interest of the East Vale Management Company. A meeting was held on 07-11-2001, at which Caroline Duncan, representative of Greenhart Estate Management Ltd, outlined that control of East Vale Management Company, was not, and could not be handed over at the present time, as Annington had registered interest in 6 houses and open ground adding this development into the existing East Vale estate. This would indicate that these six houses were the Ringwood Crescent development and therefore long term ownership of the site, and progressive use of the site would be wholly under the auspices and usage of shareholders within the East Vale Management Company. It must be pointed out that Anningtons are a major shareholder of this estate management company. We were informed via a telephone conversation, instigated by ourselves, that Anningtons had removed control from the East Vale Management Company to a newly formed Ringwood Crescent Company. Thus removing any direct objections from the East Vale Company to the proposed development.

3. Section 'Context', point 'a', We have seen a number of these houses in the process of refurbishment in the last few months. We do not know if this has any bearing on the planning application as these houses are currently for sale and therefore will soon not be owned by Annington. [Ref 1-4]

02/01239/OUT 'B2'

4. Section 'Principle of Development', paragraphs 1 and 2, It has been suggested that St. Athan East Camp lies neither within a village, countryside or rural village. It indicates that the development was an originally wholly owned RAF activity site. Whilst it is agreed that the site was RAF centred, it has been devolved to civilian usage. As such, it should be reconstituted under any housing policies such as HOUS2, 3 and 8 prior to any development by any contractor. We believe that this is a policy that should apply to any MOD site being handed over to civilian usage, thus providing clear and concise regulatory control over building and development of such sites. To this point we do not believe that there is any scope within policy EMP11 for development of the proposed site.

5. Section 'Principle of Development', line 6, "... detrimental impact... environment." It should be realised that the original concept for the St. Athan East Camp, whilst we appreciate for RAF use, was derived such as to provide contiguous quarters for differing ranks within the RAF service structure, thereby giving the East Camp site its own indicative character, providing larger open expansive areas to the higher ranks. We feel that this character still remains to the houses of the area. As regards impact upon the environment we would like to see the environmental impact study presumably undertaken by Anningtons to make this statement.

6. Section 'Principle of Development' point a, We query as to which community centre is referred to, as the community centre outlined in the provided documentation is to close permanently during October 2002. We have been led to believe that the structural repair of the building may require the building to be demolished. Furthermore, we would prefer greater clarification of "other supporting facilities".

7. Section "Open Space Provision", paragraph 1, line 1 -5 ("the application ... wider locality.") In the first instance the piece of development site West of the current existing houses, contains mature trees, which may be subject to restrictive council orders, and certainly they cannot be replaced. It could possibly be considered that this area is underused due to the restrictive nature of its environment. However, the large expansive play field and childrens playground is of a different matter. We have personally walked, taken our children to, and played on this area, on the understanding that this ground was part of the East Vale Management Company Estate, therefore providing us with full and extensive access rights to these grounds. Also, we have noted numerous children playing, and people walking, over this open ground. The statement in line 3 suggesting that the childrens playground, and indicated on the plans, is only the area bounded by a wire fence, could be considered to be entirely inappropriate, we place in evidence digital images (can provide celluloid photographic images if required). Figure 1a is a view taken from an approach road to the park. Figure 1b is the sign indicated on figure 1a marked 'x'. This sign is approximately 70 metres away from the enclosed swings and slide. There are other signs on each of the boundaries of the play area that adjoin roads. This specifies that the whole site is a childrens play area and should be considered as a whole part as such. Furthermore, it could be considered, due to the rolling program of the MOD housing being placed under the auspices of civilian popularisation the number of houses, to the East of the development, and families contained therein, will require such open expanses.

02/01239/OUT 'B'3

Moreover, the suggestion that the number of existing playgrounds is sufficient, has not been considered to its full extent, as it is believed that the playgrounds referred to in the "general wider locality" belong to, or come under the control of, privately owned estate management companies, or the MOD. Therefore, there may be no 'formal access arrangement with the general public' in place.

8. Document in general, It is suggested in a number of places this development is 'within an existing urban area'. However, if one wishes to buy one of these properties, one could find details via Annington homes own website www.annington.co.uk we present in evidence document [doc1], which directs you to David Birt and Co, whom are believed to be acting on behalf of Annington Homes, giving in evidence documents[xoc2, doc3] and extract of document [doc4] which is part of an e-mail, describing these properties and environment, the following points are highlighted...
[doc2] "Good *village* facilities" [emphasis ours]
[doc3] "wide ranging *rural views* of adjoining *countryside* [emphasis ours]
[doc4] "wide ranging rural views of many miles of adjoining countryside"
[doc4] "views over many miles of *surrounding* countryside" [emphasis ours]
[doc4] "local *village* facilities are good" [emphasis ours]
Thus describing the properties within a local village environment and certainly not within an urban context.

9. We respectfully request a further open period for person or persons to lodge their objections, or otherwise, to this application as we believe this application has not been advertised in accordance with regulations. We draw note to the absence of posted notices with respect to this application in the local vicinity. We are aware of this due to this area being a common walk path for ourselves.

With respect, we therefore feel that you will not favourably consider this application. Please do not hesitate to contact us for clarification of any point, and or discussion on any issue contained herein. Whilst it may be considered by some parties that shareholders of the East Vale Management Company have "a bone to pick" with Anningtons and therefore airing their views through objection to any Annington business plan, we feel our objections are based wholly on our considered opinion and have no malice or intention in mind.

Yours faithfully,

Rebecca Sparey-Taylor BSc(Hons) Graham Sparey-Taylor BEng(Hons)

Enc.

02/01239/OUT 'B' 4

Pastor James Dowd
39 Mallory Close
St Athan
Vale of Glamorgan
CF62 4JJ

Head of Planning and Transportation
Vale of Glamorgan Council
Docks Office
BARRY CF63 4RT

9th October 2002

**Ref: Planning Application 0201239 OUT**
**"Residential Development with associated "Village Green" open spaces area**

Dear Sir

I refer to my letter of 11th September and that of many others who have written to you concerning the above Planning Application by Annington Homes.

It has come to our notice that Annington Homes are claiming that the reference in their application to the availability of community facilities was to the relatively small Community Centre at St Athan village. In doing so they seem to lack awareness both of the local geography of that area and the limited facilities in the village Community Centre which already is quite heavily booked.

The cluster of housing estates in the ward of Flemingston, housing perhaps around 2000 persons, and which forms the locus of Annington's application is a separate and quite distinct community from the much older village of St Athan, which likewise houses around 2000 persons.

Some of the Flemingston ward estates house people having more than average social/welfare needs. All these were adequately catered for by the RAF off-camp Community Centre in the midst of the estates. With the closing of that facility, which is known to Annington, there is an acute shortage of normal facilities associated with such a housing development. This community has no public hall, no pub, no church, no youth club and indeed anywhere where a number of people can congregate together. It is a sure recipe for both rapidly escalating crime and the general breakdown of family life. It is perhaps unfortunate that this community, for postal purposes, is also called St Athan.

02/01239/OUT 'B'5

While it is true that some responsibility lies with the Vale of Glamorgan Council it is also true that Annington, with far greater financial resources, also have a measure of responsibility. It would without doubt be the height of folly to allow even one further dwelling to be built in this location without adequate social/welfare facilities.

It is within the power of Annington Homes to allow the continued use of the former RAF Community Centre for six months to one year in order to allow the former activities to resume until wise counsels can find a long term solution to the needs.

In the meantime I, together with many others, remain adamantly opposed to further building in this area.

Yours faithfully,

Pastor James Dowd

Copies to:

Jane Hutt AM
Annington Homes

02/01239/OUT 'C' 6

MR S BAMRAH
RINGWOOD HOUSE
1, RINGWOOD CRESCENT
ST ATHAN
VALE OF GLAMORGAN
CF62 4LA

MOBILE: [redacted]

29th September 2005

Mrs Prichard
Vale of Glamorgan Council
Planning Department
Docks Offices
Barry Docks
CF63 4RT

Dear Mrs Prichard

**Ref: Planning Application 02/012/39/OUT Annington's Ringwood Crescent. St Athan. CF62 4LA**

Further to my telephone call to your offices, I write to express some of my concerns and to formally object to the above planning application.

The open grass spaces in Ringwood Crescent are the only open spaces in the area, the land being previously owned by the MOD. These open spaces are still used and enjoyed as they have been for the last 30 plus years, for recreational purposes and in exercising pets and for ball games by service and civilian families.

If Anningiton's are successful with their application, a considerable increase in use of the open space that has the children's play area (with climbing frames and swings) will follow. The area will becoming dangerous for the children to use as a result of pet excrement being deposited by pets and not removed by inconsiderate pet owners. Also, the play area will see increased activity by the older youths who will want it as their territory and the area may see an increase in acts of vandalism and crime to persons and property.

Any loss of open green space used by the local community to accommodate private housing development should not be at the expense of the local community.

There is no need for further private residential housing in the area, especially when there are already a lot of surplus properties lying empty that are subjected to regular acts of vandalism and theft. Annington's own in excess of 40 properties next to Ringwood Crescent. Of these, only 15 of are occupied. Annington's current application for a further 5 or more additional private properties for building will further increase the number of empty properties.

02/01239/OUT 'C'

There is no requirement for additional housing in the area, due to the reduction of personnel at the RAF base. The imminent closure of DARA within the next 12 months will see a further reduction in the demand for private housing, and will see a further increase in the availability of properties for sale as ex employees of DARA sell their properties to move on to areas where there is work..

The proposed open space that is subject of the application has trees that have tree preservation orders. I understand from builders that even with these protection orders in place to protect the trees, "accidents" happen that result in damage or loss to the trees. The site plan outlining the layout of the access paths and site of the houses do not reflect the actual open space available. The purposed accesses to the properties from the road especially to the property across 1, Ringwood Crescent is questionable and unacceptable and may also possible damage the tree roots.

Ringwood estate infrastructure has not been adopted by the Vale of Glamorgan Council (VOGC). There is no mention in Annington's application for Annington's to carry out all the works to theVOGC requirements, and no mention that VOGC have indicated that they will adopt the existing and new estates one works have been completed.

Welsh Water appears to have been appeased and appear not to have any objections to the private housing development purposed by Annington's. The reality is that the water drainage and sewer system is old and falling apart as it has not been well maintained. In the last 9 months, on three separate occasion specialist firms have had to be called out to clear blockages in the drains and address other problems.

The cold water to the East Camp houses is supplied by the RAF site. This supply of water is erratic and has a problem with its water pressure.. The system is overloaded and unable to cope; demands by additional private houses will increase the problems already being experienced by current users.

The local amenities (schools, dental and medical surgeries, shops etc) are poor and are over stretched to meet the needs of the local community. Additional residential housing will only further accelerate the deterioration in the services that are available.

Sadly, the area has an above average crime rate and the only sight of a policeman is sitting in a vehicle trapping speeding motorists. Increased private development and empty properties brings with it increased crime and a general deterioration appearance of local housing and landscape followed by local community degeneration.

Rejection of the Annington's application would be most welcome.

Yours sincerely

Mr S Bamrah

**Scott Wilson**
3-4 Foxcombe Court
Wyndyke Furlong
Abingdon Business Park
Abingdon, Oxon
OX14 1DZ
United Kingdom

Phone: +44 (0)1235 468700
Fax: +44 (0)1235 468701/2
www.scottwilson.com

02/01239/OUT 'D'

Direct Line:
email:

Mrs Y Prichard
Department of Planning & Transportation
The Vale of Glamorgen Council
Dock Office
Barry Docks
Barry
CF63 4RT

Your Reference: P/DC/YP/02/01239/OUT

Our Reference: D105684

Date: 11 August 2005

Dear Mrs Prichard

**PROPOSED RESIDENTIAL DEVELOPMENT AT RINGWOOD CRESCENT, EAST ATHAN FOR ANNINGTON DEVELOPMENTS LTD**
**REVISION TO PLANNING APPLICATION 02/01239/OUT**

We write with reference to previous meetings, telephone conversations and correspondence about this application submitted to the Council in August 2002. On behalf of the Applicants, Annington Developments Ltd., we wish to make the following revisions to the application.

Currently the application site is in two parts, firstly an area of land to the east of Ringwood Crescent and lying adjacent to Burley Place and secondly an area of land fronting the western arm of Ringwood Crescent. The revisions delete all development proposals from the first area of land and substitute sketch layout D105684/SK01-A in place of the layout concept plan previously submitted.

In preparing the replacement sketch layout we have taken note of the tree cover on the site, which includes the tree group G3 shown on the map to schedule 1 of Tree Preservation Order (No. 2) 2003 made by your Council. In July 2005 a Topographical Survey of the site was prepared for the Applicants which showed the positions of all trees and this has formed the basis of the sketch layout information.

The plan indicates potential siting positions for dwellings and individual plot road access points all of which can be achieved without disturbance to any tree on the site.

The revised application overcomes the recreational space policy objection. As you note Welsh Water would not object to the (previous) proposal if the discharge rate from the privately maintained foul sewage pumping station were not increased from the existing rate and that confirmation of this was covered by planning condition.

On the issue of noise protection TAN 11 offers examples of planning conditions to minimise the effect of noise on new noise sensitive development. Condition C3 should provide the Council with sufficient powers such that an adequate noise protection scheme can be developed as part of detailed design for the approval of the Council but without adding unduly to the Applicants' costs at this stage.

02 / 01239 / OUT 'D2'

Four copies of the amended drawing are enclosed.

We believe we have responded positively to the issues which have, so far, held up the determination of this application and now look forward to its consideration as soon as possible.

Yours sincerely
for SCOTT WILSON KIRKPATRICK & CO LTD

pp

Richard Thomson
**Consultant Town Planner**

Copy Robin Elliot Annington Developments Ltd

RECEIVED
12 AUG 2005
ENVIRONMENTAL AND ECONOMIC REGENERATION

02/01239/OUT 'C'

13 Merthyr Street
Barry
Vale of Glamorgan
CF63 4LA

**Chris J Morgan** BA, DMS, MBA, MCMI, MRTPI
**Chartered Town Planner**

☎ 01446 419863
Fax: 01446 419864
Mobile: 07779 509824

My Ref: 0508/pool/vog/01
Your Ref: P/DC/YP/02/01239/OUT

15th September 2005

Head of Planning & Transportation
Vale of Glamorgan Council
Dock Offices
Barry
Vale of Glamorgan

F. A. O. Mrs. Yvonne Pritchard

Dear Sirs

Re: Town & Country Planning Act 1990 (as amended)
Land at Ringwood Crescent, St. Athan East Camp, St. Athan, Vale of Glamorgan
Residential Development of 5 no. Dwellings (App. No. 02/01239/OUT)

I refer to my recent telephone conversation with your Yvonne Pritchard regarding the above planning application. As I explained to her, I have been instructed by all the residents of Ringwood Crescent to object to the proposed development of 5 no. dwellings. I have been instructed by the following:

| No. | Name |
|---|---|
| 1 | Mr. Santokh & Mrs. Kamal Bamrah |
| 2 | Mr. Paul Costello & Miss Sian Edwards |
| 3. | Mr. Kevin Pool & Mrs. Linda McClenchy |
| 4 | Mr. Trevor & Paddy Thomas Impey |
| 5. | Mr. & Mrs. O'Hare |
| 6. | Mr. Dave |
| 7. | Mr. & Mrs. Andrew Crossman |
| 8. | Mr. & Mrs. Jeremy Thomas |

02/01239/OUT 'C' 2



Re: Town & Country Planning Act 1990 (as amended)
Land at Ringwood Crescent, St. Athan East Camp, St. Athan, Vale of Glamorgan
Residential Development of 5 no. Dwellings (App. No. 02/01239/OUT)

I have visited the site and am generally familiar with the area around the application site.

The starting point in my assessment of the application is the Development Plan. For the purposes of section 54A, the development plan comprises only the Vale of Glamorgan Unitary Development Plan 1996 – 2011 which was formally adopted in April 2005. The application site falls outside the defined settlement boundary for this particular part of the borough. Attached as Appendix 1 is an extract from the Proposals Map with the appeal site highlighted (this plan is not to scale). I will refer to the relevant policies from this document later in this letter.

In terms of national planning policy, the relevant advice is contained in Planning Policy Wales, which was published in March 2002 [PPW]. Introductory paragraph 1.2.1 states that:

> The planning system regulates the development and use of land in the public interest. It should reconcile the needs of development and conservation, securing economy, efficiency and amenity in the use of land, and protecting natural resources and the historic environment, thereby contributing to sustainable development.

Paragraph 2.1.3 states that the Assembly Government is promoting sustainable development by placing sustainability at the heart of its decision-making processes and through its strategic policies.

Paragraph 2.3 sets out the Assembly's key policy objectives. The first key objective listed in paragraph 2.3.2 concerns the re-use of suitable previously developed land and buildings and states that:

- Promote resource-efficient settlement patterns that minimise land-take (and especially extensions to the area of impermeable surfaces) and urban sprawl, especially through preference for the re-use of suitable previously developed land and buildings, wherever possible avoiding development on greenfield sites (Sections 2.6, 2.7).

Chapter 9 deals primarily with housing and is considered particularly relevant to this case. Paragraph 9.1 sets out the National Assembly's objectives and goes onto state that the Assembly Government will seek to ensure that:

02/01239/OUT 'C' 3



Re: Town & Country Planning Act 1990 (as amended)
Land at Ringwood Crescent, St. Athan East Camp, St. Athan, Vale of Glamorgan
Residential Development of 5 no. Dwellings (App. No. 02/01239/OUT)

- previously developed land (see definition at Figure 2.1) is used in preference to greenfield sites;

- new housing and residential environments are well designed, environmentally sound (especially energy efficient) and make a significant contribution to promoting community regeneration and improving the quality of life; and that

- the overall result of new housing development in villages, towns or edge of settlement is a mix of social and market housing that retains and, where practical, enhances important landscape and wildlife features in the development.

Section 9.3 deals with Development Control and Housing. It states that new housing developments should be well integrated with and connected to the existing pattern of settlements. On the issue of "infilling" generally, paragraph 9.3.2 states that sensitive infilling of small gaps within small groups of houses, or minor extensions to groups, may be acceptable, though much will depend upon the character of the surroundings and the number of such groups in the area. Paragraph 9.3.3 concerns "insensitive infilling" and states that it should not be allowed to damage an area's character and amenity.

Paragraph 9.3.6 concerns new house building and other new development in the open countryside and states that:

> New house building and other new development in the open countryside, away from established settlements, should be strictly controlled. The fact that a single house on a particular site would be unobtrusive is not, by itself, a good argument in favour of permission; such permissions could be granted too often, to the overall detriment of the character of an area.

In terms of the policies for the UDP, the development plan, the site lies within the delineated boundary for Employment Policy EMP 11 – RAF St. Athan. This states that:

> Further appropriate developments in respect of RAF activity within the RAF St. Athan Base will be favoured provided there is no unacceptable impact on local amenity.

02/01239/OUT'C'4



Re: Town & Country Planning Act 1990 (as amended)
Land at Ringwood Crescent, St. Athan East Camp, St. Athan, Vale of Glamorgan
Residential Development of 5 no. Dwellings (App. No. 02/01239/OUT)

First, this an employment policy, not a housing policy. In chapter 5 of the UDP, I can find no reference whatsoever to housing or related development. In my view, the policy is clear and unequivocal in that only development directly for "*RAF activity*". A speculative application for housing by a private company for sale on the open market is clearly not RAF activity.

Second, the application site is well away from the designated settlement boundaries (see attached UDP extract. Housing Policy HOUS 8 specifically identifies St. Athan to the south of the application site as suitable for additional residential development within the designated settlement boundary. Similarly, Policy HOUS 2 specifically identifies Eglwys Brewis to the west as suitable for additional residential development within the designated settlement boundary. The application site falls outside of both of these boundaries.

Paragraph 4.4.8 of the UDP states on this issue that:

> Those rural villages not identified in Policy HOUS 2 re considered not to have sufficient physical form or capacity to assimilate new residential development without having a detrimental impact on their existing character and environment....

Section 54A of the Town & Country Planning Act 1990 (as amended by Section 26 of the Planning and Compensation Act 1991) is an important consideration in the determination of any planning application or appeal. Section 54A of the Act states that:

> Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Under the terms of Section 54A, the application proposal is clearly in conflict with Policy EMP 11 and according, should be refused planning permission.

Notwithstanding the above, there are other factors to be taken into account. The application site is generally open in character and its visual appeal is greatly enhanced by virtue of the extant Tree Preservation Order (TPO No. 2) in which these trees are included in group G3. It is evident that that there is a shortage of open space within the vicinity of the application site. The other area of open space lies to the north east of the application site and was included as part of the original application. However, this area has now been removed from the application. The site is seen as an important area of open space which

02/01239/OUT 'C'5



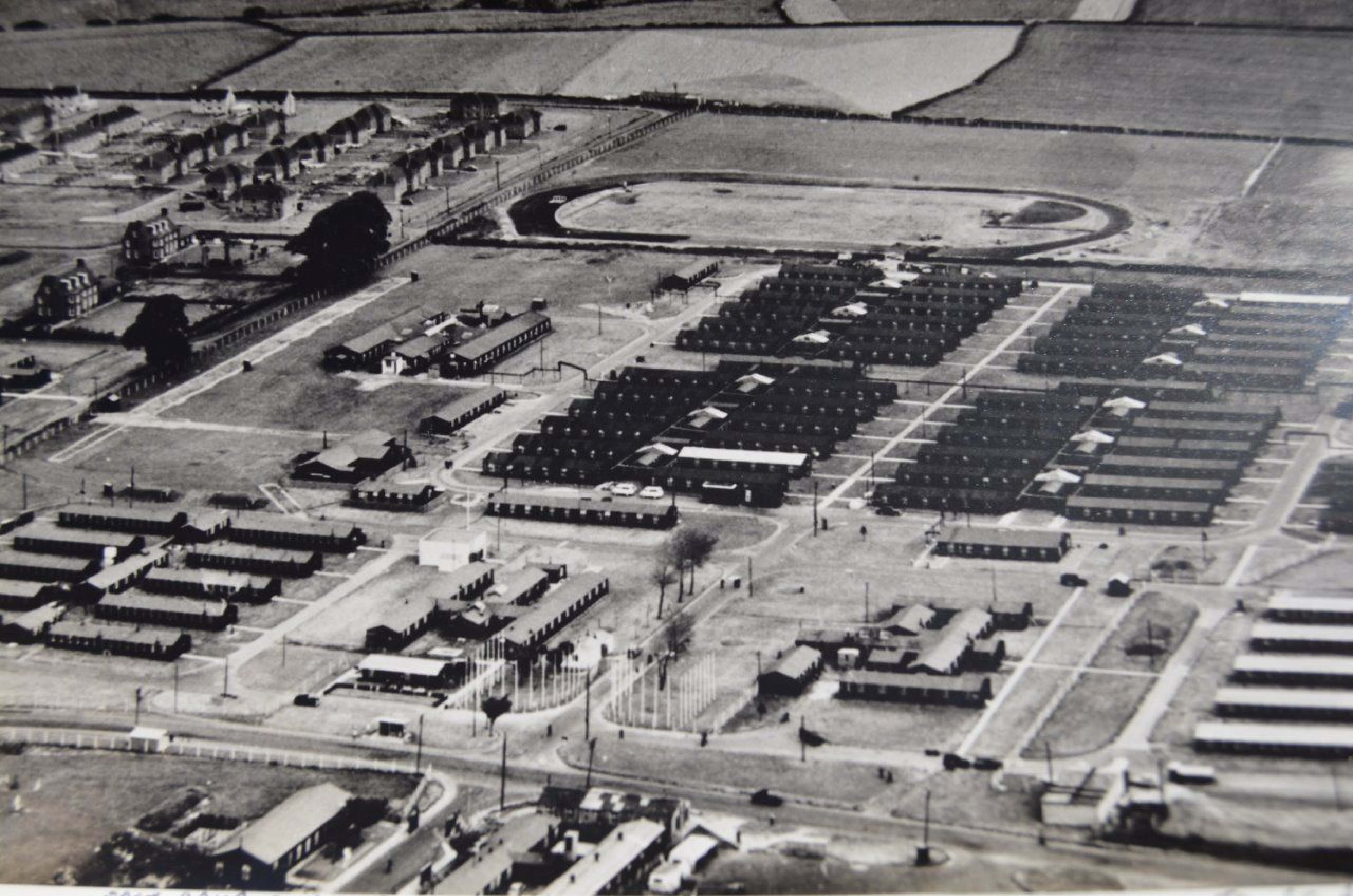
Re: Town & Country Planning Act 1990 (as amended)
Land at Ringwood Crescent, St. Athan East Camp, St. Athan, Vale of Glamorgan
Residential Development of 5 no. Dwellings (App. No. 02/01239/OUT)

enhances the existing character and environment of the area. It is considered that the approval of the application would lead to the irreversible loss of valuable open space which positively contributes to the visual amenities of the area.

Should you have any queries, please do not hesitate to contact me on the above number.

Yours faithfully

Chris J Morgan BA, DMS, MBA, MCMI, MRTPI
Chartered Town Planner


EAST CAMP

4107 106G/UK/844 25SEP45.F/20"// 541SQDN ←

"B"

Company No. 4354044

# THE COMPANIES ACT 1985

## COMPANY LIMITED BY SHARES

## NEW

## ARTICLES OF ASSOCIATION

## of

## FILBUK 695 LIMITED

## (to be renamed

## RINGWOOD CRESCENT RESIDENTS COMPANY LIMITED)

## 1. PRELIMINARY AND INTERPRETATION

1.1 The Regulations contained in Table A ("Table A") in the Schedule to the Companies (Table A to F) Regulations 1985 (as amended at the date of adoption of these Articles) shall apply to the Company save insofar as they are excluded or varied hereby. If there is any inconsistency between these Articles and Table A, the provisions of these Articles shall prevail.

1.2 In these Articles and in the Regulations of Table A that apply to the Company:-

| | |
|---|---|
| "Act" | means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force; |
| "Articles" | means the articles of association for the time being of the Company; |
| "A Share" | means the A share of £1 in the capital of the Company; |
| "B Shares" | means the B shares of £1 each in the capital of the Company; |
| "A Shareholder" | means the Member registered as the holder of the A Share; |
| "B Shareholder" | means a Member registered as the holder of any of the B Shares; |

| | |
|---|---|
| "Auditors" | means the auditors for the time being of the Company; |
| "Clear days" | means, in relation to a period of notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect; |
| "Completion Date" | means the date of completion of the purchase from the Vendor of the Last House; |
| "Deed of Grant" | means a deed of grant entered into or deemed to be entered into pursuant to the Utilities Agreement in respect of any of the Utilities Arrangements relating to the Estate; |
| "Directors" | means the directors for the time being of the Company; |
| "executed" | includes any mode of execution; |
| "Estate" | means the freehold and leasehold property at Ringwood Crescent St Athan Vale of Glamorgan including such further land the freehold interest of which may within the period of 80 years from the date of adoption of these Articles may be acquired by the Vendor and designated by the Vendor as part of the Estate |
| "House" | means a freehold residential house or a leasehold residential flat situate now or to be situated from time to time on the Estate; |
| "House Owner" | means, in relation to any House, the person who is for the time being the registered proprietor of such House and where two or more persons are the joint registered proprietors of such House they shall for the purposes of these Articles be deemed to constitute one House Owner; |
| "Holder" | means, in relation to a Share, the person or persons whose name or names is/are entered in the register of members of the Company as the holder(s) of such Share; |
| "Holding company" | shall have the meaning ascribed to it by Section 736 of the Act; |

| | |
|---|---|
| "Last House" | means the last House on the Estate to be sold or retained as a Rental House by the Vendor or if at the time of the sale or retention_of the Last House the Vendor intends developing and/or selling further Houses on the Estate then the last of such further and additional Houses to be sold or retained; |
| "Member" | means, in relation to any Share, the holder thereof; |
| "Office" | means the registered office for the time being of the Company; |
| "Rental House" | means any House which is retained by Annington Property Limited; |
| "Seal" | means the common seal of the Company; |
| "Secretary" | means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary; |
| "Shares" | means the A Share and the B Shares; |
| "Subsidiary" | shall have the meaning ascribed to it by Section 736 of the Act; |
| "Supply" | shall have the meaning ascribed to it in any transfer or lease of any House; |
| "United Kingdom" | means Great Britain and Northern Ireland; |
| "Utilities Agreement" | means an agreement dated 5th November 1996 made between the Secretary of State for Defence (1) Annington Property Limited (2) Annington Homes Limited (3) and Annington Development Limited (4); |
| "Utilities Arrangements" | means anything pursuant to or in connection with:<br>(a) the Utilities Agreement;<br>(b) any Deed of Grant;<br>(c) any agreement relating to interim temporary or provisional supplies as referred to in the Utilities Agreement |

relating to the Estate;

"Utilities Completion Date" means the date that the Utilities Works are completed (and either are maintainable at the public expense or a Deed of Grant in respect thereof is entered into) or such earlier date as the A Shareholder may determine by giving notice in writing to the B Shareholders;

"Utilities Works" means works required to ensure a continuous Supply to the Estate (over and above ongoing repair and maintenance);

"Vendor" means Annington Property Limited and its successors in title to the Estate excepting houses located on the Estate which have previously been sold by Annington Property Limited;

"A person of unsound mind" means a person who is, or may be, suffering from mental disorder and either:-

(a) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 (as amended) or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1984; or

(b) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs;

1.3 Unless the context otherwise requires, words or expressions contained in these Articles and in the Regulations of Table A that apply to the Company bear the same meaning as in the Act but excluding any statutory modification thereof not in force at the date of adoption of these Articles.

1.4 Words importing the singular only shall include the plural and vice versa, words importing the masculine gender shall include the feminine gender and words importing natural persons shall include also corporations.

1.5 The headings in these Articles are for convenience only and shall be ignored in

construing the language or meaning of the Articles. Regulation 1 of Table A shall not apply.

## 2. PRIVATE COMPANY

The Company is a Private Company within the meaning of Section 1 of the Act and accordingly no Shares in or debentures of the Company shall be offered to the public (whether for cash or otherwise) and the Company shall not allot or agree to allot (whether for cash or otherwise) any Shares in or debentures of the Company with a view to all or any of those Shares or debentures being offered for sale to the public.

## 3. SHARE CAPITAL

3.1 The authorised share capital of the Company at the date of adoption of these Articles is the sum of £1,000.00 divided into 1 A Share of £1 and 999 B Shares of £1 each.

3.2 No B Share may be allotted or issued to any person who is not a House Owner or the Vendor.

3.3 The unissued B Shares for the time being shall be under the control of the Directors who are hereby generally and unconditionally authorised to allot simultaneously with the completion of the purchase of a House from the Vendor or the retention of a Rental House by the Vendor one unissued B Share to the House Owner or the Vendor as the case may be of such House on such terms and in such manner as they think fit, but subject to any agreement binding on the Company; provided that the authority contained in this Article shall unless revoked or varied in accordance with Section 80 of the Act:-

3.3.1 be limited to the amount of the authorised but unissued B Shares at the date of adoption of these Articles; and

3.3.2 expire on the fifth anniversary of the date of adoption of these Articles but without prejudice to any offer or agreement made before that anniversary which would or might require the exercise by the Directors after such anniversary of their powers in pursuance of the said authority.

In exercising their authority under this Article the Directors shall not be required to have regard to Sections 89(1) and 90(1) to (6) (inclusive) of the Act which Sections shall be excluded from applying to the Company.

3.4 In the event that the Completion Date occurs after the Utilities Completion Date, then simultaneously with the completion of the purchase of the Last House from the Vendor the A Shareholder shall transfer the A Share to the House Owner of the Last House. On such transfer the A Share shall be automatically redesignated

a B Share ranking pari passu in all respects with the existing B Shares in issue at the date of such transfer.

3.5 In the event that the Completion Date occurs before the Utilities Completion Date, then after the Completion Date the A Share shall cease to entitle the A Shareholder to any dividend and on a winding up or on a reduction of capital involving a return of capital the A Share shall only entitle the A Shareholder to repayment of the capital paid up or credited as paid up thereon pari passu with the repayment of the capital paid up or credited as paid up on the B Shares.

## 4. VOTING RIGHTS

4.1 On and prior to the Completion Date the A Share shall confer on the A Shareholder the right to receive notices of, attend, speak and vote at general meetings of the Company and the B Shares shall not entitle the B Shareholders to receive notice of, attend, speak and vote at general meetings of the Company.

4.2 After the Completion Date the B Shares shall confer on the B Shareholders the right to receive notices of, attend, speak and vote at general meetings of the Company and the A Share shall not entitle the A Shareholder to receive notices of, attend, speak and vote at general meetings of the Company, provided that if the Completion Date occurs before the Utilities Completion Date then for the period from after the Completion Date until the Utilities Completion Date the B Shares shall not confer on the B Shareholders any right to speak or vote on any resolution concerning Utilities Arrangements and the A Share shall confer on the A Shareholder the right to receive notices of and attend general meetings of the Company the nature of whose business concerns, wholly or inter alia, Utilities Arrangements and the right to speak and vote at general meetings of the Company on resolutions concerning Utility Arrangements.

4.3.1 No A Share shall confer any right to vote either on a show of hands or on a poll upon a resolution for the appointment or removal from office of any Director nominated or appointed by any B Shareholders pursuant to Article 13.2.

4.3.2 No B Share shall confer any right to vote either on a show of hands or on a poll upon a resolution for the appointment or removal from office of any Director nominated or appointed by the A Shareholder pursuant to Article 13.2.

## 5. LIEN

The Company shall have a first and paramount lien on every Share (whether or not it is a fully paid Share) for all monies (whether presently payable or not) called or payable at a fixed time in respect of that Share, and the Company shall also have a first and paramount lien on all Shares (whether fully paid or not) standing registered in the name

of any person for all monies presently payable by him or his estate to the Company, whether he shall be the sole registered holder thereof or shall be one of several joint holders; but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The Company's lien, if any, on a Share shall extend to all dividends payable thereon. Regulation 8 of Table A shall not apply.

6. **TRANSFER OF SHARES**

6.1 No B Share or any interest therein shall be transferred or otherwise disposed of by any B Shareholder otherwise than as provided in this Article 6.

6.2 No B Share shall be transferred to any person who is not a House Owner.

6.3 Without prejudice to the other provisions of these Articles and the Regulations of Table A, the Directors may decline to register a transfer of any Share which is a fully paid Share unless:-

6.3.1 it is lodged at the Office or at such other place as the Directors may appoint and is accompanied by the certificate for the Share to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and the right of the transferee to receive the transfer;

6.3.2 it is in respect of only one class of Shares; and

6.3.3 it is in favour of not more than four transferees.

Regulation 24 of Table A shall not apply.

6.4 No Share shall be transferred to any infant, bankrupt or person of unsound mind.

6.5 The provisions of this Article 6 shall apply to any renunciation of the allotment of any Share as they would apply to any transfer of that Share.

6.6 Without prejudice to Article 6.2, the Directors may at any time give notice requiring a person becoming entitled to a Share in consequence of the death or bankruptcy of a Member to elect either to become the holder of the Share or to have some person nominated by him registered as the transferee and if the notice is not complied with within 90 days the Directors may after such time withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

Regulation 31 shall be modified accordingly.

6.7 Subject to the provisions of this Article 6, a B Shareholder shall, and may only,

transfer his B Share, simultaneously with the completion of the transfer of the ownership of his House, to the purchaser or other transferee of his House, and if two or more persons are the joint purchasers or transferees of his House, to them jointly. The price payable for such transfer of the B Share shall be the nominal value of the B Share.

6.8 If a B Shareholder refuses or neglects to transfer his B Share in accordance with this Article 6 the chairman for the time being of the Directors duly nominated by resolution of the board of Directors for that purpose, shall be deemed to be the duly appointed attorney of that B Shareholder with full power in his name and on his behalf to execute, complete and deliver a transfer of his B Share to the person or persons to whom it should be transferred under this Article 6 and the Company may receive and give a good discharge for the purchase money and enter the name of the transferee or transferees in the register of members of the Company as the holder by transfer of the said B Share.

## 7. VARIATION OF RIGHTS

If at any time the share capital of the Company is divided into different classes of shares, the rights attached to any class may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Articles relating to general meetings shall apply, but so that the necessary quorum shall be one person holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll. The rights attached to any class shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu with them.

## 8. NOTICE OF GENERAL MEETINGS

8.1 An annual general meeting and an extraordinary general meeting called for the passing of a special resolution shall be called by at least twenty-one clear days' notice. All other extraordinary general meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed:-

8.1.1 in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and

8.1.2 in the case of any other meeting, by a majority in number of the Members having a right to attend and vote being a majority together holding not less than ninety-five per cent in nominal value of the Shares giving that right.

8.2 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

8.3 Subject to the provisions of these Articles, including without limitation under the provisions of Articles 4.1 and 4.2 and to any restrictions imposed on any Shares, the notice shall be given to all the Members, to all persons entitled to a Share in consequence of the death or bankruptcy of a Member and to the Directors and Auditors.

8.4 Regulation 38 of Table A shall not apply.

## 9. PROCEEDINGS AT GENERAL MEETINGS

9.1 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business and whilst the business of the meeting is being transacted. A quorum shall consist of:-

9.1.1 on or prior to the Completion Date, the A Shareholder; and

9.1.2 after the Completion Date, two Members, provided that if the Completion Date occurs before the Utilities Completion Date then for the period from after the Completion Date until the Utilities Completion Date the quorum for the transaction of any business concerning Utility Arrangements shall consist of the A Shareholder,

in each case whether present in person or by proxy or (being a corporation) represented in accordance with Section 375 of the Act. Regulation 40 of Table A shall not apply.

9.2 If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall be dissolved. Regulation 41 of Table A shall not apply.

9.3 A poll may be demanded at any general meeting by the chairman at the general meeting, or by any Member present in person or by proxy and entitled to vote. Regulation 46 of Table A shall be modified accordingly.

9.4 The chairman at any general meeting shall not be entitled to a casting vote. Regulation 50 of Table A shall not apply.

9.5 Save as hereinafter provided and to any rights or restrictions attached to any Shares, on a show of hands every Member who (being an individual) is present

in person and entitled to vote or (being a corporation) is present by a duly authorised representative, not being himself a Member entitled to vote, shall have one vote and on a poll every Member shall have one vote for each Share of which he is the holder.

## 10. NUMBER OF DIRECTORS

The number of Directors shall be determined by the Company in general meeting but unless and until so determined there shall be no maximum number of Directors and the minimum number of Directors shall be one.

## 11. ALTERNATE DIRECTORS

11.1 Any Director (other than an alternate Director) may appoint any other Director, or any other person willing to act, to be an alternate Director and may remove from office an alternate Director so appointed by him. Save as otherwise provided in the Articles, unless he is already an officer of the Company in his own right, an alternate Director shall not, as such, have any rights other than those mentioned in Article 11.2.

11.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and to attend, speak and vote at any such meeting at which the Director appointing him is not personally present but it shall not be necessary to give notice of such a meeting to an alternate Director who is absent from the United Kingdom. A Director present at such meeting and appointed alternate Director for any other Directors entitled to attend and vote at such meeting shall have an additional vote for each of his appointors absent from the meeting. An alternate Director shall not be entitled to receive any remuneration from the Company for his services as an alternate Director. Without prejudice to the generality of the foregoing, an alternate Director shall for the purposes of these Articles be deemed to be the Director he represents.

11.3 An alternate Director shall cease to be an alternate Director if his appointor ceases to be a Director.

11.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.

11.5 Without prejudice to Article 11.2 and save as otherwise provided in these Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him.

11.6 Regulations 65 to 69 (inclusive) shall not apply and Regulation 88 shall be modified accordingly.

12. **POWERS OF DIRECTORS**

The Directors may sanction the exercise by the Company of all the powers of the Company to make provision for the benefit of persons (including Directors) employed or formerly employed by the Company or any subsidiary of the Company in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or any such subsidiary as are contained in Section 719 of the Act and Section 187 of the Insolvency Act 1986 and, subject to such sanction, the Directors may exercise all such powers of the Company.

13. **APPOINTMENT AND RETIREMENT OF DIRECTORS**

13.1 The Directors of the Company shall not retire by rotation, and Regulations 73 to 77 (inclusive) of Table A shall not apply and Regulation 78 shall be modified accordingly.

13.2.1 On or prior to the Completion Date, the A Shareholder shall be entitled at any time and from time to time to appoint up to the maximum number of Directors permitted by these Articles and to remove any such Directors from office and to appoint any other person in place of any such Director so removed or dying or otherwise vacating office and the B Shareholders shall not be entitled to appoint or remove from office any Director.

13.2.2 Subject to Article 13.2.4 after the Completion Date the holders of a majority in nominal value of the issued B Shares shall be entitled at any time and from time to time to appoint up to the maximum number of Directors permitted by these Articles and to remove any such Directors from office and to appoint any other person in place of any such Director so removed or dying or otherwise vacating office and the A Shareholder shall not be entitled to appoint or remove from office any Director.

13.2.3 Subject to Article 13.2.4 on or as soon as practicable after the Completion Date the A Shareholder shall remove any Directors and any Secretary appointed by it from office without claim for compensation and the holders of a majority in nominal value of the issued B Shares shall appoint at least one Director and the Secretary in their place.

13.2.4 If the Completion Date occurs before the Utilities Completion Date then the A Shareholder shall, for the period from after the Completion Date until the Utilities Completion Date, be entitled at any time and from time to time to appoint one Director and to remove such Director from office and to appoint any other person in place of such Director so removed, dying or otherwise vacating office and on the Utilities Completion Date the A Shareholder shall remove such Director appointed by it from office without claim for compensation and after the Utilities Completion Date the A Shareholder shall not be entitled to appoint or remove from office any Director.

13.2.5 Every appointment or removal made pursuant to this Article 13.2 shall be made by notice in writing to the Company signed by or on behalf of the person or persons entitled to make the same. Such notice shall take effect when served or deemed to be served on the Company in accordance with Article 20.2.

13.3 Save as provided by this Article 13 and subject to the provisions of the Act, no Director shall be appointed or removed from office, and the Company in general meeting shall have no power of appointing or removing Directors, but each of the Directors appointed by or under this Article 13 and every other Director hereafter appointed shall hold office until he is either removed in the manner provided by this Article 13 or dies or otherwise vacates office under the provisions contained in Article 14. Regulations 78 and 79 of Table A shall not apply.

## 14. DISQUALIFICATION AND REMOVAL OF DIRECTORS

4.1 The office of Director shall be vacated if:-

14.1.1 he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a Director; or

14.1.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally; or

14.1.3 he is a person of unsound mind; or

14.1.4 he resigns his office by notice to the Company; or

14.1.5 he is removed from office under Section 303 of the Act; or

14.1.6 he is removed from office pursuant to Article 13.2;

and Regulation 81 of Table A shall not apply.

14.2 No persons shall be disqualified from being or becoming a Director by reason of his attaining or having attained the age of 70 years or any other age.

## 15. DIRECTORS' INTERESTS

Provided that a Director declares his interest in a contract or arrangement or proposed contract or arrangement with the Company in the manner provided by Section 317 of the Act, he shall be counted in the quorum of any meeting of Directors at which the same is considered and shall be entitled to vote as a Director in respect thereof. Regulation 94 of Table A shall not apply.

## 16. DIRECTORS' GRATUITIES AND PENSIONS

Regulation 87 of Table A shall not apply

## 17. PROCEEDINGS OF DIRECTORS

17.1 The quorum for the transaction of the business of the Directors shall, except when one Director only is in office, be two, provided that the quorum for the transaction of any business of the Directors relating to Utilities Arrangements shall be one Director appointed by the A Shareholder pursuant to Article 13.2. A person who holds office as an alternate Director shall, if his appointor is not present, be counted in the quorum. When one Director only is in office he shall have and may exercise all the powers and authorities in and over the affairs of the Company as are conferred on the Directors by these Articles.

17.2 If at any time the board of Directors consists of Directors appointed by both the A Shareholder and the B Shareholders pursuant to Article 13.2.4 then in the case of an equality of votes cast by any Director appointed by the B Shareholders and the Director appointed by the A Shareholder the votes cast by the Directors appointed by the B Shareholders shall be deemed to constitute the majority, provided that in the case of any votes cast by the Directors in relation to any Utilities Arrangements the votes cast by the Director appointed by the A Shareholder shall be deemed in all cases to constitute the majority.

17.3 In the case of an equality of votes, the chairman shall not have a second or casting vote.

17.4 A resolution in writing executed by all the Directors (including a sole Director) entitled to receive notice of a meeting of Directors or of a committee of Directors shall be as valid and effectual as if it had been passed at a meeting of Directors or (as the case may be) a committee of Directors duly convened and held and may be contained in one document or in several documents in the same terms and executed by one or more Directors; but a resolution executed by an alternate Director need not also be executed by his appointor and, if it is executed by a Director who has appointed an alternate Director, it need not be executed by the alternate Director in that capacity.

17.5 Provided that due notice of such telephone conference call has been given as would be required for notice of a meeting of the Directors or (as the case may be) a committee of Directors, a telephone conference call during which a quorum of the Directors for the purposes of the business intended to be conducted at that meeting participates in the call shall be deemed to be a meeting of the Directors or (as the case may be) a committee of the Directors so long as all those participating can hear and speak to each other throughout the call. A resolution passed by the Directors at such a meeting shall be as valid as it would have been if passed at an actual meeting duly convened and held.

## 18. DELEGATION OF DIRECTORS' POWERS

The Directors shall not be entitled to delegate any of their powers in relation to Utilities Arrangements and Regulation 72 of Table A shall be construed accordingly.

## 19. DIVIDENDS

19.1 The Directors may retain the dividends payable upon Shares in respect of which any person is under the provisions as to the transmission of Shares herein contained entitled to become a Member, or which any person under those provisions is entitled to transfer, until such person shall become a member in respect of such Shares or shall duly transfer the same in either case subject to Article 5. Regulation 31 of Table A shall be modified accordingly.

19.2 The payment by the Directors of any unclaimed dividend or other monies payable on or in respect of a Share into a separate account shall not constitute the Company a trustee in respect thereof. Any dividend unclaimed after a period of twelve years from the date when it became due for payment shall be forfeited and cease to remain owing by the Company. Regulation 108 of Table A shall not apply.

19.3 The Directors may deduct from any dividend payable on or in respect of a Share all sums of money presently payable by the holder to the Company on any account whatsoever.

## 20. NOTICES

20.1 Any notice given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing. Any notice given by or on behalf of any person to the Company may be given by leaving the same at or by sending the same by post to the Office or such other place as the Directors may appoint. Regulation 111 of Table A shall not apply.

20.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 24 hours after the envelope containing it was posted. Regulation 115 of Table A shall not apply.

## 21. INDEMNITY

21.1 Subject to the provisions of, and so far as may be permitted by the Act, every Director, Auditor, Secretary or other officer of the Company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or in relation thereto including any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the Company

and in which judgment is given in his favour, or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part, or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omissions in which relief is granted by the Court.

21.2 Subject to the provisions of and so far as may be permitted by the Act, the Company shall be entitled to purchase and maintain for any such Director, Auditor, Secretary or other officer, insurance against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust in relation to the Company.

| Timestamp | What is your name? | What is your address? | If you have used this land recreationally within the last 20 years but no longer live in St Athan, please provide your previous address. | Can you confirm from this map and image that this is the open space that you use? | Please tell us how you enjoy the open space and what activities you use it for | Please state the date range in years you have used this land | Have you ever been prevented from using this land? If you have, please provide details. | Please list all the activities you have seen taking place on the land | What is appealing about this land compared to anywhere else in the St Athan village? | Please give us permission to use your evidence: "I understand that this evidence may be presented at a non-statutory inquiry and I authorise the applicant to use this form for that purpose" | Please email any pictures or evidence to support this questionnaire to villagegreenapplication@gmail.com. The more we can show how much we all love and use this green the more chance we have to fight it. If you have any further details or comments, please pop them below Thank you for your support and help |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 10/17/2022 14:33:05 | Lloyd Allen | 6 Ringwood crescent | | Yes | Playing games, walking my dog | 22 | | Dog walking, football, rugby, kite flying, bike riding, horse riding, Frisby. | Close to my home and plenty of people to chat with on there. | I give my permission | |
| 10/17/2022 14:38:27 | Sarah ohare | 5 ringwood crescent | N/A | Yes | We have used this area in multiple ways . We have used the old swing set that used to be there and even though my children are now almost grown they still remember the day it vanished . Equally we have had picnics on the green ,met friends for chats ; flown kites and kicked a ball round we have also picked the fruit on the cherry tree to make wine , jam and pies . We also regularly walk both our current do and previous dog | 20 years | | Picnic dog walking kite flying footy swing ( when they were there) socialising | There are very few open spaces in st athan with easy access | I give my permission | |
| 10/17/2022 16:24:19 | Leigh Davies | 4, Ringwood crescent, St Athan | Na | Yes | Playing with my children Sports like rugby (throwing and kicking practice), crickets, football, etc Walking dogs, strolls with my wife, nature walks Picnics with the family | 6 | | Walking, sports practice, dog walking, personal exercise, picnics, general family activities and play. | Close, convenient, only piece of open land left available for use, it's the centre point of our little conurbation | I give my permission | |
| 10/17/2022 18:07:39 | Eleanor Davies | Honey block, Unsworth House, Manchester | 4,Ringwood Crescent, St Athan | Yes | Walking, dog walking, sports practice, study and research and rest/recuperation | 6 | | Walking, sports, health activities such as jogging, picnics, family activities, sports practice (cricket, rugby, football) | Only open space for these activities in area. Next area is miles away! | I give my permission | |
| 10/17/2022 21:14:56 | Andrew Speed | 2 Ringwood Crescent | NA | Yes | Playing games with my children and enjoying family time outside | 8 | | Individual Fitness - fitness classes - military group led fitness - dog walking - dog training - football and general ball games - frisbee - go karts - picnics and BBQs | It is the only large green piece of land available to us in the area, it's a beautiful location which we, and others love to use. | I give my permission | |
| 10/18/2022 12:51:07 | Aisha Hannibal | 38 Trebeferad, Cf61 1ux | | Yes | I come here with my children to visit friends. To play football and enjoy the clean air. | 5 | | Ball games, cartwheels, picnics, gatherings of mums, parties, | Because it is lovely to spend time there, the air is clean, it's good for my mental health, my children love it. | I give my permission | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/1/2022 22:11:55 | Andrew Speed | 2 Ringwood Crescent St Athan | | Yes | Playing with my children and their friends for such activities like football, kite flying, frisbee and picnics. | 15 years | No | Fitness sessions and classes, football, frisbee, playing with aerial toys, picnics, dog walking and social gatherings like fireworks night. | It is the only large open space within the local area where the above listed activities can take place, it is a beautifully scenic area which draws people from all around the local area to use it. There are both adults and children using the space every single day of the week. We have lost the field by the gathering place, losing the old stadium ground, where are people supposed to go without promoting the use of vehicles to get there? | I give my permission | |
| 11/1/2022 22:13:16 | Sandi Thompson | 12 Greig Court, Cannock WS11 7WN | 58 Lougher Place, St Athan CF62 4PU | Yes | When I visit family and look after children of friends and family, we use this field to play on. We have games and picnics, and spend time relaxing there. I grew up playing on this field | 1970 - 2022 | No | Children and families playing, dog walking. Mums with prams walking, local residents running/keep fit | There is no green space left in the local area safe for children to play. The village playing fields are in the village, which is too far for young children to go to visit alone to play. This field is in the middle of a well established housing area, and serves the area with well required recreational space, especially with more houses already being built nearby. It provides a safe place for the local children. | I give my permission | The area needs accessible open recreational space, not more housing. There are plenty of alternative sites for housing (the stadium for one) but no other suitable areas for community green space |
| 11/1/2022 22:18:04 | Lucy Satherley | Ivy House, Flemingston | | Yes | Walking, playing with children, running | Since 2013 | No | Walking, running, dog walking, football, community activities | Contrary to the high density modern developments, this space is open and provides a really beautiful quiet space amongst the housing | I give my permission | |
| 11/1/2022 22:19:13 | Paula Speed | 2 Ringwood Crescent, St Athan, CF62 4LA | | Yes | I used to play on this land as a child with my friends when my dad was posted to RAF St Athan. In more recent years I have used it to exercise and ti play with my children (learning ti ride a bike, ball games, frisbee throwing, kite flying etc.) | Since 1986 | No | People playing with their dogs, playing with their children and exercising | cared for open green space - the last of its kind and size in this area. It has been a designated recreation area since the houses bordering it were built. It is sizeable enough that numerous groups can use it simultaneously for different purposes - unlike the much much smaller "patches" of land on the nearby Eastvale Estate which are not suitable for the activities that take place on this land .<br><br>Being as open as it is, but being bordered by Ringwood Crescent and Burley Place it is a safe area which suffers from NO antisocial behaviour.<br><br>The open space in St Athan village is too far to walk to with small children and it is a designated football pitch used for organised sports so not | I give my permission | |
| 11/1/2022 22:20:35 | Dr Angela Davies | Ty'r Wennol Higher End St Athan | | Yes | Walking playing with child | Ten | No | Walking dog walking children playing picnics | There is nowhere else in the village | I give my permission | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/1/2022 22:24:44 | Andrew sheehan | 39 mallory close St athan | | Yes | My family use it for picnics,playing sports and walking our dog | 2007 onwards | No | Sports,dog walking,families enjoying the fresh air | The only bit of grass available to the residents of East camp | I give my permission | |
| 11/1/2022 22:28:27 | Lynda Jenkins | 54 Rhodfa'r Hurricane. St Athan. | | Yes | Playing football/ cricket with my son & his friends. Using it for family picnics. | 2022.. moved locally in June 2022. | No | Picnics, football, flying kites, cricket, hide and seek, treasure hunts,childrens birthday parties... | Lovely wide space,shaded by the trees, walking distance. | I give my permission | |
| 11/1/2022 22:38:31 | Karen | Elm grove st athan | | Yes | I walk my dog here after work as it's nearby and too late/dark to go to the beach. The local dog owners lost the other fields to houses and there is little green space left to exercise our dogs close by. | 15 | No | Dog walking, people excercising | It's a pleasant area and convenient for the residents on that side of the village which has been largely developed leaving little green space left | I give my permission | |
| 11/1/2022 22:38:54 | Clare deacon | 2 talybont close | | Yes | Me and my children walk here and play they can run around and actually have space without cars and buildings , in summer we take a picnic in winter we take a ball this is the only bit of space they have to run around that's green ! | 1 | No | Dogs waking ,children playing ,adults chatting ,picnics | There isn't any green space for children to play that isn't a foot path or farmers field | I give my permission | |
| 11/1/2022 22:45:42 | Samuel rowlands | 41 mallory close, CF624JJ | Still present on east camp | Yes | Dog walk, for my son to play on because we have lost the green space opposite gathering place it would be a shame to loose every square inch of green space we have available to us! | 15-20 years | No | Football, tag and various over activities | The distance from my house is less then 2 mins the village is about 25 minutes walk so I will not let my son walk down there on his own! | I give my permission | |
| 11/1/2022 22:57:21 | Abigail Gree | 17 Aled Way, St Athan CF62 4HA | | Yes | My children play here and we all enjoy using it for our dogs | I have lived here simce 2017 | I cannot recall a time we haven't been able to use the land | Children playing. Social gatherings and dog walkers | It is peaceful. Tucked away and no real traffic means it is very safe for families and children and dogs | I give my permission | |
| 11/1/2022 23:03:23 | Laura Smith | 7 Llantwit Road, CF62 4LZ | 31 Burley Place, St Athan, CF62 4LB | Yes | used daily by us when we lived on Burley place a few years ago. It was a place to meet friends from the surrounding streets for our children to play. We had picnics, played sports games, walked the dogs and even one of our children took their first steps here. There really is nowhere else around this area to SAFELY play with your children on a lovely green area. The farming fields behind Burley are not public open spaces, many have livestock and electric fences. They are not safe areas to walk with your little ones. Having somewhere to walk around daily and throw the ball for the dog was essential to my mental health during the 4 years we lived there. I'm not sure what we would have done without it. It will be an incredible loss for the local area to lose such a lovely open and safe area. There is no other green space like this in the area, it would be horrendous to lose it to housing. It may look like a | 2014-2018 | No | Picnics, ball games, children learning to walk!, dog walking, a safe open space to spend quality time with our children. | It is safe, there are no busy roads next to it, there is nothing equivalent close by in this end of St Athan. | I give my permission | I really hope this helps. What a devastating loss this would be! |
| 11/1/2022 23:06:27 | James | 13 eagle rd | | Yes | Run my little girl around on their | 3 years | No | Football rugby running walking drama | Safe place off main roads | I give my permission | |
| 11/1/2022 23:06:57 | Mrs Ritson | 44 Drake Close | Yes | Yes | Walking, playing football & soft tennis blowing bubbles & gymnastics used most days!! The children love the open safe place. Will be heartbroken if another open space goes on their doorstep to play!□ | 2000-2022 | No | Picnics parties all sorts of games camping amazing community get together. Interaction activities with the PCSO & other officials. | Community spirit, safe space beautiful tranquil views | I give my permission | |

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| 11/1/2022 23:29:03 | Hayley Knight | 8 Talybont close | Yes | I use this space to let my two trained German shepards have a opportunity for mental and physical stimulation and exercise. My children are normally on these walks aswell and to loose the last open space of land would be terrible that we've enjoyed living here due to my husbands work. | 6 years | No | Dog walking families on of lead walks children playing football picnics badminton | Its the only open to public land available. What gets forgotten is there's over 200 military families who have no choice where they live. It's great for mental well-being getting outside and socialising with other military families but also the civilian families aswell. We've already lost land that is a building site now this last bit of land is the last. | I give my permission | |
| 11/1/2022 23:33:29 | Stewart Forrester | 10 Glebeland Place Saint Athan | Yes | I frequently take long walks around the area with my dog. Usually starting or ending in the vicinity of the area in Ringwood crescent. From there I walk either a long route through the lanes to Llancadle & Llancarfan or another route through Flemingston to Cowbridge. The green space at Ringwood crescent is the only place I can let the dog off the lead to run & stretch before the walk starts as everywhere else he has to remain on the lead. Additionally in late summer and early autumn it's an excellent spot for foraging for blackberries and fresh mushrooms untainted by the fumes from vehicles that taint the areas near the roads. | 30 years | No, never prevented from using the land. | Dog walking, birdwatching, ball games, picnics, running, exercise/circuit training, football, foraging (mushrooms & blackberries) | There is hardly any other grassed area or open land St Athan. Its a perfect spot to exercise on walks and mushrooms don't grow anywhere else in the area. | I give my permission | There are plenty of other places to build houses in the area that would not affect green space, the old Boys village in Aberthaw, the old council yard (totally overgrown and unused) across the main road from St athan park could be used to site dozens of houses with good access yet are not considered as it's easier to destroy greenbelt than build on previously developed areas |
| 11/1/2022 23:39:12 | Fiona Gregory | 15 Aled Way St Athan CF624HA | Yes | My Family have used this green space for many years. We lived in number 3 Burley place until recently, which looks out on too this beautiful green space. My two Children learned to ride their bikes on this grass and we have played rounders, Rugby and football together as a family and with our friends. My two sons have enjoyed having the freedom of playing safely on this grass with their friends. This is a lovely safe and open space for lots of children to enjoy away from any main roads. I have also used this for fitness for the same reason as it is a safe open space. The green spaces in St Athan are slowly diminishing and there are fewer and fewer places for children to use and explore which will have an detrimental impact on their health and wellbeing. It is therefore important that we protect the limited green space we have. | December 2017 - present | No | Football, Rugby, fitness classes, walking, blackberry picking, practicing fly fishing technique, rounders, cricket, picnics, playdates, cycling | It's a safe space for all. It's a lovely open green space providing opportunities for a variety of activities important for health and wellbeing. | I give my permission | |
| 11/2/2022 0:49:11 | Lisa Evans | 2 Mallory Close | Yes | We regularly walk our dog here which has plenty of space to throw a ball and allow our dog to run as well as taking our boys age 7 and 13 to play football. We use this area at least 3-5 times a week. | We have used this land for 4-5 years since we have lived in the area | No | Dog walking, football, general children playing. Children learning to ride bikes | It is close to where we live. Also it is open and for you to keep an eye on your children playing. Also large area for a dog to run | I give my permission | |

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| 11/2/2022 0:52:39 | Martyn Dowding | 40A High Street Cowbridge | 24 Shackleton Close St Athan | Yes | Leisure walking, dog walking, village events/celebrations | 4 | No | Children playing, ball games, dog walking, village events | Community spirit, away from busier main roads | I give my permission | |
| 11/2/2022 1:00:28 | Rebecca Hatter | 39 Burley Place | | Yes | Exercise, dog walking, children playing, football, cricket, rounders, socialising | 3-4 years | No | Exercise, dog walking, children playing, football, cricket, rounders, socialising, picnics | Beautiful greenery with space for families to do activities. Safe space for children to play, away from a main road, with houses being built up on top of each other all over St Athan, having an open space available allows residents to have the ability to enjoy the area, encouraging exercise, healthy living and socialising. | I give my permission | |
| 11/2/2022 1:07:57 | Tina Price | 17 Mallory Close St Athan c624jj | | Yes | We use this field every day to walk our dog so she can have a run around our kids love to play here specially during the summer months | We have lived here since 2013 and used it since then | No never | We used this as our picnic spot for ve day | It's safe and clean from. Dog mess as they people respect this place | I give my permission | I have so many pictures of this field with my children and dog more then happy to send |
| 11/2/2022 1:20:17 | Christopher Lamb | 118 Bakewell Rd Matlock DE4 3AZ | 8 Burley Place, St Athan | Yes | I lived there for 10 years, as a family we used it all year around , kids playing sports, dog walking, all also had some community get togethers | 10 years | No | Kids playing sports, dog walking community events | Large flat open space which is away from main roads | I give my permission | |
| 11/2/2022 1:56:35 | Hayley smith | Cf71 7qf | Cf624dd | Yes | Recreational with children, exercise, dog walking | 2007 to 2016 | No | Dog walking<br>Children playing<br>Exercise | Safe and accessisble | I give my permission | Nil |
| 11/2/2022 4:21:27 | Elaine Huntley | 5 Yew Tree Grove St Athan Barry CF624JX | | Yes | I often walk around this area with my dog as it is one of the few safe accessible open green spaces left within walking distance on East / West Camp particularly with all the housing now having being built. It is the view and the sense of space that contributes to wellbeing as much as what it is used for. It is important that children and the elderly in particular have somewhere like this on the doorstep. A space that can be used for walking, picnics, fetes, play and other communal activities particularly in the Summer to maintain a sense of community. It could also be used by the Gathering Place for outdoor activities now that their outdoor space has been taken away. | 22 years | No | Dog walking, children playing, picnics / meet ups. | It is accessible for everyone who lives in East Camp and Eglwys Brewis unlike St Athan village and it has always looked and felt like a village green. I don't think anywhere else in St Athan compares. | I give my permission | |
| 11/2/2022 5:58:07 | Andrew Nunn | 6 Picasso Rise, Stoke on Trent | 6 Burley place | Yes | Physical fitness, dog training, sports, picnics, teaching my son to walk | 7-8 | No | Picnics, dog walking, all ages playing sports, families enjoying each others company | The views and cleanliness | I give my permission | |
| 11/2/2022 6:16:36 | Kelly Dixon | 25 Livingstone way st athan | | Yes | Dog walking | 10 | No | Families playing together in the summer, lots of people walking their dogs | The last piece of greenery left in the area | I give my permission | |
| 11/2/2022 6:50:10 | Sinjon Richardson | 1 burley place. CF62 4lb | | Yes | Walking the dogs, playing games with the kids, having picnics with friends and family. It's a great open space to get you out of the house and keep your mental health in a good place. | 2015-2022 | Limited. | Picnics, dog walking, meeting family and friends, kids playing games, foot ball and working out. | Location, quite and secluded with no cars speeding past making it a great for kids to go play. | I give my permission | |

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| 11/2/2022 6:52:16 | Claire Gamble | 3 tintern close | | Yes | This open space is the only safe open space where my children can sit and picnic, or play ball games. As serving personnel, we very much appreciate family time and due to constraints cannot always go too far to spend quality time together. Therefore a stroll round the corner with a picnic come rain or shine is perfect for us. Please don't take the last green space. We are already forced to over look the new builds and have been suffering there development for over a year now. | 2019 to present | No | Picnic<br>Dog walking<br>Ball games<br>Free play for younger children | Flat safe land which is clean from rubbish | I give my permission | Thanks |
| 11/2/2022 6:56:35 | Robyn | 36 green meadow close, st athan | 8 clwyd way, st Athan | Yes | Walking, out with the dogs and this is an area kids have played for years inc myself | 2005-present | No | Kids playing, dog walkers, events previously when army/raf had things on, community events | This is a nice bit of land that leads you into places like flemingston etc. it's an open space for houses already situated there, a playing area for children | I give my permission | |
| 11/2/2022 7:01:08 | S evans | 2 mallory close St athan | | Yes | Go there to play football with the kids.and sometimes play rounders on there | 6years | No | Football.rounders cricket. Kids just playing around.seen some families having picnics there in the summer.dog walkers meeting up there | Best open field for kids to play footie | I give my permission | |
| 11/2/2022 7:03:21 | Rachel Burnett | 38 Drake Close, St Athan, Barry CF624JF | | Yes | Use the space to walk the dogs as well as walking around the area for exercise. | 2004 - 2022 | No | Children playing, people walking their dogs. | The space it gives around the area to be able to walk and relax, it's an area which helps me when needing to get out and walk which helps with my well being and mental health. | I give my permission | |
| 11/2/2022 7:03:58 | Rhian Fleig | 98 Lougher Place | | Yes | Walking my dog and going for runs | 2016- present day | No | Dog Walking, Children playing, running, kids playing football/ rugby. | It's a lovely open space to do lots of activities | I give my permission | |
| 11/2/2022 7:05:12 | Deborah gilbert | 16 berkroles avenue st athan Cf624py | | Yes | Walk my dogs | 2011 - present day | No | Families playing, walking, walking dogs | Green space, we have lost 3 open green slaves in the last couple of years in st athan | I give my permission | |
| 11/2/2022 7:15:48 | Stephen Hann | 10 Glynwr avenue | N/a | Yes | Walking the dog | 3 | No | Children playing | Safe | I give my permission | |
| 11/2/2022 7:20:40 | Katherine Gouws | 9 Aled Way, St. Athan, CF62 4HA | | Yes | I walk on this land every day for exercise and the open space contributes to my mental wellbeing especially as I work full time from home. Very happy memories are connected to this beautiful space. | Over 7 years | No | Individuals walking, throwing balls for dogs and walky times with pets, children playing football, see the rope swing hanging on one of the trees, admiring nature and getting fresh air outside. | It is open and free with well maintained grass to het outside and enjoy the weather. | I give my permission | This sale cannot be allowed to go through, there needs to be a balance of homes and accessible space for the community. Not all parks have playgroups! |
| 11/2/2022 7:21:16 | Heather Mckay | 23 Drake Close | | Yes | We use it for an open space for walking our dog and also an open space for our children to play. | 11 | No | Children and families playing games, football, cricket, rugby. Children climbing trees, swinging from the rope swing on the tree. Children sitting and chatting. Dogs being walked and playing. | It's one of the few remaining green spaces. We have lost the green space by the gathering place that our children use to play on and learnt to ride their bikes on and where we also use to walk our dog. This is the only remaining green space within a manageable walking distance from our house for our younger child so loves going to see her favourite tree on the field. | I give my permission | |
| 11/2/2022 7:26:52 | Kelly | Flemingston road | | Yes | I use this space to walk my dog play with my children, also to hav picnics and somewhere to sit and think if my depression is bad | 2009 to present | No | Dog walking, kids playing, family time, exercising, running, picnics | It's close to my home and where my kids can meet with their friends and be safe and in sight | I give my permission | |

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| 11/2/2022 7:47:42 | Danielle Huish | 10 crynant close | | Yes | I walk my dog twice a day here, every day for the last 2 years since owning here. We throw the ball for her as it's big enough to do so without her running out onto the road. I feel safe here when it's dark to let her run around rather than walking round the lanes. And it would be a huge loss for us | 2 years | No | Dogs walking and chasing balls. Children playing football. Children playing tag. | It's a large open space with the safety of houses around it so I don't feel at any danger. My dog has a lot of energy and it's perfect for her to run around as she doesn't like walking on a lead alongside the road through st Athan. I work long hours and walking through the lanes and to the farm field with the footpath is not an option as there is no street lights and I wouldn't be able to see if there are animals in the field | I give my permission | |
| 11/2/2022 7:48:35 | Julian hughes | Ty Mawr Gwyn,flemingston. CF624QJ | | Yes | Dog walks, our children play on this green. | 2 years, since we moved here | No | Football. Children playing, dog walking | It's beautiful and peaceful. | I give my permission | |
| 11/2/2022 7:55:54 | Louis McCullough | 17 Scott Close St Athan | | Yes | I walk my dogs on it, me and my nephew often play football in there too as there is nowhere else to be able to do that near by for a 5 year old | 8 years | No | Picnics, dog walking, people exercising, kids playing games, families playing football, people sunbathing | It's the last open green space left that is maintained so as to play games with families, exercise and walk dogs freely | I give my permission | |
| 11/2/2022 7:57:40 | Leanne Morris | 20 Drake Close St Athan | | Yes | I walk my dog daily on this area of green | 2009-present | No | Children playing football, dog walking, children riding bikes, people exercising | There is very few areas of green space left | I give my permission | |
| 11/2/2022 8:27:44 | Nadine bamrah | 7 ringwood crescent | | Yes | Dog walking - ball games with children- picnics with families from ringwood crescent- children free play from other houses - yoga | 12 years | No | Dog walking - football- children playing safely | Large- safe - friendly atmosphere | I give my permission | This is the last green space in our area- we would have to drive somewhere else. A large amount of families enjoy this space. I feel safe for my children to run, explore, gain fresh air without the stress of constant moving traffic. There is a good community spirit |
| 11/2/2022 8:45:55 | Rhiannon Dobson | 2 Rhodfa'r Hurricane | | Yes | We use this open area on Ringwood Crescent everyday to walk our dogs. It's such a lovely open space where our dogs can safely run around away from traffic. | 2 years | No | Dog walking. Fitness activities. Children playing. | It's quiet and away from traffic | I give my permission | |
| 11/2/2022 8:52:13 | Alice | Scott Close | | Yes | Walking | 1 | No | Dog walking, children playing | Its green | I give my permission | |
| 11/2/2022 8:53:10 | Sandra lloyd | 44 Tathan crescent at Athan | | Yes | We walked there when looking to buy in St Athan | We move in next week so have only used the land once but intended to use it several times a month | No | Walking and playing | As above, new to the area but any green space so important in a village | I give my permission | |
| 11/2/2022 8:55:22 | Richard Coles | 9 Flemingston Road | Still use it | Yes | Play with kids and animals on green | 5 | No | Dog walking/kids use as daily for foot ball/running activities | Last part of our communal land left | I give my permission | |
| 11/2/2022 9:08:13 | Jake lancaster | 50 Scott close | | Yes | I use it to jog on and for the kids to play on. Plenty of people use this land day in day out. | March 2018 until present. | No | Dog walking, jogging, kids playing football. | The fact that it is local to everyone by there. Why should we have to walk twenty minutes to the next patch of grass because some people want to make money. That's what it's all about now days is money! | I give my permission | |

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| 11/2/2022 9:11:23 | Georgia Avaient | 50 Scott close |  | Yes | I use it to play with the kids on their bikes and to play football with my sons. | March 2018 to present. | No | Kids playing, kids playing football, dog walking, jogging. Why do we need to explain ourselves? Why has every patch of greenery have to be built on unless we explain ourselves! | Because it's local and we shouldn't have to walk 20 minutes to the next bit of public greenery. The kids here have nothing to play on as it is, apart from the overgrown field behind the golf course. Hasn't been cut for years why aren't you building on that? Probably make the golfers angry. Can't make the rich boys unhappy can you. | I give my permission |  |
| 11/2/2022 9:28:12 | Eleanor | 15 burley place |  | Yes | We use it to play with my son and friends. We play lots of different sports like cricket and football. There is no other open ground like it around us without using transport. It would be such a shame to get rid of it for a few houses. I think we have enough houses going up around here without taking this small open space away. Lots of people use it and need it. | When I was a child 2005-2009. Now with my child 2020-current | No. Let's not start now with more houses we don't need. | Football<br>Cricket<br>Picnics<br>Rounders<br>Tag<br>Rugby<br>Children all playing together | Its close and convenient. There's no other space like it this area of st athan without travelling. We don't need more houses on such a small space. We need more playing ground for kids and family's. Not more houses. | I give my permission |  |
| 11/2/2022 9:52:24 | Simon mcgann | 9 crynant close CF62 4HE |  | Yes | Walking the dog, playing sports with the kids | 11/20 - today | No | Dog walking, sports, kids playing | Its the closest bit of greenery, flat, | I give my permission |  |
| 11/2/2022 10:24:54 | Anne Coultis | 5 Rhodfa'r Hurricane |  | Yes | Walking my dog | Since June when we moved to the area | No | Dog walkers<br>Children playing<br>Family having a picnic ( in the summer) | Nice green open space, limited within the village. | I give my permission |  |
| 11/2/2022 10:56:50 | Rebecca Thomas | 35 Mallory Close |  | Yes | The children run around and play ball games on there | 14 years | No | Football, children playing together, picnics, bat and ball games | Local | I give my permission |  |
| 11/2/2022 11:13:23 | Karen Gifford | 18 Glyndwr Avenue St Athan |  | Yes | Not used now as my kids have grown but want to be able to use it when the grandkids arrive | 1992 | No | Children playing | It is close | I give my permission |  |
| 11/2/2022 11:33:17 | Katy | Llantwit major |  | Yes | A friend lives near it and we use it most weeks for playing with the kids. We picnic there, play cricket there, do races in the summer. It would be so sad to lose it. | 10 years | No | Cricket, dog walking, forest school, races, exercise groups | It's big and you can let the kids run wild without disturbing residents and it's safe for the kids to play | I give my permission |  |
| 11/2/2022 12:27:44 | Claire Hauxwell | 8 Scott Close, CF62 4JL |  | Yes | I've used it in the past for my children to play in. I use it now for dog walking. | 02/02/2001 - present | No | Dog walking. Children playing. Football games. Kite flying. | This isn't in St Athan village. The land in the village is approximately one mile away. This land is very handy for the Explorers Estate, and there is nothing else nearby that compares. | I give my permission |  |
| 11/2/2022 12:32:20 | Graham Durber | 41 Scott close, St Athan, Barry. CF62 4JL |  | Yes | Dog walking | 1 year | No | Dog walking, children playing | The wide open green space | I give my permission |  |
| 11/2/2022 12:44:13 | Claire Lamb | 118 Bakewell Road, Matlock, Derbyshire | I used to live on Burley Place and still come to visit friends. My children used to love playing on this green regularly. | Yes | Playing rounders, throwing ball for the dog, having picnics | 8 years | No | Street parties, used by brownies for activities, running and exercise | It has a peaceful feel to it and also a community feel | I give my permission | Please save this green |
| 11/2/2022 12:44:45 | Corrin clements | 13 drake close |  | Yes | This is the only green space in the area. It's great for taking the dogs out or sitting in the summer. Great for kids and families | 1 | No | Dog walking<br>Kids playing<br>Family picnics | This is the only green space in this part of st Athan | I give my permission |  |

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| 11/2/2022 13:02:53 | Mrs Louise Shapcott | 25 Scott Close, St Athan, CF62 4JL | | Yes | I walk here regularly with my dog and my grandchild. It is a lovely green space that should remain available to the local community. It is a local treasure. If there is need for more housing there are plenty of other brown sites to build on on ex MOD land and abandoned air fields around St Athan. And I don't suppose it would be to build social housing, Its just to make money. | United Kingdom 3 years | No | Children playing and running around freely. Dog walking. Dogs Playing. Bike riding. Blackberry picking. Picnics. It is a safe place to play and walk a dog. | Its the only big space left in this area (near East Camp) where children can play. It should be untouched as it is so valuable to the local community. | I give my permission |
| 11/2/2022 13:18:26 | Karen browne | 7 bullfinch rd | | Yes | Dog walking and kids playing | 3 yrs | No | Kids playing and dog walks | The greeny | I give my permission |
| 11/2/2022 13:43:26 | Andrew Gudgeon OBE | The Sycamores St Athan | | Yes | Playing football with my nephew and his friends | 2021 - 2022 | No | Cricket, rounders, picnics, kite flying, football, frisbe, dog walking | It is one of very few open spaces where children can play safely close to where they live. It is free from traffic | I give my permission |
| 11/2/2022 16:15:49 | Lucia Sivori | 29 Clos Ogney | 31 Mallory Close | Yes | I have lived in St Athan since 2007, I spent a majority of my late childhood and adolescence playing on this green space, my friends and i would sit there on sunny days and have picnics and climb the trees. As an adult i use the space to exercise my dogs between walks about 3 times a week. | 2007-2022 | No | Children playing. Dog Walks. People using it on runs. | There are NO other green spaces left in St Athan. Everything else has been developed on. The only other space is the field near the community centre in the village which is not accessible for disabled people on east and west camp. St Athan is more than just the village. | I give my permission |
| 11/2/2022 17:43:22 | Charlotte holberry | 5 clwyd way St athan | | Yes | Take my children to play on this green space regularly. We have used this feild for both my children to learn how to ride bikes. I use it to exercise on with friends during the spring/summer months. | 6 years | No | Children playing football, Frisby, kites. Dog walkers, families using it for walks and picnics. | This is the only green space at this end of the village that is local to the numerous houses that already exist. I can only think of ONE other space that is suitable for recreational use in the village and that is at the opposite end. | I give my permission |
| 11/2/2022 17:48:55 | William holberry | 5 clwyd way St athan | | Yes | My family use this feild regularly. my children play games on this feild, football, rugby, running etc it is the only space to do this in the local area | 6 years | No | Dog walkers, runners, families playing, groups exercising, children playing | It is the only land available in the local area | I give my permission |
| 11/2/2022 17:55:31 | Lucy Jones | Scott close st athan | | Yes | I regularly take my young grandchildren there to play, it is a space where they can run freely without risk of traffic or impinging on other people's property. We have picnics etc on there. A lovely space which would be criminal if lost | 2018 to present | No | Children playing, families gathering for picnics, people meeting and socialising | It's clean, and safe from traffic and children can be seen at all times | I give my permission |
| 11/2/2022 18:02:09 | Darren Harris | 24 Mallory Close, st Athan | | Yes | Dogging and nude sun bathing | 6 | No | Dog walking, children playing, families walking | It's the only green space left | I give my permission |
| 11/2/2022 18:56:39 | Carys Ingram | 9 Ash Lane, Eglwys-Brewis | | Yes | I take my kids there to run and play on the open space we love it | 2021 till now (when we moved here) | No | Playing walking sunbathing etc | It's nearby walkable distance and safe for the kids to play | I give my permission |
| 11/2/2022 19:01:03 | Annabrlle Hallihan | Beggars Roost, Llanharry | | Yes | Children play on the space. Have used with the local scout group. | 5 | No | Games, dog walking, exercises, cricket, football, picnics. | Good open space for children to run around, can be over looked to make sure children are safe. | I give my permission |
| 11/2/2022 19:02:30 | Amanda davies | 4 Ringwood crescent | | Yes | Dog walking , playing with the kids | 2017-to present day | No | Football cricket picnics army use dog walking | Useable green space that isn't fearmland | I give my permission |
| 11/2/2022 19:36:22 | Gaynor Voake | Valley House Flemingston | I have lived in Flemingston for 30 years and have walked my dog and my children on the Green for all that time | Yes | Walking the dog and playing | Since 1992 to date | No | Children playing people walking and picnicking | There is very little open space left | I give my permission |
| 11/2/2022 19:43:02 | Jennifer Ross | 14 Shackleton close, st athan | | Yes | I walk my dogs over there every night. Occasionally hack the horses around the estate. | 1980 - present | No | Dog walkers, kids playing football, people practicing golf and fishing. | It's close to home and quiet | I give my permission |

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| 11/2/2022 20:11:41 | Gareth Morrison | Glyndwr avenue St Athan | Yes | Walked my dogs and my kids use to play games on it with their friends | 2000-2016 | N/A | Football, tag, bike riding, dog walking, rugb. | It's nice big open space | I give my permission | |
| 11/2/2022 20:46:51 | Sian Jones | 28 Livingstone Way | Yes | Dog walking | 10 years | No | Children playing, people exercising, dog walking | It is one of the last green spaces | I give my permission | |
| 11/2/2022 21:30:17 | Serena James | Mallory close, St Athan | Yes | I use this space daily to walk my puppy. He loves the natural space collecting pine cones and watching the squirrels. St athan has been heavily over developed and there arent enough green spaces or amenties to support further housing, I have grown up in this area and used to play on this land as a child. Please keep some green space for our children and pets to enjoy!! I oppose the development of this area. | 43 years. | No | Children playing, dog walking, families having picnics and games in the summer. | Its local to my house, i have mobility issues but can walk to this area with my dog, the only other local green area i.e st athan community centre i have to drive to which has both a cost and environmental implication, its lovely to see the wildlife there and its natural. It has no play equipment or designated for specific use which allows it to be used for muliple purposes. Its a lovely large open natural space. All the other green space has been developed on!!! | I give my permission | |
| 11/2/2022 21:54:31 | EllieMae Mcgrath | 39 Livingstone Way St Athan CF624JG | Yes | Family Walks , Dog Walks | 2000 Until Present | No | Playing Field , Walks, Family Time | Only Green Left In St Athan Open To Public To Enjoy For Children Families Friends | I give my permission | |
| 11/2/2022 22:07:21 | James Angove | 7 Livingstone Way, CF62 4JG | Yes | 2/3 weekly walks and exercise | 10 years + | No | Children Playing, runners, Rounders general exercise | It's a large open green space that we are lacking elsewhere locally | I give my permission | |
| 11/2/2022 22:15:03 | Paula booker | Ash lane | Yes | Walk my dog and for my mental health safer than having to walk the lanes too much traffic | 18 yrs | Not yet | Children playing picnics dig Woking, head space for mental health | It's lose and little traffic | I give my permission | |
| 11/2/2022 22:49:11 | Louise Cleave | 4 Shackleton Close, St Athan, CF62 4JE | Yes | I like to walk with my dog around the space. When my daughter was younger, she would play with her friends here. I love to see the current children playing games and enjoy the space | 2008 to date | No | Children playing ball and other games, families enjoying outdoors, picnicking, dog walking, | The grass is well maintained, it is away from traffic, it is close to local houses. It is a clear space, not marked out as sports fields. | I give my permission | Best of luck with this |
| 11/3/2022 6:27:35 | Maxine Levett | 8 Clive Road, St Athan, CF62 4JD | Yes | I have walked with my daughter in this area many times over the 15 years I have lived here, she is now adult and has a daughter who we also walk in the area. This is part of a walk that takes us safely through the estate towards Flemingston. I also walk around this area with dogs approximately 3 times a week to get to the open countryside towards Flemingston Unfortunately other green spaces have been taken away. This green space is like a village green, was designed as such to create a green space, visually pleasing, a natural break between houses, a place to relax, and is also nice to see wildlife using the area such as rabbits along the hedgerow, I have seen hedgehogs at dawn and dusk, yellow hammers use the hedgerows and are registered as a cause of concern due to deterioration in numbers. | 15 | No | Children running freely, walkers, dog walkers, people lying in the grass or sitting talking | It is a green space in the East camp area, provides a safe place to avoid walking roads, is visually appealing. I use all green spaces in the East Camp area for walking alongside many other people. It is of high importance especially as other areas used frequently by the local people have now been destroyed. Due to this there has been an increase of people using g those areas left, being Ringwood Crescent and Clive Road. | I give my permission | |
| 11/3/2022 6:28:02 | Joanne Tracey | 9 Cwrt Syr Dafydd | Yes | I meet with friends that live close to the green. It's a lovely area for the children to play on. We've had many picnics there over the years. | 2013 - present | No | Picnics, dog walking, children playing | Natural open space | I give my permission | |

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| 11/3/2022 6:51:48 | Paul | 8Clive Road | | Yes | Walking the dogs | 2010 to present | No | Kids play there in th summer and people exercise dogs all year round as it is lit up by street lights | The last open public space in the area | I give my permission |
| 11/3/2022 7:06:15 | Aine Spoors | Highmead Nurston Barry | | Yes | Walking with my dog - its one of the only spaces to walk in peace and safety! | 2017 until present | No | People exercising and children using it to play football etc. People stop and chat - it helps make a community having a space everone can use. | St Athan has very little communal green space. In a country with a huge obesity crisis we should be protecting places people can use to play and exercise. | I give my permission |
| 11/3/2022 7:44:32 | Jonathan | 14 shakleton close | | Yes | Dog walking | 2015-present | No | Children playing, people exercising, people exercising dogs | Its close to home | I give my permission |
| 11/3/2022 7:58:02 | Simon Dodd | 9 Clive Road, St Athan | | Yes | Aside from my own regular walks, I occasionally like to use the space for some open air training for the karate club when we have good weather. We used to use the land next to the Gathering Place (which we rent for the club) but as this has now been built upon, this is our only option left. | United Kingdom | no | Dog walking, rugby, football, picnics, kite flying, quick cricket | My wife and I are due to have our first child in April and I want to have the opportunity to have open spaces where I can take my child to play games, fly kites, etc. just as I did as a child growing up in an RAF family, who built these spaces into their housing projects precisely for families to enjoy. It is a quiet space, away from traffic, and simply uncluttered and can be used for anything you want it to be. | I give my permission |
| 11/3/2022 8:59:41 | Kirsty Stuart-Dodd | 9 Clive Road, St Athan | | Yes | Walking, jogging, picnics, kicking a ball around | 2010-current | No | Walkers, joggers, dog walkers, children playing, parents playing with children, picnics, the local cadets have used it for activities, people fly kites, children being taught how to ride a bike safely away from the road. | It's open green space that is easily accessible and with all the other green spaces recently destroyed to put too many houses on this is the last one left | I give my permission |
| 11/3/2022 9:31:47 | Cherrill Barrett | 5, Cwrt-yr-Iolo, Flemingston. | | Yes | There used to be a children's play park at the top end and we would cycle from Flemingston with the children to play there. I now use it when walking the dog, once again from Flemingston village. | 22 years | No | Dog walking, parents playing with their children, groups of children playing together. | St. Athan village is too far away, we need recreation facilities in the immediate vicinity not every green space to be built on. This piece of land is a safe space from passing traffic for families and children. | I give my permission |
| 11/3/2022 11:01:40 | Benjamin Sprudd | 1 Clive road st athan | | Yes | Me and my wife taken the kids to play there in the summer and also take the dog there for walks | 5 | Never | Family's picnics, children playing and people walking dogs. | It is local to me and is nice and open and flat for the kids to play what they wish on. | I give my permission |
| 11/3/2022 11:26:05 | Rhian | 8 Ringwood Crescent | | Yes | I've used this space to have fun my my daughter over the years, walk the dogs and build many a snowman! Come together with neighbours , picnics hide and seek , my daughter has always played with her friends on the green. | 2004-2022 | No | Football, tennis cricket general children running around and playing, snowman building | It's safe as traffic is minimal | I give my permission |
| 11/3/2022 11:45:01 | Kim Sims | 10 Blenheim Close Barry | My daughter and Grandson live in St Athan | Yes | Playing ball, flying kite, balance bike etc with Grandson | 4 years 1999- present | No | Exercise, children playing, picnics. | All the green space is being lost. Children and adults need fresh air and exercise, trees etc for both physical and mental health. | I give my permission |
| 11/3/2022 11:56:39 | Katie levett | 18 Treharne road Barry Cf631QY | 8 Clive road st.athan cf624jd | Yes | I walked my dogs on it, and now will want my child to run around on it when she starts walking, her grandparents live there and they will want the green space for her and their dogs | 12 years | I was about a month ago when there was metal gates in the way! | Children running around, dog walkers walking their dogs on the field, The Vpod used to go down there for the kids. | It's a big open green area and these people that want to build houses on it are killing our planet!!!! | I give my permission |

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| 11/3/2022 14:00:13 | Mansel Davies | 4, Ringwood crescent | Na | Yes | Dog walking, playing with kids, sports practice, picnics, physical fitness activities | 2016-2022 | No | Military training, dog walking, kids playing, physical activity, sports practice, picnics, community social activities | Only public green space within walking distance | I give my permission | |
| 11/3/2022 14:20:47 | Natalie Bunston | Ty Mawr Gwyn, Flemingston | | Yes | It's a beautiful area for the children to play and to walk near our home. It's perfect for family picnics which brings the community together. We pick conkers as a family which teaches our children about the outdoors, nature and embracing all seasons through the year. | 2015-2022 | No | Children playing, family walks and other activities as mentioned above | It's beautiful with old trees which gives some natural culture to the area. It's been left as an open green which is rare and does not become water logged so it is accessible all through the year. It's unspoilt as there is no park. Children need a place to run naturally and find nature itself stimulating. We don't have that anywhere else around here. Houses are going up everywhere and it's spoiling natural land! Where else will we go conker picking? Nowhere near here! | I give my permission | Natalie |
| 11/3/2022 14:22:28 | Ellie Davies | Honey, Block Hn, Floor 2, Flat 9, Room 080 Unsworth Park Chancellors Way M14 6FZ | 4 Ringwood Crescent, Barry, CF62 4LA | Yes | Used it for football and games and playing in the snow | 2016-2022 | No | Used by kids and families for games and play eg. Football | One of the few open green spaces around that isn't farmland | I give my permission | |
| 11/3/2022 16:07:35 | Amy Fieldsend | 39 Llwyn Y Gog, CF62 3LS | 10 Burley Place, CF64 4LB | Yes | We lived on Burley Place for 4 years. Both our children played on the green and they both learnt how to ride bikes there. We also walked the dog there everyday | 2015 - 2019 | No | Playing, exercising, dog walking | Its the only green space available to use at that end of the village. It's safe for kids to play on as there isn't much traffic | I give my permission | |
| 11/3/2022 19:17:36 | Angela Chinn | 1 Picketston Close, St Athan | | Yes | Walking my dog, meeting with family to walk dogs together | 1990 / present | No | Dog walking, people friends meeting to socialise | It's close to eglwys brewis, the only green space which is left around this area, where will we walk our pets?? . St Athan is further for me to walk | I give my permission | |
| 11/3/2022 19:28:55 | Dylan Davies | 4 Ringwood Crescent | | Yes | I play rugby and kick a Ruby ball around when I get back from school, as well as play football on the field. | 2016-2022 | No | Football, Cricket, Dog Walking, Picnic, Kids Playing, Rugby, Army using space for exercises, Walking | It's a large green space, in a majorly residential area, it is a prime space for young kids and is a key aspect in their development allowing for kids to develop friendships and socialise as well as exercise and develop sporting skills, as well as creating a pleasant and appealing green area to look at. The space is important for wildlife also, I've seen foxes use this space as well as hedgehogs. | I give my permission | |
| 11/3/2022 19:45:03 | Vicki Naughton | 8 celyn close | | Yes | We walk our dog on it, play cricket and rounders with the neighbours and children. Ride bikes, the children play on it almost daily. Flying kites. | Last 3 years | Never | Children playing, rounders, cricket, dog walking, bike riding, kite flying | It's closest to our home away from traffic and quiet. Overlooked by houses and feels safe enough to allow our children to play out alone. | I give my permission | |
| 11/3/2022 20:10:19 | Rebecca heyburn | 61 Hunters Ridge, Bridgend | I've never lived there but my friends used too hence how i know about it and have used it since | Yes | I use this space not only for dog walking in but for also watching the abundance of wildlife that visits which also helps with my mental health, having pic-nics with friends and enjoying the freedom & peace that it gives and provides. | From 2013 | No | Dog walking<br>Wildlife watching<br>Familes Socialising<br>Picnics<br>People using it for fitness<br>Children playing | Its just a natural beauty that everyone should be allowed to enjoy | I give my permission | |

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| 11/3/2022 20:56:10 | Jessica | 16 burley place | | Yes | Dog walking, personal walks for mental health and fitness | 1 year | No | People walking and fitnes | It's quiet, clean and open | I give my permission | |
| 11/3/2022 21:36:18 | Karen Lee | 65 Scott Close | | Yes | Walking my dog and my grandchildren | 22 years | No | Ball games with children and dogs | There is no where else except if you go into the village for recreation | I give my permission | |
| 11/3/2022 21:44:31 | Janet vincent v | 4 Ringwood Crescent St Athan Vale of Glamorgan | N/A | Yes | Dog walking and meeting fellow local people. Foraging. | 5 years | No | Dog walking. Young children playing games together. Families kite flying. Family picnics. Foraging. Teenagers meeting together. Families meeting together. Local people using the green. Military fitness activities | This is the only green space this side of St Athan available for local social use. | I give my permission | |
| 11/4/2022 3:28:53 | Jodie Bateman | 58 Lougher Place St Athan CF62 4PU | | Yes | With children and dog, picnics, walks, games etc | 1 as new to area | No | See above | It's green and beautiful and natural | I give my permission | |
| 11/4/2022 3:30:22 | Jodie Bateman | 58 Logher Place CF62 4PU | | Yes | Children, dog, picnics, games, walks | 1 as new to area | No | See above | It's green and beautiful and natural | I give my permission | |
| 11/4/2022 6:15:29 | Sarah brown | partridge road | | Yes | My children play football and other sports and it's great to walk the dogs | 2006 to currently | No | Football, athletics, rounders, picnics, dog walking, aerobics. | It's quiet, nice area, calm and reflective | I give my permission | |
| 11/4/2022 8:28:20 | Denise Cooper | Woodside Cottage, Fonmon | | Yes | Walking with children and dog. Perfect space for family ball games | 2000 to 2022 | No | Football, cricket, dog walking, children playing, families walking, parents teaching children to ride bike, | It's an open site, well maintained and safe | I give my permission | |
| 11/4/2022 8:46:11 | Liz Bunston | Ty Mawr Gwyn, Flemingston | 35 Westminster Way, Bridgend | Yes | Playing with grandchildren and walking the dog | Since 1987 | No | Kids playing, ball games | Such a central space for us and others to use. Safe playing | I give my permission | |
| 11/4/2022 10:20:50 | Krystina Duro | 8 crynant close, st athan, Cf62 4he | | Yes | I enjoy walking on it with my daughter, it's a beautiful piece of land so visually we enjoy it. We fly out kite there because it's a huge piece of beautiful open land. I run on it. My daughter plays with her friends on the grass. | 2 | No | Children playin, kite flying, walkers, people running, young children playing various ball games or other games. | It's quiet and peaceful. There are not a lot of cars driving around or if there are they go so slow so it feels safe. There are some trees. It's good for your mental health to be able to get out in fresh air away from cars. It is a big open space. It's round the corner from me so I can use it regularly. Kids can play safely and with it being close to home I can walk there. Other people locally walk to this place to use it. Other places you need to drive. | I give my permission | Please do not destroy this land with more houses there is not enough space |
| 11/4/2022 12:48:39 | Jenna williams | 14 burley place | Yes | Yes | Children play and walk my dog | 2020-present | No | Playing, dogs, kit flying, snow fights, picnics | Large and safe | I give my permission | |
| 11/4/2022 18:53:01 | Denis Hawkins | 11 Chestnut Ave. St.Athan | | Yes | Dog walking | Last 5 - 10 yrs | No | Dog walking | Green and open | I give my permission | Jenna williams existing green spaces have been taken so it is important to maintain some green spaces. |
| 11/4/2022 20:16:01 | Andrew Burnett | 38 Drake Close, St Athan | | Yes | To walk around for exercise as it's the only green space remaining in the vicinity. Also walking our dogs around the green space. | 2009 to present | No | Adults walking. Adults resting (sitting in the area). Children playing. Dogs being walked. | It's the only green space available for East camp residents. | I give my permission | |
| 11/4/2022 20:20:09 | Claire | St Athan | | Yes | The children play in this space all year round. Its great for playing games, sitting in the sun, and building snowmen on in the winter, if we get snow! It allows the children to play on a safe piece of land with their friends and neighbours. Our dog enjoys a run around the area too. | 2012- present | No | Children playing. Dog walking/playing. Neighbours getting together. | It's safe, and quiet and we can see the children playing safely. | I give my permission | |
| 11/4/2022 22:04:48 | Owain wilson | 19 drake close, st athan | N/a | Yes | I go jogging here | Ive been running here for over 5 years | No | Dog walking, runners/walkers, kids playing, sports footie, cricket etc. | Last green space left after they built on the last green space we bad | I give my permission | |

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| 11/5/2022 7:54:22 | Anna Kinson | 32 Shackleton Close St Athan Cf624je | | Yes | Dog walking. Picnics with kids. Ball games. Meeting friends | 15 years | No | Gatherings. Children playing. Dogs meeting up. Picnics. Snowball fights. Tennis. Children learning how to ride bikes. Frisbee. | There is no more green space around. We need places to play | I give my permission | |
| 11/5/2022 8:24:07 | Karen Upham | 8 Llantwit Gardens Close, St Athan | N/A | Yes | I have always owned dogs since moving to St Athan and use various walks around the area. I go through this lovely area when doing the loop from my home to Flemingston and back. It's a lovely safe place to let my dogs off lead as most of this route is on roads. They enjoy meeting the children and other dogs whilst expelling their energy and I have met some lovely people whilst enjoying being outdoors. I am a keen birdwatcher too and enjoy hearing the birds that live in the few trees and bushes that surround the area. Please do not remove one of my life's pleasures by allowing developers to yet again take away a beautiful space just to make money. | Since August 1992 to the present (30 years). | Never. | Children playing, picnics, walkers and dog walkers and young mums meeting other mums whilst out walking with their babies and children. I am a pensioner and also enjoy chatting to other pensioners whilst out walking as not all of us have someone at home to have a chat with. | It's so peaceful here and a lovely place to sit and listen to all the nature that is around without the hustle and bustle that goes on in built up areas. | I give my permission | Please may I ask you to update me regarding the progress of keeping this green space, I do so hope it stays as it is. My email address is k.upham@homecall.co.uk I will send photographic evidence of my walk tomorrow as the weather is awful today so my 2 dogs will be quite reluctant to do the loop. Thank you. |
| 11/5/2022 8:45:14 | David Hughes | Ty Mawr Gwyn, Flemington | | Yes | I enjoy enjoy walking my dog daily on the green also many of the local children play on the green | United Kingdom | No | Children playing, dog walking, picnic area also a meeting place where you talk to local people | It is anice green and open place of which there is ot many left | I give my permission | |
| 11/5/2022 10:03:37 | Michele Jones | 30 Northcliff Rd Conisborough | | Yes | I walk on here when I visit my close friend. It is helpful in my well being and mental health | 12 years | No | Walking and community | It is a beautiful part of the village and a part of the community and would be a great village green for activities for all | I give my permission | |
| 11/5/2022 10:18:57 | Claire Graham | 1 Clwyd way, St Athan, CF62 4HD | | Yes | Dog walking, teaching the children to ride their bike, football, general play with the children, picnics in the summer, meeting up with other friends | 10 | no | Dog walking, children playing | There is no other community open green space that is safe in st athan. The alternative green space by the Paul Lewis community centre is not as nice, peaceful, or safe for young children | I give my permission | |
| 11/5/2022 10:19:49 | Sarah Jones | 11 Roberts Close, St Athan, CF62 4QA | | Yes | Running and walking with family | February 2022 till present (moved to St Athan) | No | Dog walking, children playing, people exercising, walkers | There are very limited areas to exercise in St Athan particularly in winter months due to lack of safe routes in terms of lighting and having people about. In addition, there aren't many safe places for children to play. | I give my permission | Good luck |
| 11/5/2022 16:25:40 | Jodie | 8 Drake Close | | Yes | Exercising my dogs | 7 | No | Dog exercise, social events | Only bit of land that hasn't been built on | I give my permission | |
| 11/5/2022 16:34:30 | millie kinson | 32 shackleton close st athan CF62 4JE | | Yes | i play with my dogs here and have picnics | 15 years | no | people playing with dogs and their families | it's an open beautiful space | I give my permission | |
| 11/5/2022 16:38:35 | Heulwen latcham | 4 drake close | | Yes | Walking the dog and enjoying picnics | 1999- present | No | Dog walking, excercising, picnics, sunbathing | It's local to us | I give my permission | |
| 11/6/2022 7:27:47 | Megan | 37 Bullfinch Rd | | Yes | I take my kids there and dog | 2 | No | Play, dog, sport | Only green space left! | I give my permission | |
| 11/6/2022 10:43:53 | Clare price | 12 flemingston road st athan vale of Glamorgan cf62 4jh | | Yes | Walking with my children and dog and socially in the warmer months | 1 | No | Ball games waking and general leisure usage | Close to my home for my family and children | I give my permission | |
| 11/6/2022 11:34:55 | Tina Koroibanuve | 2 Bullfinch Road | | Yes | Community events | 2017- 2022 | No | Football, RAF Band | Only green space left | I give my permission | |
| 11/6/2022 17:00:51 | James Gardiner | 27 Shackleton Close, St Athan | | Yes | As one of the few green spaces on East Camp, this space has become part of my training space for runs. | 2007 to present. | No | Running, dog walking. | Only unspoilt green space on East camp. No hidden holes like on area by golf club. Well maintained. | I give my permission | |
| 11/6/2022 23:33:33 | Sally French | Drake Close St. Athan Vale of Glamorgan | | Yes | Walking the dog, it's the only place I tend to let him off the lead. | 10yrs | No | Kids playing football, playing other games and running around | It's a great open space, a relaxing place | I give my permission | |

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| 11/7/2022 6:03:50 | Carly | Fitzhamon Avenue | | Yes | Walking, picnics, sitting/ lying in the summer | 6 years | No | Running, walking, kids playing, sun bathing | The only substantial bit of green land left developers haven't already taken from residents. | I give my permission | |
| 11/7/2022 8:18:00 | Charlotte Goodway | 40 Pinewood Square | | Yes | Child plays | 3 years | No | Children playing, walking, picnics, dog walks | Quiet | I give my permission | |
| 11/7/2022 9:10:21 | Richard Overy | 28 Glebeland Place | | Yes | I just don't want houses building on it. Our bus service is rubbish and we don't have a railway station. We do not need anymore houses in the village. | 20 years | No | Kids playing football, Frisbee, dog walkers, people having picnics. | It doesn't have houses on it. | I give my permission | |
| 11/7/2022 12:30:01 | Marianne Jupp | 10 Chestnut Avenue | 19 Drake Close, 23 Scott Close, 23 Pantycelyn Place | Yes | My mother worked for an RAF officer some 60years ago, I played on that land while she did her job, as I grew older we would go conker picking. Now I have the pleasure of using it with my 4 grandchildren, we have adventures together! Hide and seek, conker picking, hand stands, fun races, searching for bugs, finding flowers even pebble treasure........don't take that away PLEASE!!! | Mid 1950s to present day 20222 | NO | Kids being kids, .......conker picking, bug finding Kids will find lots to do on OPEN ground with no persons telling them to be quiet! | There is no open land in St Athan, there is a playground (can't run very far, can't do "acrobatics", might injure a bystander, can't let a dog run etc) On this land its OPEN, there's FREEDOM.....we can BREATHE ! | I give my permission | GOOD LUCK |
| 11/7/2022 23:04:06 | Angela kincaid | 6 ash lane, St Athan | | Yes | Walking with the family. | 2001- 2022 | No | Walking, running, dog walking, children playing. | Close to my house and the rest of the green space around has now been built on. | I give my permission | |
| 11/7/2022 23:40:46 | Jenna Thompson | 17 Sycamore Avenue | | Yes | I walk there at least 4 times per week. It's the only nice bit of green space around here. | 2 years | No | Walking, children playing, cycling, dog exercise, kite flying, football, picnicking. | It's the only green space I've found to enjoy within close walking distance. | I give my permission | |
| 11/7/2022 23:50:40 | Julian Hill | 26 cedar rd CF624JT | St live here | Yes | I walk my dogs and we use it to run them on this patch also our foster child plays football and other sports here | Most days everyday in the holidays | No never | Mainly kids playing and a lot of people letting their dogs run with freedom | It's a big open space we used to run the doge where there building new houses at the moment we were devastated about that now this | I give my permission | I will start taking photos but use this land most days on our walk if not everyday along with other dog owners there will be know-where else if this disappears plenty of other places to build like the old football stadium patch that has been derelict for years they cut the grass then it grows back 6 feet then they cut it again what is happen |
| 11/8/2022 5:36:06 | Lauren yeoman | Ash lane st athan | | Yes | We use this green for walks to help with my mental health and also for walks with the family. There are not many green spaces available and during covid restrictions it was nice to have outdoor space local to visit and enjoy | From June 2019 | No | Walking, family activities, games, kids playing | It's local and the only green space we have left our way. It's part of our community and used regularly by all in the area | I give my permission | |
| 11/8/2022 7:45:20 | Helen Davies | Greystones, Flemingston, CF62 4QJ | | Yes | I am part of a friendly village running group (Flemingston) and we use it for circuits and interval training (most of the other routes have considerable inclines which are not conducive to certain training sessions). | 2017-present | No | Dog walking, football, mums with pushchairs, other runners, children playing, cricket | It's away from the main roads, peaceful and great for some mindfulness whilst running. Also, it is good for runners as it's less impactful on joints than running on roads (and much safer too). | I give my permission | |
| 11/8/2022 8:08:16 | Paul Slevin | Silverdale, Flemingston, CF62 4QJ | | Yes | Twice daily, I walk my dogs through that area and use this land as an open green space. | 2003 to present | No. | Children playing, casual football playing, walking, playing with dogs, people sitting on the grass and chatting, people meeting to talk | It is a well kept, safe and open piece of grass land that acts as a central amenity for residents and visitors. | I give my permission | |
| 11/8/2022 8:09:19 | Rachel Petley | Bank Cottage, Flemingston, CF624QJ | | Yes | Running with my children, playing sport with my children | 2018-2022 | No | Dog walking, sport, walkers, runners | Open green space accessible to everyone | I give my permission | |

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| 11/8/2022 8:23:01 | Helen Potts | Y Hen Fferm Dy, Flemingston, CF62 4QJ | N/A | Yes | Dog walking and play. | 20 years | No | Dog walking and play. Children at play. | Large open area of green space. | I give my permission | |
| 11/8/2022 9:07:08 | Roger Eustace | Court House, Flemingston CF62 4QJ | | Yes | Walking | 30 years | No | Children playing, people walking and enjoying the fresh air | Open recreational space | I give my permission | |
| 11/8/2022 10:24:40 | Tony Yates | The lodge Flemingston St Athan CF62 4QJ | | Yes | Used it extensively for playing with my children and for exercising - general recreation | 1990 to present day | No | Every recreation that parents do with children of all ages. Human and Dog exercising. Children playing on their own. Football, cricket, kite flying, baby walking/playing, frisbee etc | There isn't anything comparable in the area - it's safe and open for both adults and children | I give my permission | With the large new developments of houses adjacent to this area and subsequent loss of the childrens play area there will be even more call for a green safe area for children adults and families to play and exercise. |
| 11/8/2022 18:11:07 | H JALLAT-MARSON | CHURCH BARN FLEMINGSTON CF624QJ | | Yes | Walks | 30 years | No | Walking, resting, reading, children playing, dog walking, kite flying, running etc all kind of leisure activities | It is safe, you can see children play from all angle, it provides a nice green break between walking in streets. It is a public space not a private field. It is bordered by nice old trees. It is one of the last greens in the area. | I give my permission | |
| 11/8/2022 18:40:38 | Jane Cheso | Upper Barn, Flemingston | | Yes | I take my children there to play and I use it personally for running both by myself and with a group of local women. It feels like a safe open space area away from traffic. | 2 years | No | Playing ball with the children, running and walking my dog. | It is away from the busy roads and feels safer. | I give my permission | |
| 11/8/2022 21:03:04 | Linda Frowd | 30 Scott Close, Saint Athan. | | Yes | It's a beautiful area where I love to walk my dog, and socialise with other dog walkers. This is a very important place for me, it's a life saver for my Mental Health and My little dog loves walking here. | I have used this land for 3 years, since moving to the area. | No. | Dog Walking, Children Playing, Picnics, Families gathering. | I live in East Camp and there are no other Green Spaces left in this area as pleasant as this is to Walk. The only option for exercise is around the Camp housing estate which is no comparison. | I give my permission | |
| 11/8/2022 22:18:17 | Lyndsey Rudd | 2 Clwyd Way St Athan. | | Yes | The kids use it for playing. & we walk our dogs on it (on the lead) as only green area in east camp. | 2 years since moving to the area. | No | Football, cricket, dog walking, running, ball games | It's the only green area on east camp for the kids to play & short work from our house. | I give my permission | |
| 11/9/2022 7:57:01 | Vic dixon | St athan | | Yes | Meeting up with fellow dog walkers and play for grandchildren | 1975-2022 | No | Walking riding playing chatting | Beautiful open green space | I give my permission | |
| 11/10/2022 18:52:37 | Mr S Bamrah | 1 Ringwood Crescent. St Athan. CF62 4LA | 2 Drake Close St Athan CF62 4JF | Yes | This was the only community green in the area that had an enclosed children's play ground with swings, slides etc for use by service personal and local residents. The green was used for exercising and relaxing , playing football, dog walking and generally for children or any one else to play. | 1986 to 1988 and from 2003 to date | no | The land continues to be used unrestricted by everyone, families for exercising and relaxing , playing football, dog walking and children playing ball games. Members of the Armed Forces use the land for exercising and on November 5 the land is used for Fireworks display. | The is the only open green land /space in the local area that is available for use by members of the local community i.e. enjoy walking/relaxing family and friends, walking dogs, playing with our children. | I give my permission | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/11/2022 14:04:12 | Cheralyn Tonkins | 12 Sycamore Avenue, CF62 4JW | | Yes | This is one of the last green open spaces to enjoy within our community. We walk here daily with our dog and family. We have used this area to have picnics and play ball games over the summer. One of the only areas in our community within walking distance with younger children to be able to do this. The green in front of the gathering place is now gone for housing as is the public access to walk through the fields off cowbridge Road. It is such a shame that so many green spaces open for public use are being lost to yet more housing. There are more than 20 Houses in stones throw fully boarded up, but yet plans to build more.... It makes no sense. | 2017 to current | No | Walking, running, dog walking, ball games, picnics, flying kites, children playing in trees. | It is within walking distance, it is local and safe, the pathways are lit in the evening. Over the winter months it can be intimidating dog walking in the lanes as drivers drive so fast and with ignorance, this is a safe walking space. | I give my permission | |
| 11/11/2022 20:00:57 | Matthew watkins | 41 Mallory close | | Yes | I walk my dog around the field and me and my friends chill on that field and sometimes have a picnic in the summer. | I have used this land for about five years | No | Football<br>Walking dogs<br>Cricket | They look after that field good and it's nice quiet around the area | I give my permission | |
| 11/13/2022 10:41:31 | Emily Allen | 20 Burley Place, St Athan, Vale of Glamorgan, CF624LB | | Yes | We live around the corner and use this space for walking, keeping fit and playing with grandchildren | November 2012 - present | No | Children playing, football, exercise, running, dog walking | Safe area that feels very enclosed | I give my permission | |
| 11/15/2022 10:16:34 | Jayne Hoggarth | CF612XL | Cf624JT | Yes | Take my kids there and meet friends | 1999-2022 | No | Street party . General social area | Peaceful and safe | I give my permission | |
| 11/16/2022 3:14:00 | Rhi | Llantwit major | | Yes | Beautiful space for walking and enjoying | 2018-2022 | No | Children playing, dog walking, exercise | There are no houses on it! | I give my permission | |
| 11/16/2022 11:39:37 | Mrs Helen M Higgs | 34 Scott Close, St Athan | | Yes | letting our dogs run free you took the other space by the Gathering Place for housing | 24 years | No | picnics, jogging | its the only space left near where we live | I give my permission | |
| 11/18/2022 8:21:46 | Christopher Sparks | 3 Ringwood Crescent, St Athan, Barry, Vale of Glamorgan, CF62 4LA. | N/A | Yes | Walking, dog walking, blackberry and cherry picking, picnics | Used since 2017 to today | No, never | Walking, dog walking, children playing, kids and adults playing informal football, cricket, flying kites. Picnics, running and other various ball games by adults and children. | It's a lovely flat grassed area that is well maintained. | I give my permission | It would be such a shame if this land was lost to development. There are very few open spaces left in the immediate area that can be enjoyed by the public. |
| 12/1/2022 13:11:41 | Elizabeth Ann Rees | 6 Cwrt-Yr-iolo Flemingston CF62 4QH | | Yes | We formerly walked our dog there, and we walk around the area daily, and take grandchildren to play there when the weather is nice. | 30+ | No | Ball games, dog walking, picknicking. | It is one of the only green spaces left, and fits in with the rural nature of the area. | I give my permission | |

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**Commons Act 2006**
**Land at Ringwood Crescent, St Athan**
**Application for a new Village Green. Application No 01/2023 VG:53**

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Objection on behalf of Annington Property Limited

Ref: 165629.010834
Date: 15 April 2023
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## 1. INTRODUCTION

1.1 By copy of a letter dated 8 March 2023 Annington Property Limited ("Annington") received formal notice from Vale of Glamorgan Council as Registration Authority ("RA") pursuant to the Commons Act 2006 (the "2006 Act") that an application has been made to register land situated at Ringwood Crescent, St Athan in the Vale of Glamorgan as a town or village green (the "Application").

1.2 The Application is made by Ringwood Green Residents (the "Applicant") and relates to the following two land parcels (being the "Application Land"):

1.2.1 A parcel of land described as approximately 0.9ha of managed grassland and adjoining Ringwood Crescent, St Athan ("Parcel 1"); and

1.2.2 A parcel of land described as approximately 0.41ha of grassland and adjoining Ringwood Crescent and Burley Place, St Athan ("Parcel 2").

1.3 Any representations are required to be submitted on or before 21 April 2023.

1.4 This statement is submitted on behalf of Annington as owner of the Application Land in objection to the registration of the land as a town or village green ("TVG"). This statement is also accompanied by Witness Statements provided by James Hamand and Stephen Jefferson; all three documents read together comprise Annington's objection to the Application.

1.5 Section 15(1) of the 2006 Act provides that a person may apply to the commons registration authority to register land as a TVG where subsections (2), (3) or (4) apply.

1.6 The Application is made on the basis that section 15(2) of the 2006 Act applies; namely, that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and they continue to do so at the time of the Application.

1.7 For the reasons set out more fully below, it is Annington's position that the Application must be rejected by the RA because:

1.7.1 it fails to satisfy the various elements of section 15(2) of the 2006 Act (see **paragraph 2** below); and

1.7.2 the supporting evidence submitted with the Application does not come close to meeting the evidential burden required to register the Application Land as a TVG in any event (see **paragraph 3** below).

## 2. CONSIDERATION OF SECTION 15(2) CRITERIA

2.1 As was noted by the Court of Appeal in *R v Suffolk County Council, ex parte Steed* [1996] 7 WLUK 191 "*it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green*". It is therefore of considerable significance that all the elements necessary to justify registration should be strictly proved by an applicant on the balance of probabilities to the satisfaction of the RA.

2.2 In this context we consider the respective elements of section 15(2) of the 2006 Act, first setting out the relevant legal authorities and then our analysis as to whether the Application demonstrates such elements are satisfied.

**Element 1: "A significant number of the inhabitants of any locality, or of any neighbourhood within a locality"**

2.3 The 2006 Act does not define what amounts to a significant number of the inhabitants of any locality, or any neighbourhood.

2.4 In *R (Alfred McAlpine Homes) v Staffordshire County Council [2002] EWHC 76,* the High Court confirmed that, whilst "significant" did not necessarily mean a considerable or a substantial number*, "the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasion use by individual as trespassers."* What amounts to a "significant" number of inhabitants therefore has to be assessed in the context of the locality or neighbourhood which is referred to in the application.

2.5 As for what constitutes a "locality" or "neighbourhood", case law has settled that if an application is made solely on the basis of a locality[1], it must be an area that can be identified as having legally significant boundaries such as a Town, Parish or Ward (*Paddico (267) Ltd v Kirklees Metropolitan Council [2012] EWCA Civ 262* and *R. (on the application of Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P. & C.R. 573)*. In a similar vein, the High Court confirmed in *R (Cheltenham Builders Ltd) v South Gloucestershire Council [2003] EWHC 2803 (Admin)* that "locality" must be more than an arbitrary area delineated on a plan.

2.6 In the present case, the Application is made based on use by the inhabitants of the "locality" rather than a "neighbourhood within a locality". Notably, the application form states that "the locality area is clearly shown on the attached plan Locality Plan SB1 marked with an Orange Boundary". However, the Application does not seek to identify the locality by reference to any legally significant boundary. It is also not clear that there is any connectivity between the areas encompassed in the locality shown on the Locality Plan SB1. The claimed locality appears to be an entirely arbitrary area drawn on a plan; an approach which has been firmly rejected by the Courts. Accordingly, the Application fails to satisfy one of the key components of section 15(2) of the 2006 Act and, for this reason alone, it should be rejected.

2.7 Notwithstanding this fundamental flaw with the Application, even if a locality had been correctly identified and this was taken to be the Electoral Ward of St Athan, which would appear to be the most appropriate area, it is submitted that insufficient evidence has been put forward to demonstrate use by a significant number of inhabitants within this locality in any event.

2.8 In particular, data provided by the Office for National Statistics from 2021[2] estimates the population of St Athan to be 4,775. The spreadsheet accompanying the Application appears to summarise 160 responses. From a review of the responses, it is clear that some have been completed by more than one person at the same address, and a number have been submitted from people giving their address as outside of the claimed locality. Additionally, in several instances, the persons listed in the responses do not appear to be the owners of the properties listed.

2.9 However, even if all of the responses had been submitted by persons living in the ward of St Athan and these are taken at face value, this would still only comprise 3% of the population. This is therefore insufficient to constitute a "significant" number of the inhabitants of St Athan in any case, as such use cannot reasonably be said to amount to a "general use by the local community" in line with the *R(Alfred McAlpine Homes)* case referred to above.

**Element 2: "As of right"**

2.10 "As of right" means without force, secrecy or permission ('nec vi, nec clam, nec precario'). In this case, it is the third limb, "without permission", that is of most relevance.

2.11 The Supreme Court, in its judgement in *R (Barkas) v North Yorkshire County Council & Anor [2014] UKSC 31*, considered that the legal meaning of the expression "as of right" applies where land was used without the landowner's permission. It is almost the converse of "by

[1] i.e. and not a neighbourhood within a locality

[2] https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/wardlevelmidyearpopulationestimatesexperimental

right" or "of right"; which applies where the landowner permits the use. The significance of the word "as" is therefore crucial.

2.12 Permission can be express, such as by a written licence or by erecting signage which in terms grants temporary permission to local people to use the relevant land. In the House of Lords case of *Beresford v Sunderland City Council [2003] UKHL 60*, Lord Walker noted as follows:

> *"It has often been pointed out that "as of right" does not mean "of right". It has sometimes been suggested that its meaning is closer to "as if of right" (see for instance Lord Cowie in Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd 1992 SLT 1035 , 1043), approving counsel's formulation). This leads at once to the paradox that a trespasser (so long as he acts peaceably and openly) is in a position to acquire rights by prescription, whereas a licensee, who enters the land with the owner's permission, is unlikely to acquire such rights. Conversely a landowner who puts up a notice stating "Private Land — Keep Out" is in a less strong position, if his notice is ignored by the public, than a landowner whose notice is in friendlier terms: "The public have permission to enter this land on foot for recreation, but this permission may be withdrawn at any time"."*

2.13 In the case of the Application, it is submitted that the use of the Application Land was with Annington's permission, and therefore not "as of right", for the following two reasons:

2.13.1 A number of the respondents who are listed on the spreadsheet submitted with the Application benefit from express easements to use the Application Land for amenity purposes; and

2.13.2 Signage has been erected throughout the 20-year period which clearly states that the use of the Application Land is with the landowner's permission.

We consider each of these aspects in turn.

<u>Express Rights Granted</u>

2.14 The Application Land comprises former Ministry of Defence ("MoD") land which was sold to Annington in circa 1996. Annington subsequently sold off various plots within the former MoD estate and surrounding area throughout the early 2000s, including 1 – 8 Ringwood Crescent.

2.15 As noted in James Hamand's Witness Statement, the transfers for the individual dwellings within Ringwood Crescent granted express rights to use the Application Land for "reasonable purposes connected with the residential use of the Property". Evidently this will encompass dog walking, picnics and children's play, being those recreational activities predominantly listed in the spreadsheet responses submitted as part of the Application.

2.16 As evidenced by the transfer deed appended to James Hamand's Witness Statement the properties within Ringwood Crescent, benefit from express rights to use the Application Land for amenity purposes. These properties forming part of the claimed locality had express rights, and therefore permission, to use the Application Land for the recreational activities listed. Such use by the owners and occupiers of these properties within Ringwood Crescent is not therefore "as of right".

<u>Signage</u>

2.17 As set out in Stephen Jefferson's Witness Statement, a site visit of the Application Land was undertaken on 18 April 2023 and a number of photographs of the signage were taken. The plan appended as exhibit SJ2 to Stephen Jefferson's Witness Statement identifies the various locations of the notice around the Application Land (the "Signage Plan").

2.18 The Signage Plan and the accompanying photographs at exhibits SJ3 – SJ9 show that the notices at the locations numbered 1, 2, 5 and 7 erected at the Application Land (over both parcels) state that:

*"This is private property and there is no public access or right of way without the permission of the owner*

*The owner hereby permits access by members of the public onto the land for recreational purposes only at their own risk*

*This permission may be revoked at any time."*

2.19 It will be noted that the words used in the notices, providing permission to members of the public to use the land, are almost identical to the formulation set out by Lord Walker in the House of Lords *Beresford* judgment referred to above. It is also clear that permission is granted for "recreational activities" which would evidently encompass the various activities described in the spreadsheet list of responses (dog walking, picnics and children's play)**[3]**.

2.20 The remaining three notices, which are at the locations numbered 3, 4 and 6 on the Signage Plan, state as follows:

*"Dogs are not allowed to be exercised either on or off the leash in this childrens play area."*

2.21 These three notices reference the use of the children's play area that had been laid out on part of the larger parcel of the land comprising the Application Land and has since been removed (estimated to have been removed between 2009 and 2013). This area is now covered by grass, albeit the signs referring to this play area were not taken down. The responses listed in the spreadsheet submitted as part of the Application also refer to this former children's play area (e.g. see response by Sarah O'Hare).

2.22 Thus, read together, the signs make clear that dog walking is and was permitted on the Application Land being recreational activities, save that it was not permitted within the enclosed children's play area when it was in place.

2.23 The extracts from Google street view taken from September 2009 which are appended to Stephen Jefferson's Witness Statement as exhibits SJ10 – SJ16 show that the same seven notices were also in place in September 2009 (and exhibit SJ15 also shows the former children's play area was still laid out at this time).

2.24 Accordingly, it is clear that the use of the Application Land throughout the relevant period for carrying out various recreational activities has been with the landowner's permission, expressly granted by the notices displayed at various locations on the Application Land. The use of the Application Land as asserted in the Application therefore cannot have been "as of right".

2.25 This is a fatal flaw in the Application and is the primary reason why it must be rejected by the RA.

**Element 3: "Lawful sports and pastimes on the land for a period of at least 20 years"**

2.26 Under section 15(2) of the 2006 Act, the user of the land as of right must have been carried out for at least 20 years up to the date of the application.

2.27 The test is whether the user has been sufficient as to amount to the assertion of user as of right. Use which is "*so trivial and sporadic as not to carry the outward appearance of user as of right*" is not sufficient (*R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335*). Similarly, in *White v Taylor (No.2) (1969) 1 Ch 160*, the Court held that:

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**3** Indeed, in the House of Lords case of *R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335* it was recognised that dog walking and playing with children were, in modern life, "the kind of informal recreation that may be the main function of a village green".

*"the user must be shown to have been of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed."*

2.28 In the case of the Application, the spreadsheet submitted as part of the supporting documentation provides a summary of the activities purportedly carried out on the Application Land by the respondents. However, no further information such as supporting questionnaires or other supporting evidence is provided as to the regularity of such activities, nor is there any indication as to where specifically on the Application Land such activities have been carried out. In fact, based on the evidence provided, it is not clear which land the responses relate to; it certainly should not be taken as read that these responses relate to the (full extent of the) Application Land without further evidence, given there are two discrete parcels of land.

2.29 Furthermore, on the printed copy of the spreadsheet provided which confirms various periods of time over which the activities are claimed to have been carried out, it is not clear which time periods are attributable to which respondents / addresses.

2.30 The Application is therefore clearly unable to demonstrate that the use of the Application Land has been of such a character, degree and frequency as to amount to user as of right over a period of at least 20 years up to date of the Application. Notwithstanding the other deficiencies already stated above, for this reason alone the Application must be rejected.

## 3. SUPPORTING EVIDENCE

3.1 Once land is registered as a TVG it becomes a criminal offence to cause any damage to the TVG or to undertake any act which interrupts the use or enjoyment of a green as a place for exercise and recreation (section 12, Inclosure Act 1857) and it is deemed a public nuisance to enclose, disturb, interfere with or erect a building on a TVG, unless this is done "with a view to the better enjoyment of such town or village green" (section 29, Commons Act 1876). The consequences for the landowner of its land being registered as a TVG are evidently therefore of huge significance. Accordingly, the burden of proof lies on the applicant to demonstrate that criteria within section 15(2) of the 2006 Act are satisfied.

3.2 The standard of proof is the civil one—that is 'on the balance of probability' or that it is more likely than not. The approach of Pill JL in *R v Suffolk County Council, ex parte Steed [1996] P & CR 102(CA)* is relevant:

> *"However, I approach the issue on the basis that it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green and that the evidential safeguards present in the authorities already cited dealing with the establishment of a customary right (class B) should be imported into a class C case. Use, as of right, and as inhabitants of Sudbury, for sports and pastimes must be properly and strictly proved."*

3.3 It is against this backdrop that the evidence submitted by the Applicant to support the Application must be properly assessed. Considering each document in turn:

3.3.1 Document 1 is Open Space Background Paper (September 2013) prepared by Vale of Glamorgan Council prepared in support of its Local Development Plan 2011-2026. The Applicant notes in the application form that both parcels of the Application Land are identified as open space within this Background paper. Annington does not dispute that the area has been laid out as green amenity space, including a children's play area. However, this does not evidence that any of the criteria of section 15(2) are satisfied and so not seem to advance the Applicant's case.

3.3.2 Document 2 is the list of owners, lessee, tenants and occupiers of the Application Land prepared by the Applicant so does not go to the Applicant's case.

3.3.3 Document 3 is a plan identifying the Application Land.

3.3.4 Document 4 comprises planning application documentation relating to an application to develop Parcel 2 of the Application Land pursuant to reference 02/01239/OUT, which was subsequently refused by the local planning authority. Planning policy considerations and the previous treatment of the planning application for the development of part of the Application Land are irrelevant to the determination of whether to register the land as a TVG. It is not therefore clear how this documentation supports the Applicant's case in evidencing that the section 15(2) is satisfied.

3.3.5 Document 5 is a black and white photograph purportedly from 1945 showing an army base (this is Document 6 on the hard copy provided). However, the photograph is not dated and it is not clear that is actually shows the Application Land (nor where the Application Land is meant to be within the photograph). This does not therefore support the Applicant's case in demonstrating the use of the land for the purposes of sports and pastimes. It also pre-dates the relevant 20-year period so is irrelevant.

3.3.6 Document 6 comprises a black and white aerial photograph purportedly from 1945 (this is Document 5 on the hard copy provided). Again, the photograph is not dated, nor is it detailed enough to show any activities being carried out on the Application Land and so does also not appear to assist the Applicant's case. Again this pre-dates the relevant 20-year period so is irrelevant.

3.3.7 Document 7 is an undated photograph purportedly taken on 17 November 2022 showing army officers standing on the green. It does not appear to be claimed that any sports or pastime is being carried out in the photograph and this cannot be made out from the photograph provided. Moreover, it is not claimed in the Application that army officers are inhabitants of the claimed locality so it is unclear how this document support the Applicant's case.

3.3.8 There are two Document 8s listed in the application form. The first Document 8 is an undated photograph purportedly taken on Bonfire Night 5th November 2022. This is a single photograph taken of an annual event and is clearly insufficient to demonstrate sufficient pattern of usage on the Application Land.

3.3.9 The second Document 8 is the Articles of Association of the Ringwood Crescent Residents Company Limited and does not advance the Applicant's case as to the fulfilment of the section 15(2) criteria.

3.3.10 Document 9 is stated to be a video of a child cycling on the land May 2020. However, this document does not appear to be included within the copy documents provided to Annington, nor as part of the documents published on the RA's website.

3.3.11 Documents 10 and 11 (which appear to be parts of a single document) comprises a spreadsheet which lists responses provided by residents as to the activities carried out on the Application Land. However, as already noted, no supporting questionnaires with statements of truth signed by the respondents are provided (nor any other evidence) to support the spreadsheet. Very little weight can therefore be given to it as evidence. Additionally, upon review, a number of the respondents do not appear to be owners of the addresses listed and some of the addresses fall outside of the claimed locality. It is also significant that only a handful of respondents appear to have owned the properties within the locality for 20 years or more. Accordingly, this spreadsheet does little to advance the Applicant's case that the criteria in section 15(2) have been satisfied.

3.4 Given the significant consequences of Annington's land being registered as a TVG, there is clearly an evidential threshold which must be reached to demonstrate that all elements in section 15(2) of the 2006 has been satisfied. Notwithstanding Annington's objection, it is submitted that the Application and supporting documentation, considered on its own terms, does not come close to evidencing that, on the balance of probabilities, the relevant criteria have been met. The evidence is scant at best and is clearly insufficient in establishing a pattern of usage over a 20-year period.

## 4. CONCLUSION

4.1 Annington have demonstrated through this statement and the supporting Witness Statements that the section 15(2) criteria are not, and cannot be, satisfied:

4.1.1 a locality has not been identified, nor has use by a significant number of inhabitants;

4.1.2 the use of the Application Land has been "by right" rather than "as of right";

4.1.3 at least 20 years use has not been adequately evidenced.

4.2 Notwithstanding this, the evidence provided to support the Application, considered on its own merits, does not come close to reaching the evidential threshold required to prove that, on the balance of probabilities, the section 15(2) has been satisfied in any event.

4.3 For these reasons, the RA must therefore reject the Application and not register the Application Land as a TVG.

**20 April 2023**

**Eversheds Sutherland (International) LLP**

**Witness Statement of James Hamand**

1. My name is James Hamand and I am employed by Annington Property Limited ("Annington") as Head of Property Services. I have held this role for approximately one and a half years. Prior to that I have held various other positions within Annington since 2016.

2. I first visited the land in question, which is shown edged red on the plan appended at **exhibit JH1** and referred to herein as "the Site", in 2017 as part of a general estate tour of the Annington estate. Since then, I have visited the Site approximately six times. It will be noted that the Site comprises two parcels of land.

3. I enclose as **exhibit JH2** HM Land Registry official copies for the Site, which confirm that Annington has been freehold owner and registered proprietor of the Site since 24 June 2002.

4. The resident's management company is responsible for the grounds maintenance, however, Annington has historically contributed a proportion of the maintenance costs each year. PREIM are the appointed managing agents and have managed the Land since 2014 and employ contractors, Edenvale, to undertake the ground maintenance.

5. Whilst I have not personally seen the Site be used for such purposes, I understand from PREIM that it has been used for dog walking and picnics by members of the public.

6. I understand that a site visit of the Site was undertaken by a representative of Annington on 24 March 2023, who then prepared a report identifying, with supporting photographs, the various signs erected around the larger parcel of land comprised within the Site. A copy of this report is appended at **exhibit JH3.**

7. The Site forms part of the former Ministry of Defence ("MoD") land which was sold to Annington in the late 1990s / early 2000s. Annington sold off various plots within the former ("MoD") estate and surrounding area throughout the early 2000s, including the various plots from 1 – 8 Ringwood Crescent. One of the Transfer Deeds (for 1 Ringwood Crescent) is enclosed as **exhibit JH4**, although I understand that the other Transfer Deeds for Ringwood Crescent (for 2 – 8 Ringwood Crescent) were also in substantially the same form.

8. I note that the appended Transfer Deed as shown in **exhibit JH4** provides the following:

8.1 Express rights to use to use the "Amenity Areas" for reasonable purposes connected with the residential use of the Property.

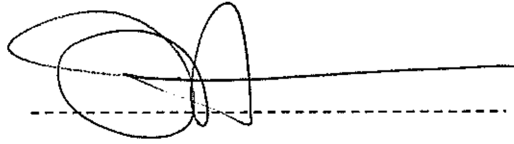
8.2 Definition of "Amenity Areas" which is "unadopted open space and planted/landscaped areas footpaths verges and hard standing now laid or to be laid within the Perpetuity Period within the Estate other than the Units the Estate Roads and Conduits Provided that the extent of the Amenity Areas may from time to time be varied by the exclusion or the addition of any part of parts of the Estate by the Transferor".

8.3 Definition of "Estate" which is the "land edged blue on Plan 1 together with such other land comprised in Title WA810910 on 13th June 2002 the freehold interest in which may within the Perpetuity Period" be acquired by the Transferor and designated by the Transferor as part of the Estate Provided that the extent of the Estate may from time to time be varied by the exclusion by the transfer of any part of parts thereof".

8.4 'Plan 1' appended to the Transfer Deed includes the Site.

9. Accordingly, I understand the property benefits from express rights of way to use the Site for reasonable purposes connected with the residential use of the Property.

I believe that the facts and matters contained in this statement are true

Signature (of person making this statement): 

Print full name: JAMES WILLIAM HAMAND

Date: 19th April 2023

**Exhibit JH1**

UK Planning Maps

# Ringwood Crescent

© Crown copyright and database rights 2023 OS 100054135. Map area bounded by: 301546,169387 301746,169587. Produced on 18 April 2023 from the OS National Geographic Database. Supplied by UKPlanningMaps.com. Unique plan reference: p4b/uk/937989/1265406

Ordnance Survey
Licensed Mapping

**Exhibit JH2**

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Applications are pending in HM Land Registry, which have not been completed against this title.

Mae'r copi swyddogol electronig o'r gofrestr yn dilyn y neges hon.

Sylwch mai hwn yw'r unig gopi swyddogol a ddarparwn. Ni fyddwn yn darparu copi swyddogol papur.

Mae ceisiadau'n aros i'w prosesu yng Nghofrestrfa Tir EF nad ydynt wedi eu cwblhau yn erbyn y teitl hwn.

# Official copy of register of title
# Copi swyddogol o gofrestr teitl

| Title number / Rhif teitl | Edition date / Dydddiad yr argraffiad |
| --- | --- |
| CYM76989 | 02.01.2020 |

- This official copy shows the entries on the register of title on 27 OCT 2022 at 10:00:44.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 20 Mar 2023.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Wales Office.
- Mae'r copi swyddogol hwn yn dangos y cofnodion yn y gofrestr teitl ar 27 HYDREF 2022 am 10:00:44.
- Rhaid dyfynnu'r dyddiad hwn fel y "dyddiad y chwilir ohono" mewn unrhyw gais am chwiliad swyddogol sy'n seiliedig ar y copi hwn.
- Y dyddiad ar ddechrau cofnod yw'r dyddiad y gwnaethpwyd y cofnod yn y gofrestr.
- Cyhoeddwyd ar 20 Mawrth 2023.
- Dan adran 67 Deddf Cofrestru Tir 2002, mae'r copi hwn yn dderbyniol fel tystiolaeth i'r un graddau â'r gwreiddiol.
- Gweinyddir y teitl hwn gan Gofrestrfa Tir EF Swyddfa Cymru.

## A: Property Register / Cofrestr Eiddo

This register describes the land and estate comprised in the title.

Mae'r gofrestr hon yn disgrifio'r tir a'r ystad a gynhwysir yn y teitl.

THE VALE OF GLAMORGAN/BRO MORGANNWG

1 (24.06.2002) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 3-8 Ringwood Crescent, East Camp, St Athan.

NOTE 1: So much of the land as comprises a Highway which is vested in the Highway Authority and maintained at Public Expense is excluded from title.

NOTE 2: The M.O.D. Site I.D. Reference is BRE01701401.

2 (24.06.2002) The land has the benefit of the following rights granted by but is subject to the following rights reserved by the Transfer dated 10 June 2002 referred to in the Charges Register:-

"1. DEFINITIONS

In this transfer the following words and expressions have the following meanings:

1.1 "the adjacent property" means each and every part of the

# A: Property Register continued / Parhad o'r gofrestr eiddo

Transferor's property described in Schedule 1

1.3 "the Perpetuity Period" means the period referred to in clause 12

There are hereby granted for the benefit of the land hereby transferred and each and every part of it:-

7.2.1 the right of support from any of the Adjacent Property;

7.2.2 rights of overhang of roofs gutters eaves downspouts drainage encroachment of foundations (if any) (including but without prejudice to the generality of the foregoing any fence post foundations) existing on the date of this transfer; and

7.2.3 the rights more particularly described in Part IV Schedule 3 to this transfer

8. EXCEPTIONS AND RESERVATIONS

8.1 There are hereby excepted and reserved out of the land hereby transferred, as appurtenant to the Adjacent Property

(A) all ways, waters, water-courses, liberties, privileges, easements, rights or advantages whatsoever, appertaining or reputed to appertain to the Adjacent Property or to any part of it or, at the date of this transfer, demised, occupied, or enjoyed with or reputed or known as part or parcel of or appurtenant to the Adjacent Property or any part of it for the benefit of the Adjacent Property and each part of it over the land hereby transferred which have hitherto been exercised or enjoyed in fact and which are necessary for the use and enjoyment of the Adjacent Property;

(B) (if and to the extent that any boundary of the Adjacent Property is also a boundary of the land hereby transferred) a right to construct and retain a perimiter fence overhang for the security of the Adjacent Property in the air space of the land hereby transferred to a depth from the boundary of 0.75 metres and between 2.0 and 3.0 metres above ground level and to construct and retain related perimeter fence footings in and under the land hereby transferred and to enter for reasonable periods onto the necessary parts of the land hereby transferred for the purpose of maintaining and renewing the same but the person exercising such right of entry shall cause as little damage as possible to the land hereby transferred and shall make good any caused to it at his own expense; and

(C) a right to enter and remain on the land hereby transferred for the purposes of clause 9 of this transfer

9. RIGHT OF ENTRY

9.1 In this clause

"dominant owner" means the freehold owner or owners for the time being of the Adjacent Property;

"plant" means every pipe, drain, wire, cable and other conduit, machinery and other apparatus of any description and every roadway, footpath and other land by, through or over which (and only to the extent that) any right is exercisable on, over or through the servient land for the benefit of the Adjacent Property;

"rights" means all the rights of any description which are excepted or reserved by clause 8 of this transfer; and

"servient land" means so much of the land hereby transferred which is burdened by the existence of a right and "servient owner" means the owner or owners for the time being of the servient land;

9.2

9.2.1 The servient owner shall be obliged to keep any plant located on and benefitting the servient land as well as the Adjacent Property (or any part of it) in a reasonable state of repair and condition (but not

necessarily to adoptable standards) subject to payment by the dominant owner of a fair and reasonable contribution to the expenditure so incurred by the servient owner

9.2.2 Before the servient owner implements any material work of repair (including any material renewal) pursuant to clause 9.2.1 it shall notify the dominant owner of the nature and specification and an estimate of the anticipated cost of the relevant work and, if the dominant owner reasonably requests (within a reasonable time) that the work is done to a higher specification and undertakes to indemnify the servient owner against;

(A) any consequential increase in cost; and

(B) any consequential increased costs incurred by the servient owner in compliance with its obligations under clause 9.2.1,

and (unless the dominant owner is the Secretary of State for Defence) if the dominant owner provides adequate security for the imdemnity referred to in paragraph (A), the servient owner shall implement the work to the higher specification

9.3 In circumstances where the servient owner fails to comply with its obligations under clause 9.2 the dominant owner shall be entitled to serve notice on the servient owner requiring the servient owner to proceed diligently with the execution of such repairs as may be required in order to comply with its obligations under clause 9.2 provided that, if the servient owner fails to proceed diligently with the execution of such repairs within a reasonable time after service of such notice, the dominant owner may (upon reasonable notice except in the case of emergency) enter and remain for a reasonable period with or without workmen and appliances on the servient land (and on other parts of the land hereby transferred) for the purpose of maintaining, repairing and renewing the plant located within the servient land

9.4 To the extent that, and for so long as, plant is located on land not comprised in but surrounded by the land hereby transferred or, in case of plant located on the servient land which exclusively serves the Adjacent Property (or any part of it). the dominant owner (upon reasonable notice and prior appointment, except in the case of emergency) shall be entitled to enter with or without workmen and appliances on the servient land (and on other parts of the land hereby transferred) for the purpose of gaining access to the land within which the plant is located in order to maintain, repair and renew the same and (to the extent that the plant also serves the land hereby transferred) the dominant owner shall keep the said plant in a reasonable state of repair and condition

9.5 The dominant owner shall exercise the rights set out in clauses 9.3 and 9.4 at its own expense (subject as provided in clause 9.6) and shall cause as little damage as possible to the land hereby transferred and shall make good any damage caused to it immediately upon request at the dominant owner's expense

9.6 If and to the extent that the plant in respect of which the dominant owner incurs expense on maintenance, repair or renewal also serves the land hereby transferred or any part of it, the Transferee shall pay or procure that the servient owner pays a fair and reasonable contribution to the expenditure so incurred

SCHEDULE 3

PART IV

(A) (i) Subject always to paragraphs (a) to (g) inclusive and paragraph (B) below, if any water, gas or electricity pass to the land hereby transferred through conducting media, or domestic sewage or storm water passes from the land hereby transferred to a drain or sewer or other destination (wherever located) through the Adjacent Property; or if any means of disposal (including without limitation any soakaway, ditch or channel) of surface water run off from the Premises is situated in or under or passes through the Adjacent Property without (as applicable) any intermediate pumping, generation, transformation or storage (other

than such storage as may be implicit in the fact of containment within any ordinary conducting media, drain or sewer or means of disposal) or other treatment by plant which is owned and controlled by the Transferor then the land hereby transferred has the benefit of a right (to the extent the Transferor can grant it at the date of this transfer) to the passage of water, gas, electricity, domestic sewage and surface water run off through (as applicable) the relevant conducting media, drain or sewer or means of disposal in or under the Adjacent Property, together with the right on reasonable prior notice to enter the Adjacent Property for the purposes of maintaining, repairing, renewing or replacing any conducting media drain or sewer of means of disposal with or without workmen and plant and equipment

(ii) Subject always to paragraph (a) to (g) inclusive and to paragraph (B), in circumstances where:-

(iiA) the Transferee elects to exercise any right to convert any services or supplies to mains or other services or supplies pursuant to any Utilities Arrangement; or

(iiB) the Transferee reasonably requires;

and (in either such case) the Transferee notifies the Transferor in writing that the land hereby transferred reasonably requires (in the context of the cost and degree of inconvenience of all reasonable alternatives) rights over the Adjacent Property to facilitate the supply thereto and disposal therefrom of services for all residential purposes or for purposes ancillary or incidental to the residential use of the land hereby transferred to a density of development which exists as at the date of this transfer, the Transferee and the land hereby transferred shall have the benefit of the right at any time during the Perpetuity Period:-

(iia) to lay, construct, connect into, alter, repair, renew, maintain in over or upon the Adjacent Property, in such location or locations as the servient owner may reasonably specify having regard to any use or intended use of the Adjacent Property or any part of it (and notwithstanding that the location or locations may not be the most convenient for the purposes of the Transferee), such sewers drains conduits channels watercourses pipes cables wires ducts or other service or conducting media (the "New Conducting Media") during the Perpetuity Period as may be reasonably necessary for the supply of relevant utility services (being, in the circumstances described in paragraph (iiA), the same type of utility supply as was supplied pursuant to the Utilities Agreement) to or from the land hereby transferred; and

(iib) of free and uninterrupted (subject to temporary and reasonable disruption limited to any diversion resulting in a substantially continuous supply) passage and running of water, soil, stormwater, gas or electricity as are or may during the Perpetuity Period be used from and to the land hereby transferred through the New Conducting Media (being, in the circumstances described in paragraph (iiA), the same type of utility supply as was supplied pursuant to the Utilities Agreement)

which rights referred to in sub-paragraphs (i) and (ii) shall be freehold or (according to the nature of the Transferor's interest in the land hereby transferred at the date of this transfer) leasehold, provided that it shall be a condition of such grant that:-

(a) the Transferee shall cause as little damage and inconvenience as reasonably practicable to the Adjacent Property (as soon as reasonably practicable making good all damage to the Adjacent Property occasioned in the exercise of such rights at its own expense);

(b) the Transferee shall pay a fair and reasonable contribution to the costs (if any) reasonably incurred by the owner for the time being of the Adjacent Property in maintaining, repairing or renewing any of the items referred to in paragraph (A)(i) or any New Conducting Media serving the land hereby transferred and located within the Adjacent Property; and

# A: Property Register continued / Parhad o'r gofrestr eiddo

(c) the Transferee shall give reasonable written notice to the Transferor of its intention to exercise such rights and comply with the reasonable regulations of the Transferor in the exercise of the rights; but

(d) the Transferor shall not be required to contribute to any expenditure unless, and to the extent that, it also uses the relevant items referred to in paragraph (A)(i) or any New Conducting Media in which event it shall ensure that on any disposal of any of the Adjacent Property that it is a condition of such disposal (so as to bind the land) that the purchaser shall contribute to the aforementioned expenditure, provided that the Transferor shall not be liable for any contribution after the date of the relevant transfer (without prejudice to any accrued liabilities):

(e) the Transferor and his successors in title shall have the right to alter the route of any conducting media, drain or sewer or means of disposal or any New Conducting Media provided that it first gives to the Transferee written notice of the alternative route in advance of the alteration to the route, and the existing route shall not be stopped up until the alternative route is available (unless an adequate, temporary alternative is provided in the meantime) and the Transferor shall cause the minimum interruption as is reasonably practicable in doing so;

(f) so long as the Adjacent Property is owned by the Transferor named in this transfer, any representive of his government department or any agency on his or his department's behalf shall be entitled to serve a counter-notice to the effect that his department wishes itself to carry out the work or other matter to which the notice relates (in which event the Transferor shall carry out or procure the carrying out of such works within a reasonable period at the reasonable requirements of the Transferee); and

(g) so long as aforesaid and if required by or on behalf of the Transferor, that such works be carried out under the supervision of a representative of the Transferor and in accordance with any reasonable requirements and subject to such security checks as such representative may seek to impose, the proper costs of such representative to be borne by the Transferee;

and anyone granting such rights shall be required to deduce his title to make the grant and consent to notice of the grant being entered against the relevant title or titles but shall not be required to give any title guarantee

(B) If the Transferor named in this deed or any representative of his government department or any agency on his or his department's behalf objects for operational or security reasons to the grant of any rights under paragraph (A)(ii), and provided written certification is given to the Transferee of the necessity for and (other than in circumstances where security concerns preclude the certification of reasons) the reasons for so objecting, he or his representative or agency may serve a counter-notice on the Transferee within a reasonable period after receipt of a notice under that paragraph to that effect, in which event the Transferor shall not be obliged to grant the rights in question"

NOTE: The adjacent property referred to adjoins the Western,Northern and Southern boundaries of the land in this title.

3 (24.06.2002) The Transfer dated 10 June 2002 referred to above contains the following provision:-

"The Transferee and its successors in title to the land hereby tranferred may use and develop it for any purpose notwithstanding the effect which the use or development may have on the Adjacent Property or on its use or occupation, provided there is no interference with any easement or other right reserved by this transfer for the benefit of the Adjacent Property and provided there is no material adverse interference with the flow of light and air to the Adjacent Property

It is hereby agreed and declared that (subject as provided in clause 7.2 of this transfer) this transfer does not grant and it is the

# A: Property Register continued / Parhad o'r gofrestr eiddo

parties' intention that it should not grant any ways, water, water-courses, liberties, privileges, easements, quasi-easements, rights or advantages whatsoever, appertaining or reputed to appertain to the land hereby transferred, or any part of it, at the date of this transfer, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land hereby transferred or any part of it for the benefit of the land hereby transferred over the Adjacent Property and, accordingly the Transferor and the Transferee hereby further agree and declare that:-

(A) no such ways, waters, water-courses or any of the other foregoing matters shall pass to or be annexed or appurtenant to the land hereby transferred or to any part of it either by implication or under or by virtue of Section 62 of the Law of Property Act 1925 or under or by virtue of the doctrine of Wheeldon and Burrows or under or by virtue of the doctrine of derogation from grant; and

(B) any enjoyment in fact of any ways, water, water-courses or any of the other foregoing matters by the land hereby transferred or by any part of it over, along, through, under or upon the Adjacent Property shall be exercised personally by the person exercising it and with the revocable consent of the owner or owners for the time being of the Adjacent Property."

4 (14.03.2003) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

# B: Proprietorship Register / Cofrestr Perchnogaeth

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Mae'r gofrestr hon yn nodi'r math o deitl ac yn enwi'r perchennog. Mae'n cynnwys unrhyw gofnodion sy'n effeithio ar yr hawl i waredu.

## Title absolute/Teitl llwyr

1 (24.06.2002) PROPRIETOR: ANNINGTON PROPERTY LIMITED (Co. Regn. No. 3232852) of 1 James Street, London W1U 1DR.

2 (24.06.2002) The Transfer dated 10 June 2002 referred to in the Purchasers Register contains Purchasers personal covenant(s) details of which are set out in the schedule of personal covenants hereto.

3 (02.01.2020) RESTRICTION: No disposition of the part of the registered estate shown edged blue on the title plan by the proprietor of the registered estate is to be registered without a certificate signed by Edenstone Homes Limited (Co. Regn. No. 06397071) of Third Floor, Building 102, Wales 1 Business Park, Newport Road, Magor, Caldicot, NP26 3DG or its conveyancer that the provisions of clause 2.6 of an option agreement dated 11 July 2019 made between (1) Annington Property Limited and (2) Edenstone Homes Limited have been complied with.

## Schedule of personal covenants
## Atodlen cyfamodau personol

1 The following are details of the personal covenants contained in the Transfer dated 10 June 2002 referred to in the Proprietorship Register:-

Maintenance of and Plant

The Transferor shall be obliged to keep in good and tenantable repair any conducting media and/or other plant over which rights are granted for the benefit of the land hereby transferred pursuant to paragraph (A) (i) of Part IV of schedule 3 for so long as and to the extent that the conducting media and/or plant (as the case may be) is located on in or under land adjoining the land hereby transferred demised to the

## Schedule of personal covenants continued
## Parhad o'r Atodlen cyfamodau personol

Transferor by the Transferee by virtue of an underlease made on 5 November 1996 between the Transferee (1) the Transferor (2).

If and to the extent that repairing the conducting media and/or plant to a good and tenantable standard is sufficient for the purposes for which they are reasonably required the Transferor shall (but only following a written request by the Transferee to do so) carry out the additional repair work but at the reasonable cost of the Transferee and (if the Transferor reasonably requires) only if the Transfereee has provided security for those costs.

RECOVERY OF UTILITY SUPPLY COSTS

The Transferee (including for the purposes of this clause successors in title) hereby covenants with the Transferor to pay a reasonable and proper proportion of the costs attributable solely to any supply received by the Transferee by virtue of the rights more particularly described in paragraph (A) (i) and (ii) of Part IV of Schedule 3 to this Transfer payable by the Transferor to any third party which are attributable solely to the land hereby transferred and/or such of the units that benefit from the supply within the land hereby Transferred as shall be agreed upon between the Transferor and the Transferee such proportion being calculated:-

12.1.1 in respect of the supply of water and the disposal of sewage and surface water to equate to the amount of payment that the Transferee would have been required to pay to the mains supplier in the locality for each unit within the land herby transferred charged on a domestic rateable value or other applicable non-metered basis (including a standing charge for each unit) and

12.1.2 in respect of the supply of electricity for all of the Units within the land hereby transferred on a metered basis for all electricity supplied at the domestic tariff rate for the mains supplier in the locality (including a standing charge for each unit)

12.1.3 in respect of the supply of electricity to the street lighting column on the land transferred to equate to the amount of payment that the Transferee would have been required to pay to the mains supplier in the locality on an unmetered basis.

Provided always for the avoidance of doubt in respect of 12.1.1 and 12.1.2 that the proportion of such costs payable by the Transferee to the Transferor for each unit shall not exceed the costs that would otherwise be payable by a private owner of a Unit to the mains suppliers in the locality had the supply of utilities been rendered direct by such mains suppliers to the Transferee

Provided Always for the avoidance of doubt in respect of 12.1.3 that the proportion of such costs payable by the Transferee to the Transferor for each street lighting column shall not exceed the cost that would otherwise be payable by a private owner of a street lighting column to the mains supplier in the locality had the supply of such utitlity been rendered direct by such mains supplier to the Transferee.

12.2 The Transferor and the transferee hereby further agree that the payments more particularly referred to in clause 12.1 shall be made in such manner as and upon such dates as shall also be agreed upon between the Transfeor and the Transferee Provided always that during the period when any such payments shall be made by the Transferee to the Transferor in respect of any supply of the utitlities more particularly referred to in clause 12.1 the Transferor shall not require any payments to be made pursuant to paragraph (b) to paragraph (A)(i) and (ii) of Part IV of schedule 3 to this Transfer in respect of any of those utitlities.

12.3 The Transferor and the Transferee hereby further agree that they shall hereafter enter into written agreement that shall be required by the Transferor to fully document the obligations of the parties hereunder in the event of any change in circumstances following the date hereof which may render the provisions of this clause in respect

## Schedule of personal covenants continued
## Parhad o'r Atodlen cyfamodau personol

of the supply of any of the utilities more particularly referred to in clause 12.1 inoperable and it proving necessary to sustitute an alternative arrangement to enable the Transferor to recover from the Transferee a reasonable and proper proportion of the supply costs as required hereunder in respect of any such utility Provided always that if it is required by the Transferor to install any supply meter in connection with any such alternative arrangement then such meters will be installed by and at the expense of the Transferor at the most appropriate location.

12.4 The Transferor and the Transferee hereby further agree that the Transferor or the Transferee may at any time make arrangements with the mains supplier in the locality in respect of any of the utilities more particularly referred to in clause 12.1 for individual bills for the purposes of 12.1.1 and 12.1.2 for any unit within the land hereby transferred to be rendered direct to the owners or occupiers thereof in which event the provisions of this clause shall cease to be of effect from the date when the first direct bill is rendered Provided always the transferor or the Transferee shall give written notice to the other party of any intention to proceed in accordance with the provisions of this sub clause.

The Transferor and the Transferee hereby further agree that the Transferee shall reimburse to the Transferor any costs expenses and losses incurred by the Transferor that may arise in respect of any late payment by the Transferee to the Transferor under the provisions of this clause and not otherwise

12.6 The Transferor and the Transferee hereby further agree

12.6.1 that the obligations on the part of the Transferee pursuant to this clause may be discharged by a single management company proposed by the Transferee for the site comprising the land hereby transferred and

12.6.2 that the Transferee or any single management company as aforesaid shall act as a single billing point of contact for the Transferor for the recovery of the supply costs as aforesaid notwithstanding any subsequent sale by the Transferee of any unit within the land hereby transferred to a third party.

12.7 The Transferor and the Transferee hereby further agree that in the event of the Transferor being required by law to charge Value Added Tax in respect of the supply of utilities under the provisions of this clause then Value Added Tax at the designated rate may be added to the payments made by the Transferor in respect thereof.

12.8 The transferor and the Transferee hereby further agree that if the Transferor operates any plant (meaning any machinery or apparatus of any description) in connection with the making of any supply of utilities under the provisions of this clause then the Transferee shall pay to the Transferor a fair and reasonable contribution to the costs (if any) reasonably incurred by the Transferor in operating running maintaining repairing or renewing the same.

# C: Charges Register / Cofrestr Arwystlon

## This register contains any charges and other matters that affect the land.

## Mae'r gofrestr hon yn cynnwys unrhyw arwystlon a materion eraill sy'n effeithio ar y tir.

1 (24.06.2002) An Agreement dated 6 June 1968 made between (1) Ministry of Defence and (2) The South Wales Electricity Board relates to the laying and maintenance of an electric line.

*NOTE: Copy Filed.*

## C: Charges Register continued / Parhad o'r gofrestr arwystlon

2 (24.06.2002) A Transfer of the land in this title dated 10 June 2002 made between (1) The Secretary of State for Defence (Transferor) and (2) Annington Property Limited (Transferee) contains covenants details of which are set out in the schedule of restrictive covenants hereto.

3 (24.06.2002) Lease dated 5 November 1996 to Annington Property Limited for 999 Years from 5 November 1996.

4 (14.03.2003) The land is subject to rights of drainage and rights in respect of the supply of water, gas, electricity and other services.

5 (14.03.2003) The parts of the land affected thereby which adjoin the parts edged and numbered in green on the filed plan are subject to rights of support and protection rights in respect of overhanging or underlying structures and rights of entry to repair, maintain, paint and rebuild any buildings and other structures erected on or near the boundaries of the said parts edged and numbered in green.

6 (14.03.2003) The estate roads included in the title are subject to rights of way.

7 (14.03.2003) The Amenity Areas are subject to rights of user.

## Schedule of restrictive covenants
## Atodlen cyfamodau cyfyngu

1 The following are details of the covenants contained in the Transfer dated 10 June 2002 referred to in the Charges Register:-

"The Transferee hereby covenants with the Transferor not to use the land hereby transferred for any purpose which causes a nuisance to any person or property or for any unlawful or immoral purpose

For so long as (and to the extent that) the Transferor or other government department or governmental agency retains an interest in the Adjacent Property the benefit of the covenant referred to in clause 4.2 is annexed to each and every part of it

4.2 The Transferee covenants with the Transferor that the Transferee and its successors in title to the land hereby transferred and each and every part of it will observe and perform the covenants set out in Schedule 2 to this transfer

SCHEDULE 2

RESTRICTIVE COVENANTS

1. Not to construct or use or permit or suffer to be constructed or used any building, or allow any trees or other obstruction, on the land hereby transferred or alter or extend or permit or suffer to be extended any existing building on the land hereby transferred in a manner which would obstruct the transmission to or from the Adjacent Property of microwave and other communication signals and not to obstruct or contaminate or permit or suffer to be obstructed or contaminated any air space comprised in the land hereby transferred so as to diminish or otherwise interfere with any such signals or communications

2. Not to interfere with, or impede access to, or build within 2 metres of, or in any manner trangress over or through any perimeter fence referred to in clause 8(B) of this transfer and not to lay pipes and cables any closer than 1 metre from the said perimeter fence."

## End of register / Diwedd y gofrestr

**Exhibit JH3**

Paul Warren
Annington

# PROJECT RINGWOOD CRESCENT OPEN LAND SIGNAGE.

Friday, 24 March 2023

Prepared For Annington

6 Issues Identified

**ISSUE 1**

Assigned To Opposite No 2 Ringwood Crescent.

Says
This is private property and
There is no public access or right
Of way without the permission
Of the owner

The owner hereby permits access by
Members of the public onto the land for
Recreational purposes only at their own risk

This permission may be revoked at any time.

**ISSUE 2**

Assigned To Opposite No 2 Ringwood Crescent.

Says
Notice
Dogs are not allowed to be exercised. Either
On or off the leash in this childrens play area.

**ISSUE 3**

Assigned To Opposite No 3 Ringwood Crescent.

Says
Notice to dog owners not to exercise there dogs on or off lead,
childrens play area.

**ISSUE 4**

Assigned To Opposite No 5 Ringwood Crescent.

Says

This is private Property and

There is no public accessor right

Of way without the permission

Of the owner

The owner hereby permits access by

Members of the public onto the land for

Recreational purposes only at their own risk

This permission may be revoked at any time.

**ISSUE 5**

Assigned To Side No 40-41 Burley Place.

Says

Same as other signs.

Private ownership.

And dogs not to be exercised.

**ISSUE 6**

Assigned To General

Hi James

Hope this is what you are looking for down at Ringwood st Athans.

As you can see, 3 no signs are stating private ownership.

And 3no stating no exercising your dog off the leash. Childrens play area.

If you require anything else please let me know.

Kind regards

Paul

**Exhibit JH4**

**These are the notes referred to on the following official copy**

Title Number CYM140587

The electronic official copy of the document follows this message.

This copy may not be the same size as the original.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

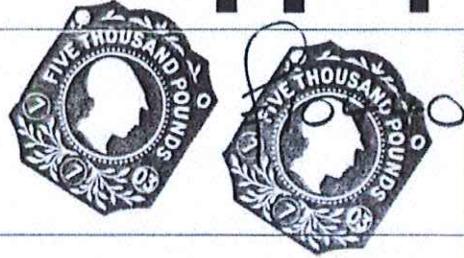
80145/12531

**Transfer of part of registered title(s)**

**HM Land Registry** **TP1**

*(if you need more room than is provided for in a panel use continuation sheet CS and staple to this form)*

1. Stamp Duty




*Place "x" in the box that applies and complete the box in the appropriate certificate*

[ ] It is certified that this instrument falls within category in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

[X] It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceed the sum of £500,000.00

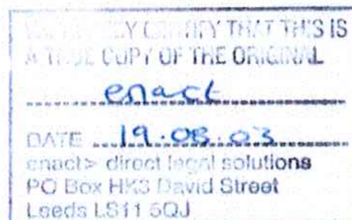
2. Title Number (s) out of which the Property is transferred *(leave blank if not yet registered)*

WA810910 and CYM102529

3. Other title number(s) against which matters contained in this transfer are to be registered *(if any)*

4. **Property transferred** *(Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor and by or on behalf of the transferee).*

1 Ringwood Crescent St Athan Vale of Glamorgan But excepting from this Transfer all water mains and sewers within the Property transferred which serve more than one Unit (but not the service pipes and drains connecting the Property thereto)




The property is defined: *(place "X" in the box that applies and complete the statement)*

[X] on the attached plan and shown *(state reference e.g. "edged red")* Edged Red on Plan 2

[ ] on the transferor's filed plan and shown *(state reference e.g. "edged and numbered 1 in blue")*

5. Date 30/05/2003 ~~2 June 2003~~

This official copy is incomplete without the preceding notes page.

6. Transferor *(give full names and Company's Registered Number if any)*

Annington Property Limited
Windsor House
50 Victoria Street
London
SW1H ONW

(Registered No: 3232852)

7. Transferee for entry on the register *(Give full names and Company's Registered Number if any: for Scottish Co. Reg Nos., use an SC prefix. For foreign companies give territory in which incorporated.)*

**Santokh Singh Bamrah and Kamaltij Kaur Bamrah**

*Unless otherwise arranged with Land Registry Headquarters, a certified copy of the transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.*

8. Transferee's intended **address(es) for service in the U.K.** *(including postcode)* **for entry on the register.**

1 Ringwood Crescent
St Athan
Barry
CF62 4LA

9. **The Transferor transfers the Property to the Transferee.**

10. Consideration *(Place AX in the box that applies. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.)*

[X] The Transferor has received from the Transferee for the Property the sum of £348,000.00 (Three Hundred and Forty Eight Thousand Pounds)

*(insert other receipt as appropriate)*

[ ] The transfer is not for money or anything which has a monetary value

This official copy is incomplete without the preceding notes page.

**11.** The Transferor transfers with *(place "X" in the box which applies and add any modifications)*

[X] full title guarantee  [ ] limited title guarantee

except that the covenants implied under Section 2(1)(b) of The Law of Property (Miscellaneous Provisions) Act 1994 are varied by the deletion of the words "at his own cost" and the substitution of the words "at the cost of the person requiring compliance within this covenant"

**12.** Declaration of trust *Where there is more than one transferee, place "X" in the appropriate box*

[X] The transferees are to hold the property on trust for themselves as joint tenants.

[ ] The transferees are to hold the property on trust for themselves as tenants in common in equal shares.

[ ] The transferees are to hold the property *(complete as necessary)*

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## 13. Additional Provisions

*1. Use this panel for:*
- *definitions of terms not defined above*
- *rights granted or reserved*
- *restrictive covenants*
- *other covenants*
- *agreements and declarations*
- *other agreed provisions*
- *required or permitted statements, certificates or applications.*

*2. The prescribed subheadings may be added to, amended, repositioned or omitted.*

### 13.1 Definitions

**"Estate"** means the land edged blue on Plan 1 together with such other land comprised in Title WA810910 on 13th June 2002 the freehold interest in which may within the Perpetuity Period be acquired by the Transferor and designated by the Transferor as part of the Estate Provided that the extent of the Estate may from time to time be varied by the exclusion by the Transferor of any part of parts thereof

**"Adjacent Property"** any land owned by the Secretary of State for Defence adjoining or neighbouring the Estate defined as Adjacent Property in the Transfer

**"Amenity Areas"** unadopted open space and planted/landscaped areas footpaths verges and hard standing now laid or to be laid within the Perpetuity Period within the Estate other than the Units the Estate Roads and Conduits Provided that the extent of the Amenity Areas may from time to time be varied by the exclusion or the addition of any part of parts of the Estate by the Transferor

**"Amenities"** the Amenity Areas the Conduits and the Estate Roads together

**"A" "Shareholder"** the holder of the A Share in the Management Company for the time being

**"Conduits"** all pipes downpipes sewers drains soakaways channels gullies gutters watercourses conduits ducts flues wires cables and other service conducting media plant equipment or apparatus for the supply or transmission of water sewerage electricity gas telephone or other communications media now or hereafter constructed within the Perpetuity Period which are not at the date hereof maintainable at the public expense or vested in any relevant statutory undertaker within the Estate but which are available for use in connection with the Units including for the avoidance of doubt any such matters which are within under or over more than one Unit benefiting more than one Unit together with such further matters as may be designated from time to time as "Conduits" by the Management Company (but

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| | |
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| | excluding any which exclusively supply any one Unit) |
| **"Contribution"** | the cost approved by the "A" shareholder of carrying out the Utilities Works up to but not exceeding the Maximum Contribution |
| **"Deed of Grant"** | a deed of grant entered into or deemed to be entered into in respect of any Utilities Arrangement relating to the Estate |
| **"Estate Roads"** | all roads within and serving the Estate now or hereafter constructed within the Perpetuity Period and which are not maintainable at public expense |
| **"Lease"** | a Lease dated 5 November 1996 and made between the Secretary of State for Defence (1) and the Transferor (2) |
| **"Management Company"** | Ringwood Crescent Residents Company Limited of Fitzalan House Fitzalan Road Cardiff CF24 OEE |
| **"Maximum Contribution"** | the sum of £110,450.00 such sum to be increased in accordance with increases in the Retail Prices Index (All Items) published by the Central Statistical Office excluding mortgages or its successor from time to time from the month immediately proceeding the date of this transfer up to the month preceding payment of the Contribution |
| **"Perpetuity Period"** | the period ending 80 years from 1st August 2001 |
| **"Plan 1 and 2"** | the plans annexed hereto |
| **"Supply"** | (A) in relation to water, the provision of water for domestic purposes from a natural or man-made or pumped source located on the Adjacent Property (or, if it is pumped on or otherwise treated by plant located on the Adjacent Property, from a source located on other land other than on the Estate) and the transmission of it through conducting media owned and/or controlled by the Secretary of State (as the case may be) to the boundary of the Estate<br>(B) in relation to electricity, the provision and/or distribution of electricity from any generator, transformer or distribution chamber, electricity sub-station or other like plant located on the Adjacent Property and the transmission of it through conducting media owned and/or controlled by the Secretary of State (as the case may be) to the boundary of the Estate; and<br>(C) in relation to domestic sewage the flow thereof from |

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the boundary of the Estate to or through the Adjacent Property, whether by gravitational or pumped force through conducting media owned and/or controlled by the Secretary of State for Defence, and (or, in the case of flow by pumped force, or) the treatment of it on the Adjacent Property by means of any septic tank, cesspit or other sewage or effluent reception or treatment plant and equipment owned and/or controlled by the Secretary of State (as the case may be) and subsequent disposal,

Provided that:

(i) "Supply" in the case of conducting media or other plant and equipment owned and/or controlled by the Secretary of State on Adjacent Property does not extend to (a) the simple passage of water and electricity (or either or them) to the boundary of the Estate across any Adjacent Property from a source (whether or not located outside Adjacent Property) without any intermediate pumping generation, transformation or storage (other than such storage as may be implicit in the fact of containment within any ordinary conducting media) or other treatment by plant which is owned and controlled by the Secretary of State nor (b) the simple passage of domestic sewage from the boundary of the Estate across any Adjacent Property to a drain or sewer or other destination (whether or not located outside Adjacent Property) without any intermediate pumping, treatment or other storage (other than such storage as may be implicit as aforesaid) by plant which is owned and controlled by the Secretary of State

**"Secretary of State"** the Secretary of State for Defence and his successors in title in relation to the Adjacent Property

**"Transfer"** a transfer of the Estate dated 8th November 2002 made between the Secretary of State for Defence (1) and the Transferor (2)

**"Unit"** means a freehold residential house or a leasehold residential flat including any Conduits exclusively serving the same situate now or to be situated from time to time on the Estate and designated as such by the Transferor or the Management Company

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| **"Utilities Agreement"** | an agreement dated 5 November 1996 made between the Secretary of State for Defence (1) The Owner (2) Annington Homes Limited (3) Annington Development Limited (4) |
| **"Utilities Arrangement"** | anything pursuant to or in connection with (a) the Utilities Agreement (b) any Deed of Grant executed or deemed to be executed pursuant to the Utilities Agreement (c) any agreement relating to interim temporary or provisional supplies as referred to in the Utilities Agreement relating to the Estate |
| **"Utilities Completion Date"** | the date that the Utility Works are completed or a Deed of Grant is entered into |
| **"Utilities Works"** | any works required upon cessation of the Supply in respect of domestic water (over and above ongoing repair and maintenance) to ensure an independent supply of this utility to the boundary of the Estate |

13.2 RIGHTS GRANTED FOR THE BENEFIT OF THE PROPERTY

13.2.1 Conduits

The right to use for all proper purposes connected with the Property any Conduits serving the Property jointly or in common with the Transferor and the Management Company and any other persons who are now or may hereafter be entitled to connect with or use the same or any of them the Transferee bearing paying and contributing together with such other persons a fair proportion according to the extent to which the same are served thereby of the cost of repairing maintaining replacing renewing inspecting and cleansing the Conduits

13.2.2 Overhang and Foundations

Rights of overhang of roofs gutters eaves downspouts drainage encroachment or foundations (if any) (including but without prejudice to the generality of the foregoing any fence post foundations) passage of light air and water and (where necessary) the discharge of rainwater from the roofs eaves spouts gutters and pipes of the Property and all liberties privileges and advantages now used or enjoyed or to be used or enjoyed over or under the remainder of the Estate by the Property or by any buildings now erected or within the Perpetuity Period to be erected thereon (whether as easements or quasi-easements or otherwise and whether or not continuous apparent or reasonably necessary)

13.2.3 Rights of Way

The right for all reasonable purposes connected with the use of the Property with or without motor and other vehicles to go pass and repass along the Estate Roads

13.2.4 Enter to Repair

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The right at all reasonable times (save in case of emergency) to enter upon the remainder of the Estate so far as may be reasonably necessary for the purpose of repairing maintaining painting and rebuilding any buildings and the foundations thereof erected on over or constructed under or within the Perpetuity Period to be erected on or constructed under the Property the person exercising such right making good at his own expense any damage to the Estate occasioned by the exercise of such right

13.2.5 Amenity Areas

The right (subject to Clause 13.6.9 and the Estate Regulations) to use the Amenity Areas for reasonable purposes connected with the residential use of the Property

13.2.6 Transfer

In so far as the Estate benefits therefrom the rights granted for the benefit of the Estate pursuant to the Transfer so far as required for the benefit of the Property

13.2.7 Right of Support

The right of subjacent and lateral support and protection from the Estate, including any party walls or structures, for the purpose of supporting upholding and maintaining the buildings on the Property

13.3 RIGHTS RESERVED FOR THE BENEFIT OF THE ESTATE

13.3.1 Light and Air

Any right of light or air now subsisting or which might (but for this exception) be acquired over the remainder of the Estate to the intent that the Transferor or the Management Company may build on or rebuild the remainder of the Estate in such manner as the Transferor or the Management Company may think fit notwithstanding any interference with the access of light or air to the Property thereby occasioned and so that the Transferee shall be deemed to enjoy such access of light and air in the meantime by the consent of the Transferor hereby given and not as of right

13.3.2 Overhang and Foundations

Rights of overhang of roofs gutters eaves downspouts drainage encroachment of foundations (if any) (including but without prejudice to the generality of the foregoing any fence post foundations) passage of light air and water and (where necessary) the discharge of rainwater from the roofs eaves spouts gutters and pipes of the remainder of the Estate and all liberties privileges and advantages now used or enjoyed or to be used or enjoyed over or under the Property by the remainder of the Estate or by any buildings now erected or within the Perpetuity Period to be erected thereon (whether as easements or quasi-easements or otherwise and whether or not continuous apparent or reasonably necessary)

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13.3.3 Conduits

13.3.3.1 The right in common with the Transferee and (in relation to such of the Conduits as may within the Perpetuity Period be adopted by or otherwise become vested in any water or sewerage undertaker) the relevant undertaker or any other proper authority and all other persons entitled thereto:-

13.3.3.1.1 to use the Conduits now laid or which may at any time within the Perpetuity Period be laid in over or under the Property and

13.3.3.1.2 to enter upon the Property at all reasonable times (save in case of emergency) for the purpose of laying making connections with repairing maintaining replacing renewing cleansing or re-routing the Conduits and erecting placing or constructing any street lighting or street name plate on the Property or any buildings thereon and planting any trees hedges or shrubs or carrying out any landscaping required

13.3.3.1.3 to seek and secure at the Transferor's discretion the adoption by or other vesting in the water or sewerage undertaker of any of the water mains or sewers excepted from this transfer

13.3.3.2 The statutory rights for user access maintenance repair renewal replacement connection with and other purposes of the relevant water or sewerage undertaker in relation to those Conduits which have been adopted by or otherwise become vested in it

13.3.4 Enter to Repair

The right to enter upon the Property at all reasonable times for the purposes of erecting repairing maintaining painting and rebuilding any buildings retaining walls and the foundations thereof erected on or constructed under or within the Perpetuity Period to be erected on or constructed under the remainder of the Estate including the like right for such purposes to erect maintain use and dismantle scaffolding upon the Property the person exercising such right making good any damage to the Property occasioned by the exercise of such right

13.3.5 Alteration of Estate Roads

The right for the Transferor or any person to whom the benefit of this right is expressly assigned to stop up alter or re-route the direction of any Estate Road in such a way as it thinks fit in which event such Estate Road may in the absolute discretion of the Transferor or assignee be redesignated as Amenity Areas of Units on condition that an alternative access to the Property is provided prior to the stopping up of any Estate Road

13.3.6 Alteration of the Amenity Areas

The right for the Transferor to vary the extent of the Amenity Areas by the exclusion or addition of any part or parts of the Estate and designated or redesignated (as the case may be) by the Transferor

13.3.8 Transfer

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Insofar as the Estate is subject thereto the rights excepted and reserved and the matters benefiting the Adjacent Property pursuant to the Transfer so far as required for the benefit of the Adjacent Property and to which the Property is subject

13.3.9 Right of Support

The right of subjacent and lateral support and protection from the Property, including any party walls or structure, for the purpose of supporting upholding and maintaining the buildings on the Estate

13.4 RESTRICTIVE COVENANTS BY THE TRANSFEREE

The Transferee covenants with the Transferor and the Management Company and in relation to Clause 13.4.9 below also with the relevant statutory undertaker for the benefit and protection of each and every part of the remainder of the Estate and so as to bind the Property into whosoever hands the same may come that the Transferee will at all times hereafter observe and perform the following covenants and restrictions:-

13.4.1 New Buildings

Not without the written consent of the Management Company to construct any new buildings on the Property whether temporary or permanent provided that this shall not prohibit the construction of a garage on the Property or the making of any alterations or additions to the existing buildings on the Property

13.4.2 User

Not without the previous written approval of the Management Company to use the Property or suffer the same to be used for the purpose of any manufacture trade or business of any description or for any purpose other than as a private dwellinghouse in single family occupation with associated garage/car parking nor place or suffer to be placed on any part of the Property any showboard or placard

13.4.3 Nuisance

Not to do any act or thing in or about the Property which shall be or may grow to the annoyance nuisance damage or disturbance of the Transferor or the owner or occupier of any part of the remainder of the Estate

13.4.4 Notices

Not until 5th July 2003 without the previous written consent of the Management Company to erect or display any notice offering the Property for sale or letting

13.4.5 Demolition

Not at any time hereafter to permit or authorise the demolition of the dwelling house or garage (if any) erected on the Property so as to leave the party walls dividing any buildings erected on

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the Property from any buildings erected on the remainder of the Estate exposed as exterior walls without complying with 13.5.5

13.4.6 Parking Restrictions

Not to leave or park or permit to be left or parked (in whole or in part) any untaxed vehicle commercial vehicle caravan or trailer or like moveable structure at any time on any part of the Property or the Estate; and not to park any vehicle on the Property or the Estate other than in the allocated car parking space or garage (if any) or on the Estate Roads

13.4.7 Aerials

Not to erect or place radio/ham aerials on the roof or exterior of the Property or garage

13.4.8 Street Lighting

Not to interfere in any way with the street lighting (if any) located on the Property

13.4.9 Not to erect or cause to be erected any building or structure over any sewer or water main excepted from this transfer or on or over land within three metres measured horizontally from the centreline of any such sewer or water main and not to obstruct access thereto on foot and with any necessary vehicles plant or equipment but this clause shall not prohibit the retention of plot boundary walls or fences roads and footpaths drives or paths existing at the date hereof

13.5 POSITIVE COVENANTS BY THE TRANSFEREE

The Transferee covenants with the Transferor and the Management Company for the benefit and protection of each and every part of the remainder of the Estate and so as to bind the Property into whosoever hands the same may come that the Transferee will at all times hereafter observe and perform the following covenants and obligations:-

13.5.1 Boundary Walls/Fences

To keep in good repair the walls/fences/hedges on the sides of the Property marked "T" within the boundary of the Property

13.5.2 Conduits Costs Utilities Agreement Transfer and Service Charge

To bear and pay such proportionate part as may be determined by the Transferor or the Management Company (as the case may be) of the cost in accordance with 13.11 of:-

13.5.2.1 repairing maintaining replacing renewing inspecting and cleansing the Conduits used by the Transferee in common with the Transferor and any other persons who are now or may hereafter be entitled to connect with or use the same or any of them

13.5.2.2 compliance by the Transferor or the Management Company (as the case may be) with any

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Utilities Arrangement and the Transfer

13.5.2.3 provision of the Services (as defined in 3.11)

13.5.2.4 to pay and indemnify the Transferor and the Management Company in respect of all costs incurred in enforcing any of the Transferee's covenants contained in this transfer

13.5.3 Late Payment of Costs

If any sum due to be paid by the Transferee to the Management Company or the Transferor under the terms of this Transfer shall remain unpaid for twenty one days after becoming payable (whether formally demanded or not) the Transferee shall pay to the Management Company or the Transferor (as the case may be) interest upon such sum as shall remain unpaid at the rate of four per cent (4%) per annum above the base rate (or its equivalent) from time to time of Barclays Bank plc (but if such Bank shall cease to exist or shall not have a base rate at a reasonable comparable rate) calculated on a day to day basis from the date of the same becoming due to the date of payment or any other right or action of the Management Company or the Transferor (as the case may be) in respect of non-payment of such sums

13.5.4 Gardens

To keep the front and rear gardens of the Property in a neat and tidy condition

13.5.5 Party Walls

To forthwith support point and render weatherproof to a reasonable standard the party walls referred to in 13.4.5 if at any time the said party walls shall become exposed as exterior walls

13.5.6 Transfer Covenants

To observe and perform the covenants and obligations contained in the Transfer on the part of the servient owner referred to in Clause 9 and on the part of the Transferee in Clauses 4 and 6 and the restrictive covenants set out in Schedule 2

13.5.7 Estate Regulations

To comply with the Estate Regulations (if any) issued by the Management Company as it considers appropriate from time to time in the interests of good estate management and of the occupiers from time to time of the Estate

13.5.8 Service Charge

To pay the Service Charge set out in 13.11

13.6 DECLARATIONS

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13.6.1 References to clauses and sub-clauses are references to the clauses and sub-clauses contained in the respective part of this Panel 13 so numbered

13.6.2 If the Transferee is more than one person all covenants agreements and obligations on the Transferee's part shall be construed as joint and several

13.6.3 References to the Transferor the Management Company and the Transferee in this transfer shall where the context so admits include their respective successors in title and assigns

13.6.4 Any obligation on the Transferee not to do anything shall be deemed to include an obligation not to permit anything to be done where it is reasonably within the Transferee's control to prevent the same to be done

13.6.5 If the Transferor shall pay any sum to the Local or Highway Authority by way of deposit against the cost of street works pursuant to Section 219 of the Highways Act 1980 and such sum or any part thereof is repaid or is due to be repaid pursuant to Section 221 of the said Act it is hereby agreed and declared that such sum shall belong to the Transferor and the Transferee shall (if in receipt of such sum) forthwith repay or (if appropriate) direct the said Authority to repay such sum to the Transferor

13.6.6 The Walls (if any) dividing the buildings erected on the land hereby transferred from the buildings erected on the remainder of the Estate shall be deemed to be party walls and the rights and liabilities in respect thereof shall be in accordance with the Party Walls Etc. Act 1996

13.6.7 Neither the Management Company nor the Transferor (except where personal injury arises) shall be liable for any damage suffered by the Transferee or any servant agent or workmen of the Transferee or any member of the Transferee's family or any guest of his through the neglect fault or misconduct of the Transferor or the Management Company save to the extent the same is attributable to any employee of the Transferor or the Management Company which is covered by insurance in connection with its respective obligations herein contained

13.6.8 In this transfer where reference is made to rights or easements which constitute future rights or easements in connection with Conduits Estate Roads and Amenity Areas which do not at the date hereof exist the said reference shall be deemed only to apply to such easements and rights as shall come into existence during the Perpetuity Period

13.6.9 Nothing herein contained shall prevent the Transferor or its successors in title from transferring selling leasing holding developing or altering free from any restriction or stipulation any part of the Estate (excluding the Property) or from waiving compliance with or varying or releasing any restriction or stipulation now or hereafter affecting any part of the Estate or neighbouring land now or formerly belonging to the Transferor

13.6.10 Wherever in this transfer there is a covenant by the Transferee to pay expenditure expenses outgoings charges costs fees or any like expression incurred or payable by the Transferor or the Management Company all such expressions shall include Value Added Tax incurred or payable by the party incurring the expenditure in connection with the subject matter of the covenant and this transfer shall be construed accordingly

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13.6.11 Rights and easements granted to the Transferee are granted also to those authorised by the Transferee but in common with the Transferor the Management Company and all others having the like or similar right

13.6.12 Rights and easements excepted and reserved to the Transferor are excepted and reserved also in favour of the Management Company and the owner and owners for the time being of Units on the Estate capable of being benefited and all persons authorised by it or them and where appropriate the Local or other Statutory Undertakers providers of utilities (including gas electricity and telecommunications) and all other persons having the like or similar right

13.6.13 The Transferee declares that it is entitled to the freehold estate transferred and to the leasehold interest in the same right and that the Lease insofar as it relates to the Property is now determined on merger

13.6.14 The Transferor and Transferee do not intend that the terms of this transfer will be enforceable by virtue of The Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

13.7 RESTRICTIONS ON THE REGISTER

The parties hereby apply to the Chief Land Registrar for the entry on the Proprietorship Register of the following restrictions:-

"Except under an order of the Registrar no transfer, assent, or other disposition leading to a change in proprietorship of the land is to be registered unless a certificate signed by an Officer of or a Solicitor to the Management Company is furnished that the provisions of Clause 13.8.1 and 13.8.2 of the said transfer have been complied with"

13.8 COVENANTS TO BE GIVEN ON DISPOSITION

13.8.1 On every transfer of the Property or upon the devolution of the legal estate therein howsoever arising save for financial charges the Transferee covenants with the Transferor and the Management Company to procure the execution of a Deed of Covenant (in the form set out in 13.13 hereof) relating to the Transferee's covenants and the delivery thereof to the Transferor and the Management Company or their respective Solicitors and a transfer of the Transferee's share in the Management Company to the transferee immediately at completion of the transfer or devolution (as the case may be)

13.8.2 On receipt of the completed Deed of Covenant by the Transferor and the Management Company or their respective Solicitors as aforesaid and additionally in the case of the Management Company on receipt of any arrears of Service Charge the Transferor and the Management Company (on payment of their reasonable administrative and other charges) shall give to the person delivering the said Deed and (in the case of the Management Company) paying any arrears of Service Charge a certificate in accordance with 13.7

13.9 MANAGEMENT COMPANY'S COVENANT TO PROVIDE SERVICES

The Management Company will provide the Services from and including today subject to the

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terms of 13.12

13.10 TRANSFEROR'S COVENANTS

13.10.1 The Transferor covenants with the Management Company to pay the Service Charge properly and fairly attributable to those units which are unsold but are intended to be transferred to purchasers on a similar basis as the Property is hereby transferred until such units are sold

13.10.2 The Transferor covenants with the Transferee and separately with the Management Company

13.10.2.1 to pay to the Management Company the Contribution against production of certificates signed pursuant to the relevant contract for the carrying out of the Utilities Works

13.10.2.2 once the Utilities Completion Date has occurred to procure so far as it can that the freehold of the Estate is transferred to the Management Company subject to and with the benefit of all matters then affecting the freehold

13.11 SERVICE CHARGE

13.11.1 Definitions

In the remainder of this transfer the following expressions have the following meanings:-

13.11.1.1 "Advance Payment"

Payment on account of the Service Charge

13.11.1.2 "Certificate"

A statement certified by the Management Company's surveyor or accountant (and in the absence of manifest error to be accepted by the Transferee as conclusive) showing the Service Costs and the Service Charge for.the relevant Service Charge Period, details of all Advance Payments received in respect of the relevant Service Charge Period and any balance of Service Charge due from the Transferee or refund due to the Transferee

13.11.1.3 "Certificate Date"

31 March in every year or any other date from time to time chosen by the Management Company

13.11.1.4 "Services"

(a) Repairing maintaining cleaning and decorating or otherwise treating the Amenities in a manner which the Management Company reasonable considers appropriate

(b) Providing any other matter mentioned in 13.11.1.6 which the Management Company in its absolute discretion decides is appropriate for the management or maintenance of the Amenities

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13.11.1.5 "Service Charge Period"

The period from and excluding one Certificate Date up to and including the next Certificate Date

13.11.1.6 "Service Costs"

The total of the following costs all of which shall be proper costs reasonably incurred:

(a) the cost of repairing maintaining cleaning and decorating or otherwise treating the Amenities and (where the subject matter has become incapable of economic repair) of rebuilding and replacing the same

(b) the cost of providing operating periodically inspecting and maintaining in proper working order overhauling repairing and (when incapable of economic repair) replacing the Conduits and in replacing any supply

(c) the cost of providing maintaining and renewing any machinery equipment materials or supplies which are from time to time required in order to provide the Services

(d) the cost of running any plant serving the Estate and providing all other services to the Estate

(e) the cost of all and any accounts addressed to the Management Company or the Transferor for the supply of water electricity and sewerage to the Estate

(f) the cost of restoring cleaning decorating lighting and keeping free from obstruction the Amenities and keeping the Amenities in clean and tidy condition

(g) the cost of providing maintaining and (when reasonably necessary) renewing all directional and other notices posters boards or signs in the Amenities

(h) the cost of operating on such basis as the Management Company may reasonably determine any car parking areas and of repairing maintaining rebuilding and cleaning the same and keeping them clear of all rubbish and obstructions

(i) the cost of the upkeep of any landscaping

(j) the cost of and incidental to taking all steps deemed expedient by the Management Company in order to comply with or contest the requirements or proposals of the local or any other competent authority in respect of the Amenities or in respect of the Estate as a whole

(k) all rates taxes charges assessments and outgoings in respect of the Amenities or in respect of the Estate as a whole

(l) the cost of any insurance premium in insuring against any liability (including third party liability of the Transferor and/or the Management Company) in connection with the Amenities and or the Estate and insuring against employer's liability to anyone employed to provide any

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of these services

(m) VAT where chargeable on any of the Service Costs to the extent it cannot be recovered by the Management Company

(n) the cost of all maintenance and other contracts entered into for the provision of the Services

(o) the cost of employing or arranging for the employment of staff (and the termination of that employment) in connection with the maintenance management or security of the Estate or the provision of the Services including all incidental expenditure such as (without limitation) that relating to: insurance pension and welfare contributions the provision of clothing tools and equipment the provision of residential and other accommodation and a notional rent for that accommodation reasonably determined by the Management Company

(p) the cost of obtaining any professional advice which may from time to time be required in relation to the management of the Estate and the provision of Services

(q) the fees of managing agents retained by the Management Company for the following matters namely the management of the Estate the provision of Services and the collection of Service Charge and Advance Payment due from transferees of other Units (or where any of those tasks is carried out by the Management Company a reasonable charge for the Management Company for that task)

(r) the cost of preparing and auditing Service Charge accounts (whether carried out by the Management Company or by the Management Company's surveyors or accountants)

(s) any provision for emergency or anticipated future expenditure in relation to the Services which may in the Management Company's reasonable opinion be appropriate

(t) any costs charges expenses or outgoings which the Management Company may expend or incur on any matter relating to any facility or structure benefiting the Estate from time to time and not comprised exclusively within the Estate including without limitation all such matters incurred or expended in connection with the Transfer and matters arising therefrom or any Utilities Arrangement (save only for the Utilities Works)

(u) the cost of carrying out any other works or providing services or facilities of any kind whatsoever (but not the Utilities Works) which the Management Company may from time to time reasonably consider desirable for the purpose of maintaining or modernising the services or facilities in or for the Estate and which are for the general benefit of all or substantially all of the Units

13.11.1.7 "Service Charge"

A fair proportion of the Service Costs as are conclusively decided from time to time by the Management Company's surveyor or accountant

13.11.2 Transferee's Payments of Service Charge

13.11.2.1 The Management Company will submit to the Transferee a statement of the Advance Payment

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for each Service Charge Period which will be estimated by the Management Company having regard to anticipated Service Costs for that Service Charge Period

13.11.2.2 If the estimated Advance Payment for any Service Charge Period is not received by the Transferee by the date due for payment then until it has been received the Advance Payment will be paid at a rate equal to the Advance Payment for the immediately preceding Service Charge Period

13.11.2.3 The Transferee will pay the Advance Payment to the Management Company

(a) in advance on the 31st March in each year

(b) if requested by the Management Company by monthly payments by way of Banker's Standing Order or Direct Debit or by such other method as the Management Company may reasonably require

13.11.2.4 Where there are insufficient funds available to the Management company to cover any item or items of expenditure for Services the Management Company may at any time during the Service Charge Period issue to the Transferee a demand or demands for payment in addition to any Advance Payment and the Transferee shall pay such demand or demands within 14 days of receipt

13.11.2.5 As soon as practicable after a Certificate Date the Management Company will submit to the Transferee a Certificate for the Service Charge Period ending on that Certificate Date and:

(a) if the Certificate shows that a balance of Service Charge is due from the Transferee the Transferee will pay that balance to the Management Company within 14 days after receipt of the Certificate

(b) if the Certificate shows a positive balance that amount shall either be carried forward to a Reserve Fund or credited against subsequent Advance Payments at the absolute discretion of the Management Company

13.12 Obligations of the Management Company

13.12.1 Subject to the due performance by the Transferee of his obligation to pay Service Charge in the manner herein provided the Management Company will comply with any Utilities Arrangement, carry out the Utilities Works and provide the Services (as defined in 13.11) but the Management Company will have no liability to the Transferee for any failure to comply with this paragraph:-

13.12.1.1 during any period when the Transferee is in arrears with payment of any monies due from the Transferee to the Management Company

13.12.1.2 the interruption of a Service for reasons of inspection maintenance repair or other works (in which event the Management Company will restore the Service as soon as reasonably practicable)

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13.12.1.3 failure to provide a Service due to damage breakdown inclement weather shortage of fuel or water or any other cause beyond the Management Company's reasonable control (although the Management Company will then take all reasonable steps to restore that Service or (where practicable) provide an alternative Service as soon as reasonably practicable)

13.12.1.4 withdrawal of a Service (but not in respect of any Utilities Arrangement) if the Management Company reasonably considers it no longer appropriate and

13.12.1.5 to the extent that the Management Company has insufficient funds

13.12.2 ENFORCEMENT OF COVENANTS

If so required by the Transferee to enforce the covenants and conditions in favour of the Management Company entered into or to be entered into by the transferees of other Units on the Estate and which are given in the same or similar form to the covenants and conditions contained herein on the part of the Transferee so far as the same affect the Transferee and subject to the Transferee indemnifying the Management Company against all costs and expenses in respect of such enforcement and (if so required by the Management Company) giving reasonable security for such costs and expenses

13.13 THIS DEED OF COVENANT is made the day of

BETWEEN:-

(1) ANNINGTON PROPERTY LIMITED of Windsor House 50 Victoria Street London SW1H ONW ("the Transferor")

(2) of ("Management Company") and

(3) ] of [ ] ("Transferee")

WHEREAS:-

(A) The Transferee has agreed to purchase the property known as Unit No. [ ] [Site] ("Property") as the same is more particularly described in the Transfer date 19 and made between (1) the Transferor and (2) the Management Company and (3) [Original Transferee] ("Original Transfer")

(B) The Transferee has agreed to enter into this Deed in the manner hereinafter appearing pursuant to the requirements of the Original Transfer

NOW THIS DEED WITNESSES and it is hereby agreed and declared as follows:-

1 Reference to the Transfer the Management Company and/or the Transferee includes (where the context so admits) their respective successors in title

2 Where the Transferee is two or more persons obligations expressed or implied to

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be made by or with the Transferee are deemed to be made by or with the Transferee jointly and severally

3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa

4 The Transferee hereby covenants with the Transferor and the Management Company that he will on and with effect from completion of the transfer of the Property or upon the devolution of the legal estate therein howsoever arising of the Property to the Transferee observe and perform all the covenants restrictions and obligations on the part of the Transferee contained in the Original Transfer to the same extent (mutatis mutandis) as if he was a party to the Original Transfer

5 The Transferee hereby covenants with the Transferor and the Management Company that he will include in any contract for the transfer of the Property a condition precedent that the intending transferee shall enter into a Deed of Covenant with the Transferor and the Management Company in the terms (mutatis mutandis) of this Deed and that the intending transferee shall bear all costs incidental to the preparation and execution of such Deed including any Stamp Duty payable thereon

IN WITNESS whereof the Transferee has executed this deed the day and year first above written

SIGNED as a Deed by the said )
[ ] in the presence of: )

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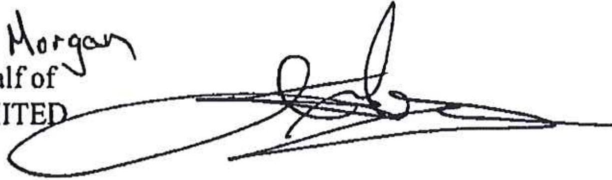
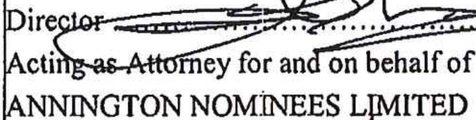
**14.** ***The Transferors and all other necessary parties (including the proprietors of all the titles listed in panel 3) should execute this transfer as a deed using the space below and sign the plan.*** *Forms of execution are given in Schedule 3 to the Land Registration Rules 1925. If the transfer contains transferees' covenants or declarations or contains an application by them (e.g. for a restriction), it must also be executed by the Transferees.*

SIGNED as a DEED by Janet Morgan
acting as attorney for and on behalf of
ANNINGTON PROPERTY LIMITED
in the presence of:-

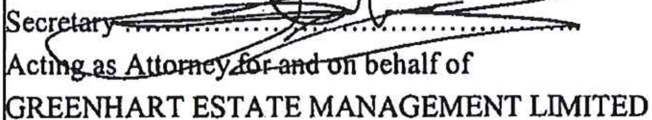


Witness: M Jones
Name: Mary Jones
Address: c/o Eversheds, 1 Callaghan Square
Cardiff CF10 5BT
Occupation: Legal Assistant

SIGNED as a DEED by
RINGWOOD CRESCENT RESIDENTS COMPANY LIMITED
acting by:



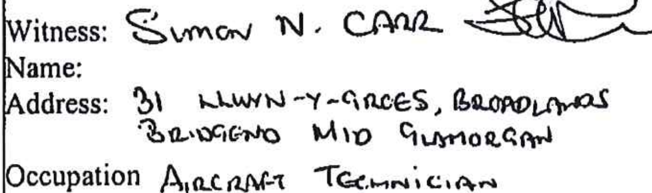
Director ..............................
Acting as Attorney for and on behalf of
ANNINGTON NOMINEES LIMITED



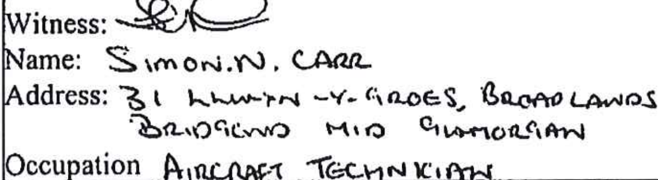
Secretary ..............................
Acting as Attorney for and on behalf of
GREENHART ESTATE MANAGEMENT LIMITED

SIGNED as a DEED by
Santokh Singh Bamrah
In the presence of:

Witness: Simon N. Carr
Name:
Address: 31 Llwyn-y-Groes, Broadlands
Bridgend Mid Glamorgan
Occupation Aircraft Technician



SIGNED as a DEED by K. Bamrah
Kamaltij Kaur Bamrah
In the presence of:



Witness:
Name: Simon.N. Carr
Address: 31 Llwyn-y-Groes, Broadlands
Bridgend Mid Glamorgan
Occupation Aircraft Technician

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RINGWOOD CRESCENT

CLWYD WAY

CLOSE

BURLEY PLACE

AREA OF PROPOSED FUTURE INFILL

AREA OF PROPOSED FUTURE INFILL

El Sub Sta

EAST CAMP
R6 & R7

ESTATE PLAN

N.T.S

BRG07_R7_ESTATE

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25

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1

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**Witness Statement of Stephen Jefferson**

1. My name is Stephen Jefferson and I am a solicitor employed by Eversheds Sutherland (International) LLP. I am acting for Annington Property Limited ("Annington") in connection with its objection against an application to register part of its land at Ringwood Crescent, St Athan as a town and village green ("TVG Application").

2. The land subject to the TVG Application is shown edged red on the plan appended at **exhibit SJ1** and referred to herein as "the Site".

3. I visited the Site on 18 April 2023 and took a number of photographs of the signs around the Site.

4. I have marked up a plan which is appended at **exhibit SJ2** and identifies the location of the various signs around the Site from points '1' to '7' (the "Signage Plan").

5. I further append the following exhibits:

5.1 **Exhibit SJ3** of the photograph I took on 18 April 2023 of the sign marked at point 1 on the Signage Plan;

5.2 **Exhibit SJ4** of the photograph taken of the sign marked at point 2 on the Signage Plan;

5.3 **Exhibit SJ5** of the photograph taken of the sign marked as point 3 on the Signage Plan;

5.4 **Exhibit SJ6** of the photograph taken of the sign marked as point 4 on the Signage Plan;

5.5 **Exhibit SJ7** of the photograph taken of the sign marked as point 5 on the Signage Plan;

5.6 **Exhibit SJ8** of the photograph taken of the sign marked as point 6 on the Signage Plan;

5.7 **Exhibit SJ9** of the photograph taken of the sign marked as point 7 on the Signage Plan.

6. The Signage Plan and the accompanying photographs at **exhibits SJ3 – SJ9** show that the notices at the locations numbered 1, 2, 5 and 7 erected at the Site state that:

> *"This is private property and there is no public access or right of way without the permission of the owner*
>
> *The owner hereby permits access by members of the public onto the land for recreational purposes only at their own risk*
>
> *This permission may be revoked at any time."*

6.1 The Signage Plan and the accompanying photographs show that the notices at the locations numbered 3, 4 and 6 erected at the Site state that:

> *"Dogs are not allowed to be exercised either on or off the leash in this childrens play area."*

7. I also exhibit the following extracts from Google street view:

7.1 **Exhibit SJ10** showing an extract from google street view marked as being taken in September 2009 showing the sign marked at point 1 on the Signage Plan;

7.2 **Exhibit SJ11** showing an extract from google street view marked as being taken in September 2009 showing the sign marked at point 2 on the Signage Plan;

7.3 **Exhibit SJ12** showing an extract from google street view marked as being taken in September 2009 showing the sign marked at point 3 on the Signage Plan;

7.4 **Exhibit SJ13** showing an extract from google street view marked as being taken in September 2009 showing the sign marked at point 4 on the Signage Plan;

7.5 **Exhibit SJ14** showing an extract from google street view marked as being taken in September 2009 showing the sign marked at point 5 on the Signage Plan;

7.6 **Exhibit SJ15** showing an extract from google street view marked as being taken in September 2009 showing the sign marked at point 6 on the Signage Plan;

7.7 **Exhibit SJ16** showing an extract from google street view marked as being taken in September 2009 showing the sign marked at point 7 on the Signage Plan;

8. I note that the signs shown on the google street view appear to be the same signs as those that I witnessed and took photographs of on my visit to the Site on 18 April 2023.

9. It will also be noted from **exhibit SJ15** that there is a children's play park shown on the image of the Site taken from September 2009. However, I noted from my visit of the Site on 18 April 2023 that the children's play area is no longer there and the area is now covered by grass.

I believe that the facts and matters contained in this statement are true

Signature (of person making this statement):

Print full name: STEPHEN JEFFERSON

Date: 20th April 2023

# Exhibit SJ1

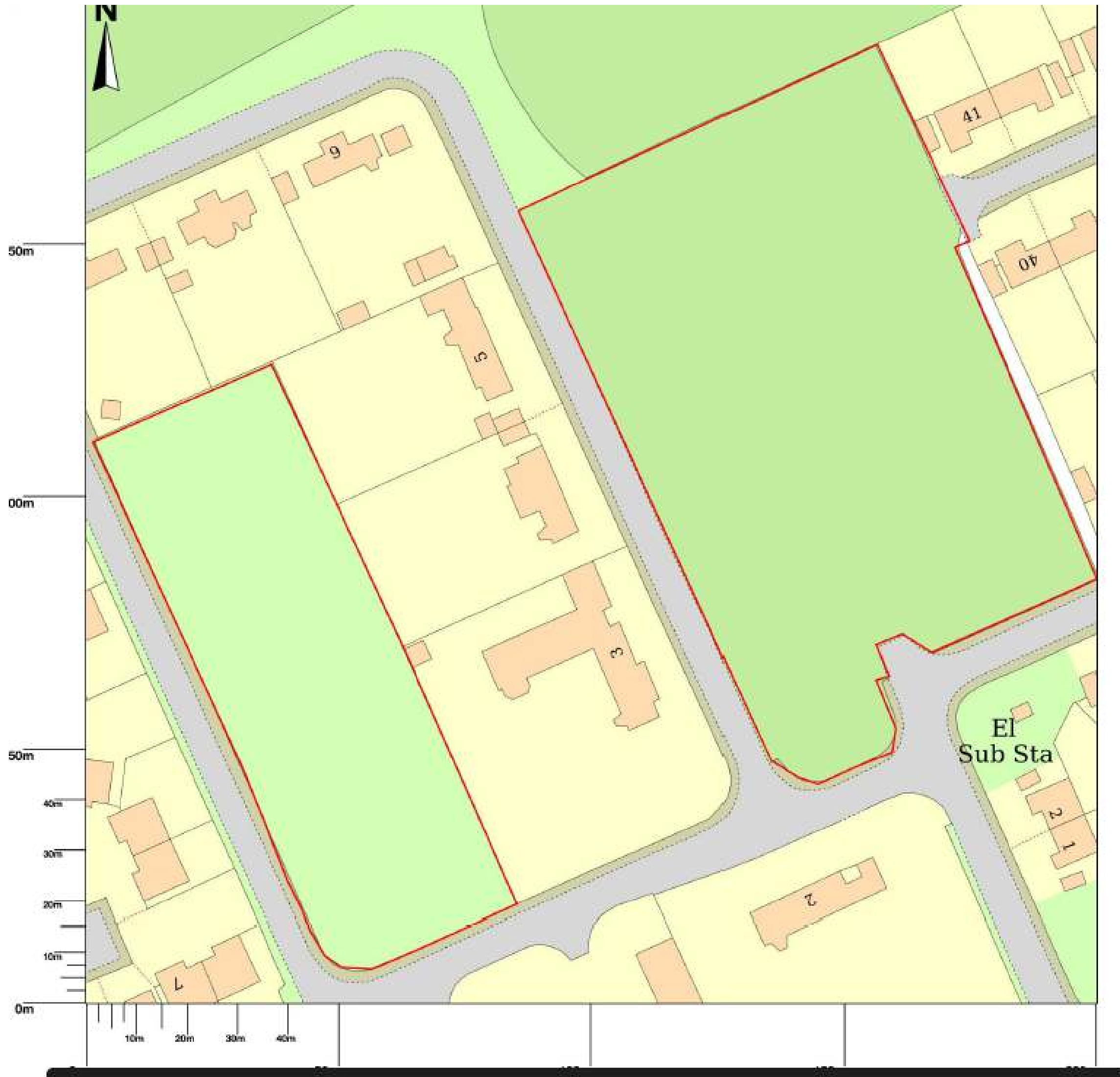
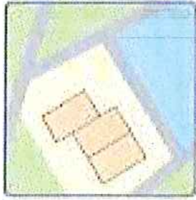


**Exhibit SJ2**



UK Planning Maps

# Ringwood Crescent

N

Scale 1:1250

© Crown copyright and database rights 2023 OS 100054135. Map area bounded by: 301546,169387 301746,169587. Produced on 18 April 2023 from the OS National Geographic Database. Supplied by UKPlanningMaps.com. Unique plan reference: p4b/uk/937989/1265406

**Exhibit SJ3**

Photograph taken on 18 April 2023 – Point 1 on the Signage Plan

**Exhibit SJ4**

Photograph taken on 18 April 2023 – Point 2 on the Signage Plan

**Exhibit SJ5**

Photograph taken on 18 April 2023 – Point 3 on the Signage Plan

**Exhibit SJ6**

Photograph taken on 18 April 2023 – Point 4 on the Signage Plan

**Exhibit SJ7**

Photograph taken on 18 April 2023 – Point 5 on the Signage Plan

**Exhibit SJ8**

Photograph taken on 18 April 2023 – Point 6 on the Signage Plan

**Exhibit SJ9**

Photograph taken on 18 April 2023 – Point 7 on the Signage Plan

**Exhibit SJ10**

Google Street View Image dated September 2009 – Point 1 on the Signage Plan

**Exhibit SJ11**

Google Street View Image dated September 2009 – Point 2 on the Signage Plan

**Exhibit SJ12**

Google Street View Image dated September 2009 – Point 3 on the Signage Plan

**Exhibit SJ13**

Google Street View Image dated September 2009 – Point 4 on the Signage Plan

**Exhibit SJ14**

Google Street View Image dated September 2009 – Point 5 on the Signage Plan

**Exhibit SJ15**

Google Street View Image dated September 2009 – Point 6 on the Signage Plan

**Exhibit SJ16**

Google Street View Image dated September 2009 – Point 7 on the Signage Plan

Neutral Citation Number: [2023] EWHC 1154 (Admin)

Case Nos: CO/889/2022; CO/2389/2022

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/05/2023

**Before** :

**THE HON. MR. JUSTICE HOLGATE**

- - - - - - - - - - - - - - - - - - - -

**Between :**

**THE KING on the application of**

| | |
|---|---|
| **(1) ANNINGTON PROPERTY LIMITED**<br>**(2) ANNINGTON LIMITED**<br>**(3) ANNINGTON HOLDINGS (GUERNSEY) LIMITED** | **Claimants** |

**- and -**

| | |
|---|---|
| **THE SECRETARY OF STATE FOR DEFENCE** | **Defendant** |

**- and -**

**(1) UK GOVERNMENT INVESTMENTS LIMITED**
**(2) DEFENCE INFRASTRUCTURE HOLDINGS LIMITED**

**Interested Parties**

**- and -**

Neutral Citation Number: EWHC 1155 (Ch)

Claim No: PT-2022-000206

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**PROPERTY, TRUSTS AND PROBATE LIST (CH D)**

**ANNINGTON PROPERTY LIMITED**

**Claimant**
**(Defendant to Counterclaim)**

**- and -**

**THE SECRETARY OF STATE FOR DEFENCE**

**Defendant**
**(Counterclaimant)**

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Monica Carss-Frisk KC, Jason Pobjoy and Emmeline Plews** (instructed by **Linklaters LLP**) and **Zia Bhaloo KC**, **James Maurici KC**, **Toby Watkin KC**, **Mark Sefton KC** and **Tamsin Cox** (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimants**
**Sir James Eadie KC, Ivan Hare KC, David Lowe, Tom Cleaver and Daniel Cashman** (instructed by **Slaughter and May**) and **Joanne Wicks KC**, **Philip Rainey KC**, **Adam Rosenthal KC**, **Ceri Edmonds** and **Daniel Petrides** (instructed by **Forsters LLP**) for the **Defendant**. The **Interested Parties** did not appear and were not represented.

Hearing dates: 13, 14, 15, 16 and 17 February 2023
- - - - - - - - - - - - - - - - - - - - -

# JUDGMENT APPROVED

This judgment was handed down remotely at 12 noon on 15 May 2023 by circulation to the parties or their representatives and by release to the National Archives.

**Mr. Justice Holgate**

1. This judgment is set out under the following headings: -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## Introduction

2. The central issues in these claims are whether the Secretary of State for Defence ("the SoS") is entitled to enfranchise 8 properties under the Leasehold Reform Act 1967 ("the 1967 Act") and, if so, whether his decisions to exercise those rights are unlawful on public law grounds. There are additional issues about whether the SoS has adopted a wider scheme for serving further enfranchisement notices to acquire the "married quarters estate" ("MQE") and, if so, whether that scheme is unlawful.

3. In 1995 the Ministry of Defence ("MoD") decided to pursue a bulk sale to the private sector of about 80% of its service family accommodation ("SFA"). There were excluded from the sale properties in Scotland and Northern Ireland and about 6,300 properties in England and Wales. The MQE refers to the portion of the SFA which in due course was sold. The MoD's objects included raising funds to enable it to upgrade the condition of the accommodation, to dispose of surplus properties and to secure "value for money" ("VFM") through a competitive sale.

4. A tender exercise took place attracting 19 bidders. On 3 September 1996 the MoD announced that Annington Properties Limited ("APL") was the successful bidder. Contracts for a sale and leaseback agreement were exchanged on 24 September 1996 ("the sale agreement") and completion took place on 5 November 1996. The commercial documents are complex and what follows is based upon an agreed summary.

5. On 5 November 1996 the SoS granted 740 999-year headleases of 765 sites across England and Wales compromising 55,060 residential units. The SoS retained the freehold reversion to those headleases. APL paid a purchase price to the SoS of £1.662 billion.

6. On the same date APL leased back each of the sites to the SoS by underleases, each for a term of 200 years. For the first 25 years of this term the rent payable by the SoS was, in effect, the aggregate open market rental value of the residential units on each site, discounted by 58% to reflect MoD's responsibility for maintenance and the cost of voids, the bulk nature of the transactions and the strength of the MoD's covenant.

7. The SoS disposed of surplus properties through two routes. First, the SoS immediately transferred the freehold of over 55 sites comprising over 2,350

residential units to APL. Second, the SoS has the right (subject to various conditions) to terminate an underlease of a site or part thereof at any time on 6 months' notice. These are referred to as "released units" or "handbacks". Upon termination APL has the right to purchase the SoS's freehold reversion of the premises handed back for a nominal sum of £500. Although the underleases do not impose on the SoS a repairing obligation during the 200-year term, he is obliged to ensure that any premsies handed back is in good and tenantable repair.

8. Pursuant to the "master agreement" between SoS and APL dated 5 November 1996, the SoS was obliged to hand back a total of 13,213 residential units by 2021 in staged releases. This took place under the SoS's break clause in the underleases. The SoS satisfied that obligation by 2007.

9. Under a profit-sharing agreement entered into on 5 November 1996 the SoS was entitled to receive a share of the increase in property values on certain disposals by APL, but only for the first 15 years and on a decreasing scale. This resulted in the SoS receiving a further £161.2m.

10. The rent payable by the SoS under the underleases was subject to two different review mechanisms. First, "beacon rent reviews" were to be carried out on a 5-year rolling basis beginning in 1999. A review would be carried out for 4 roughly equal tranches of the MQE in each of four years (with no review in the fifth year). The open market rent was assessed for a representative unit, the "beacon unit", specified in each underlease and the percentage change in that rent applied to the site rent as a whole, subject to the 58% reduction.

11. Second, a "site review" was to be carried out of approximately 25% of all sites in each of the years 2021 to 2024. Each review was to determine the open market rent which a hypothetical lessee would pay for a lease in substantially similar terms as the underlease, but subject to certain assumptions and disregards.

12. Mr. Stephen Leung is the Chief Financial Officer of APL. He explains in his first witness statement that the MQE is the core asset of the Annington Group (to which the claimants belong). Most of the Group's revenue, and its value to investors, derives "from the high degree of cash flow certainty of its interest in the MQE portfolio", including the rental income from SFA leased to the SoS. Terra Firma manages the funds which represent the majority owners of the Group. Terra Firma intended that Annington Limited and its subsidiaries (including APL) would be sold before the end of 2022 when those funds were due to expire, rather than seeking to extend the life of those funds by up to one or two years (i.e. end 2023 or 2024). To that end Terra Firma has been preparing for the sale since 2017. The site rent reviews were one of the key steps in those preparations (paras. 1.1, 2.2, 2.4, and 3.1 to 3.4). Not surprisingly, Mr. David Thomas, the in-house counsel of Terra Firma, states that the company viewed the conclusion of the rent review process as a pre-condition for the sale (third witness statement para. 5.5).

13. As the first "site review" approached there remained 488 underleases. On 7 March 2019 APL and the SoS entered into two agreements. First, an arbitration agreement was intended to provide a faster process for the site review. The 488

sites were divided between 27 "baskets", each of which was judged to share similar characteristics, and a "representative site" identified for each basket. An adjustment factor was to be derived from the reviewed rent for each representative site and then applied to determine the site rents for the other sites in the same basket.

14. Second, the parties entered into a "Dilapidations and Handback Agreement" ("the D&H Agreement"), whereby the SoS agreed to release to APL a minimum of 3,500 residential units at a rate of 500 units a year for 7 years (i.e. to 31 March 2026). APL agreed to waive liability for dilapidations of up to £7,000 per unit, up to a maximum of £3.5m a year. After 31 March 2026 the defendant is to continue to release units at the same rate (clause 2.3), but either party may request an increase or decrease in that rate, which is to be considered by the parties in good faith having regard to their respective commercial interests (clause 2.4). The dilapidations relief is to continue beyond 2026, provided that the SoS continues to release units at the agreed rate (clauses 3.2 and 3.4).

15. The arbitral tribunal comprised Lord Neuberger of Abbotsbury, Professor Graham Chase FRICS and Mr. Martin Butterworth FRICS. They issued 5 awards between December 2019 and July 2021. The rent reviews proceeded on an agreed assumption that neither APL nor the SoS could be considered as parties to the hypothetical letting.

16. In September 2019 the solicitors for APL and the MoD had agreed that the bid of the hypothetical lessee could take into account any entitlement to enfranchise under the 1967 Act. In their third award (dated 18 June 2020) the tribunal set out the approach to be taken to that issue.

17. In their fourth award (dated 6 October 2020) the tribunal determined the site review rents for the representative sites in "batch 1", comprising 4 of the 27 representative sites to be dealt with in the arbitration. One of those sites was located at Cranwell and included two of the dwellings in respect of which enfranchisement notices have been served. In their fifth award (dated 5 July 2021) the tribunal determined site review rents for the eight sites in "batch 2."

18. At this point site rents for the remaining 15 representative sites were still to be assessed. It was expected that the process would continue until 2023. The arbitration proceedings were hard fought. The parties exchanged over 50 expert reports and hearings took place over many days. The legal submissions were extensive. APL alone has spent around £60m in costs. Accordingly, in April 2021 Mr. Guy Hands, Chief Executive Officer of Terra Firma, the fund manager controlling all the voting rights of the shares in Annington Holdings (Guernsey) Limited ("AHGL") (see below), proposed that the parties should work together to find an alternative solution for resolving the site reviews.

19. Following negotiations, APL and the SoS executed the "settlement agreement" dated 15 December 2021. The parties agreed to dispose of the arbitral proceedings by consent. The site rent reviews already determined by the tribunal were treated as being null and void. The parties agreed a "global adjustment factor" of 49.6% for all representative sites, which would apply from the relevant review date until the date of the next site review. That review would

take place in 30 years' time in place of the 15 years provided for in the underleases. The D&H Agreement was varied so that with effect from 1 April 2022, the minimum number of residential properties to be released by the SoS would be reduced from 500 to 375 units a year on a 2-year average (subject to a minimum of 250 units in any one year). The SoS also agreed to release 85 dilapidated units at Uxbridge, with APL waiving the SoS's liability for dilapidations, and 87 "demolished units" at Brize Norton.

20. On 16 December 2021, the day after the settlement agreement, the SoS served the first of his 8 enfranchisement notices under s.5 of the 1967 Act. The first related to 1 Sycamore Drive, Cranwell, Sleaford. It was addressed to APL as the immediate landlord and to the SoS as the registered legal proprietor of the freehold reversion. A second s.5 notice dated 28 March 2022 was served by the SoS in relation to 3 Sycamore Drive, Cranwell (1 and 3 Sycamore Drive are referred to as "the Cranwell properties"). Between 8 and 13 April 2022 there followed 6 notices in relation to 6 houses which together formed the site 16 to 21 Belvedere Road, Bristol ("the Bristol properties"). All 8 notices claimed a right to enfranchise pursuant to s.1AA of the 1967 Act (see below).

21. APL had no indication from the MoD before 16 December 2021 of its intention to serve enfranchisement notices. The MoD treated the matter as being strictly confidential within the department. Subsequently, APL served notices in reply disputing the SoS's right to enfranchise. I note that the claimants had previously taken advice in 2005, 2012, between 2017 and 2019 and in 2021 on the risk of the SoS pursuing a claim for enfranchisement (Agreed Statement of Facts ("ASF") paras. 48 and 56).

22. Mr. Leung explains in his witness statements that service of the enfranchisement notices has caused the sale of Annington Limited and its subsidiaries to be deferred. This is because of the uncertainty generated by the risk of enfranchisement. For example, investors with a low cost of capital seeking an income stream with relative certainty in the long term are unlikely to bid for the company and other bids would be at a significantly reduced level. In addition, for so long as the sale is delayed the value of APL's cashflows is sensitive to increases in interest rates which further reduce valuations.

23. In May 2019 internal MoD documents began to explore the possibility of an enfranchisement claim in the context of buying out APL's interest in the MQE. It is necessary to understand how this had come about.

24. In 1996 the MoD had been satisfied that the agreements entered into that year represented VFM. In August 1997 the National Audit Office ("NAO") issued a report "The Sale of the Married Quarters Estate." It concluded that the sale process had been "well managed" and "competitive". "Proceeding with the sale rested ultimately on securing a competitive price for assets that the Department did not need to own and other policy benefits". The NAO noted that in most respects risks were transferred to APL, that is risks associated with the release of surplus SFA and with future property values. The MoD would continue to be responsible for maintenance "and bear the risk associated with possible volatility in market rents."

25. From at least 2009 the NAO were expressing concerns about poor maintenance of the MQE and the high proportion of SFA properties that were void.

26. In 2016 the NAO stated in "Delivering the Defence Estate" that budgetary pressures had resulted in the MoD making decisions that had offered "poor value for money in the longer term, including the 1996 decision to sell and lease back the majority of Service Family Accommodation, which is now limiting the Department's ability to manage this element of the estate cost-effectively." The NAO noted that the MoD had had to pay higher rental costs to APL and had not benefited from the rise in house prices. Because of a lack of investment in SFA, the average dilapidation payment on residential property "handed back" to APL was about £14,000 per unit, which was limiting its ability to manage the SFA cost-effectively.

27. In January 2018 the NAO published its report "The Ministry of Defence's arrangement with Annington Property Limited". On the topic of the "original value for money of the sale" in 1996, the report stated that the MoD had committed itself to paying rent for up to 200 years, in return for an up front cash payment, when it would have been cheaper to retain ownership. So the merits of the deal had rested on policy benefits, such as improving the estate and incentives to dispose of surplus properties. Since then the MoD had incurred a loss of between £2.2 billion and £4.4 billion, owing to significantly higher increases in house prices and rentals than had been expected. That loss would increase if rents and house prices increased above the level of general inflation over the remainder of the 200-year term. The main external risks to APL had been significant falls in house prices and rents. Originally the MoD had expected APL to achieve an annual rate of return of 9.7% (including inflation), whereas the actual rate of return to end March 2017 had been 13.4%. The then current valuation of the MQE portfolio in APL's 2016-2017 accounts was £7.3 billion.

28. The NAO stated that the MoD had retained a number of risks and responsibilities, such as maintenance and voids, that would normally be taken on by a landlord of a residential lease. The estate had not been kept in good repair and the vacancy rate was 19%, almost twice the MoD's target. The MoD pays for empty properties and had not managed those risks well. Most of the properties handed back to Annington had been declared surplus before 2004 and the size of the estate had not fallen in line with more recent reductions in the armed forces. The NAO also expressed the view that APL and the MoD had not worked together to generate greater value from the MQE. The report noted that the upcoming rent reviews could significantly increase the MoD's rental costs. Achieving VFM in the future would be closely linked to the level of ongoing adjustments in the rents paid on the MQE.

29. On 13 July 2018 the Public Accounts Committee published its report "The Ministry of Defence's contract with Annington Property Limited". In their summary the Committee said:

> "In 1996, the Ministry of Defence sold most of its married quarters estate (now referred to as service family estate) to Annington Property Limited and agreed to rent it back for up to

200 years. The deal has turned out to be disastrous for taxpayers, offering no protection against the private sector making excessive gains at the taxpayer's expense. Worse could follow because the rent, which has been subject to a 58% downwards adjustment to date, is to be reviewed from 2021. Depending on the outcome of negotiations, the Department's costs could increase significantly at a time when the defence budget is already stretched."

30. The Committee's conclusions and recommendations began with the following:

> "**1. The Department's 1996 deal with Annington Property Limited provided little protection for taxpayers, who have lost billions of pounds, while enabling Annington to make excessive returns.** The deal comprises a sale and leaseback arrangement with the private sector involving over 55,000 residential properties. The Department expected Annington to make a reasonable return, but the current annual return of 13.4% is significantly out of line with the limited risks that Annington took on, fuelled by greater than forecast house price rises. In contrast, as a result of rent payments and the loss of the house price gains, the Department is between £2.2 billion and £4.2 billion worse off so far, than if it had retained the estate. The Department has also not done enough to protect long-term value for money; clawbacks on increases in the value of house prices ended 15 years into the 200 year deal, it is paying rent on around 20% of the retained Annington estate which it holds vacant, and it has only surrendered a small number of properties since 2004. The Department and Annington have failed to collaborate for mutual benefit to identify opportunities for developing the estate in line with the objectives of the deal, although both sides told us relations had improved recently.
>
> **Recommendations:**
>
> ***In its response to this report, the government should confirm that all its future deals will contain effective protections for the taxpayer that were noticeably absent in this sale. In respect of the Annington deal, the Department must make the most of a bad situation. As well as securing the best possible outcome from the rent negotiations, it should work with Annington to extract the maximum value from the estate, including via estate development opportunities, options to release sites, and agreements around the use of utilities***." (original emphasis)

31. On behalf of the MoD Ms. Kate Harrison[1] summarises the Ministry's consideration of VFM issues in relation to the MQE (e.g. paras. 3.10, 4.4 to 4.20, 12.1 to 12.4, 13.10 to 13.13, and 21.1 to 21.6 of first witness statement). It was important to achieve VFM in the site rent reviews. But achieving VFM

[1] See [62] below.

from the provision of SFA from the MQE in the long term posed problems. The MQE is too large for the MoD's current SFA requirements. In 2015 the MoD announced that the size of the armed forces would be reduced to 82,000 and then on 23 March 2021 that target was further reduced to 72,500 by 2025. Not all members of the armed forces require SFA and many are based overseas. There are 48,000 SFA units of which about 38,000 currently form the MQE provided by APL. The MoD struggles to meet the huge expense of maintaining MQE properties. There are two consequences. First, the standard of repair may be unsatisfactory and second, disrepair has operated as a disincentive for the MoD to hand back SFA to APL. Even with the relief available under the D&H Agreement (see [14] above), liability to APL for dilapidations is a budgetary constraint resulting in high numbers of vacant units, for all of which the SoS must pay rent to APL. The sale and leaseback arrangements represented increasingly poor VFM for the taxpayer and the SoS lacked commercial levers to improve that value.

32. Ms. Harrison explains that there were two potential methods for exiting the lease arrangements. The first was to hand back units to APL that were no longer required. The second was to buy back SFA from APL which continue to be required, either at open market values or by enfranchisement. In the rent review proceedings the hypothetical underlessee's right to enfranchise had stimulated investigation by the MoD of the possibility of the SoS being entitled to enfranchise in the real world. If the result of the 8 initial notices, treated as test cases, was that the price payable to APL would be less than the SoS's liabilities for renting SFA from APL, the public sector net debt ("PSND") would be reduced and there would be VFM. This would offer the SoS an alternative means of financing the provision of SFA to leasing. The concern was how best to manage the MoD's financial obligations in the future, regardless of the profits that APL were making (see also Mr. Razzell's witness statement paras. 8.1 to 8.3). Decisions to enfranchise would be taken on a site-by-site basis and considered as one strategy amongst others, including accelerated handback to APL and building SFA on MoD-owned land. These strategies were not mutually exclusive. The MoD considered that the existing contractual arrangements gave the Ministry no commercial leverage in its dealings with APL and that enfranchisement could provide that leverage. An ability to acquire properties at less than open market value would put significant commercial pressure on APL, particularly if its owners were intending to dispose of their interests.

33. The MoD has accepted that aspects of the arbitration agreement in 2019 and the settlement agreement in 2021 represented VFM as far as they went. But they did not alter the fundamentals of the sale and leaseback arrangements nor the view that those agreements were a bad deal and did not represent VFM (see e.g. paras. 4.20, 7.2 and 26.5 to 26.8 of the first witness statement of Ms. Harrison and paras. 5.4 to 5.8 of the witness statement of Mr. Razzell[2]).

34. At a meeting with officials on 5 May 2020 the SoS recognised that the deal with APL was "not a good one" and was keen to explore how the MoD could extricate itself by enfranchisement or by buying back the properties. In a submission dated 20 May 2020, the Minister was advised that leasehold

[2] See [63] below.

enfranchisement could be a potential tool for the MoD either to negotiate better terms with APL or to buy out its interest in some or all of the estate.

35. It is common ground that at the time of the 1996 sale and leaseback the SoS could not make an enfranchisement claim because the 1967 Act required the tenant to occupy the home as his only or main residence. Plainly, the SoS could not satisfy that test. But the residence requirement was abolished by s.138 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

36. However, the decision of the Court of Appeal in *Gratton-Storey v Lewis* [1987] 19 HLR 546 presented the SoS with a different problem. The Court held that on a proper construction of the legislation, a sub-tenant who does not own the freehold reversion of the property can serve a notice to enfranchise in order to acquire both the freehold and any intermediate interest. But where the subtenant already owns the freehold, the 1967 Act does not enable him to enfranchise simply in order to buy any intermediate interest. The SoS reserves the right to argue in a higher court that *Gratton-Storey* was wrongly decided but, of course, it is binding on me. The court suggested that the inability to enfranchise in that situation might have been an unintended omission. But if so, Parliament has not intervened to fill that perceived lacuna, despite having made amendments to the 1967 Act on several occasions.

37. Nevertheless, the court recognised (at p.548) that a sub-tenant who owns the freehold could overcome this issue by transferring his freehold to a nominee who would, of course, be under the control of the sub-tenant. Mr. Sefton KC accepted on behalf of APL that that proposition is correct.

38. Accordingly, the SoS decided to create an analogous structure. He decided to incorporate a private limited company under the Companies Act 2006, Defence Infrastructure Holdings Limited ("DIHL"), as a special purpose vehicle ("SPV") to hold the freehold of the properties to be enfranchised. DIHL is under the absolute control of the SoS. The SoS was and remains its sole shareholder. The initial two directors, and the subsequent directors, were or are senior civil servants in the MoD. On 18 December 2020 the Minister of State for Defence Procurement ("MinDP") wrote to the Chief Secretary to the Treasury asking for approval of the establishment of DIHL as a SPV and for proceeding with a test case involving a small number of dwellings. On 1 February 2021 the Chief Secretary gave that approval on the basis that the SPV was to be used solely as a "proof of concept".

39. In the meantime 1 and 3 Sycamore Drive, Cranwell had been identified as initial test cases. They were chosen because the tribunal's award determining rent for the representative sites in batch 1, included the Cranwell site and the rent determined for that site included any upward effect on rental value of a potential claim by the hypothetical lessee to enfranchise (Mr. Razzell's witness statement para. 9.6).

40. On 12 February 2021 the SoS transferred the freehold of the Cranwell properties to DIHL for the nominal sum of £1.

41. In a submission dated 8 October 2021 the MinDP was provided with a long-term commercial strategy for dealing with APL which included exiting the arrangements with Annington as far as possible. It was also explained how enfranchisement could reduce the PSND. On 19 October 2021 the SoS and the MinDP gave approval to pursue enfranchisement of the Cranwell properties.

42. On 20 October 2021 Terra Firma sent the MoD its detailed settlement proposals for the site review arbitrations. The MinDP and the Chief Secretary approved the settlement on 24 November and 6 December 2021 respectively.

43. On 2 December 2021 officials advised the MinDP that Terra Firma might be intending to sell its interest in Annington in the market soon after reaching a settlement with the SoS. The SoS should not agree a settlement with Annington and then Terra Firma sell its interest before the service of any enfranchisement notices. A purchaser would be likely to be more highly leveraged than Terra Firma thus reducing the SoS's room for further negotiation. It would also expose the SoS to questions as to why Terra Firma had been allowed to crystallise such significant profits. Accordingly, the MoD should launch its initial test enfranchisement cases immediately after the settlement agreement had been completed.

44. On 16 December 2021, having already served the first s.5 enfranchisement notice in respect of 1 Sycamore Drive, Cranwell earlier that day, the SoS applied to HM Land Registry to register the transfer of the freehold of the two Cranwell properties from the SoS to DIHL. That transfer was registered on 26 January 2022, showing the date of registration as 16 December 2021.

45. On 28 January 2022 the SoS served on APL (as immediate landlord) and DIHL (as freeholder) a s.5 enfranchisement notice in relation to 3 Sycamore Drive, Cranwell.

46. Having obtained the approval of the MinDP to pursue further test cases, the SoS transferred the freehold of the Bristol properties to DIHL. On 1 April 2021 DIHL was registered by HM Land Registry as the freehold owner of those properties and the 6 enfranchisement notices were served between 8 and 13 April 2022 on APL and DIHL.

47. A further potential obstacle to the enfranchisement of the eight properties lay in s.1(1B) of the 1967 Act. If the SoS's underlease of either the Cranwell site or of the Bristol site was a business tenancy, that is a tenancy to which Part II of the Landlord and Tenant Act 1954 applies ("the 1954 Act"), then the relevant s.5 notices served in relation to dwellings on that site would be invalid. If the underlease is a business tenancy, it is common ground that the SoS is unable to satisfy the residence requirement contained in s.1(1B) of the 1954 Act.

48. The Bristol site comprises only the 6 dwellings and their gardens the subject of the enfranchisement notices.

49. The Cranwell site contains in addition to 1 and 3 Sycamore Drive, 95 other dwellings and 37 separate garage units. There are also common parts comprising *inter alia* estate roads (which are agreed to be adopted public

highways), footpaths, areas of landscaping, amenity areas, parking areas, electrical, water and gas services and drainage. On 14 December 2021 the SoS granted a sub-underlease to DIHL of those common parts for a term of 6 years at a peppercorn rent. The object was to avoid the SoS occupying areas under his 200 year underlease for purposes which could result in that underlease being treated as a business tenancy within Part II of the 1954 Act. The arbitral tribunal had suggested the use of this model in the context of the hypothetical letting it had to apply (see para. 121 of its fourth award). Schedule 1 of the sub-underlease describes the common parts as including those areas of the land in HM Land Registry title LL136823 which are used in common by DIHL, owners and occupiers of the estate, the SoS and those permitted by them to do so.

50. The sub-underlease requires DIHL to keep the common parts in good and substantial repair and condition, to maintain plant and machinery forming part of the demise in good working order (employing contractors for that purpose) and to replace any landlord's fixtures in need of replacement and beyond economic repair.

51. At the date of the sub-underlease there were already long-established arrangements for the maintenance and management of SFA units and the common parts of MQE sites across the country. On 1 May 2014 the SoS had entered into the National Housing Prime Contract ("NHPC") with Carillion Amey (Housing Prime) Limited ("Amey"). Amey was responsible for *inter alia* the maintenance and management nationally of common parts on SFA sites. Accordingly, on 14 December 2021 the SoS and DIHL also entered into an "Agreement for the outsourcing of facilities management services". The contract defined the SoS as the supplier of services and DIHL as the customer. The SoS is obliged to provide services equivalent to those provided under the NHPC (or any successor contract) in relation to the common parts demised to DIHL by the sub-underlease, but no more. Clause 5 of the outsourcing agreement requires DIHL to pay charges to the SoS equivalent to those payable under the NHPC. The SoS is to invoice DIHL for those charges and DIHL is to settle them within 30 days. Paragraph 89 of the ASF notes that, in order to address the range of services provided by Amey across the whole of the MQE, the pricing methodology under the NHPC was very detailed and complex. Amey would invoice the SoS monthly in respect of forecast prices and within 3 months of the end of each contract year the account would be reconciled to the costs actually incurred.

52. The NHPC expired on 31 March 2022 and was replaced by the National Accommodation Management Services contract and Regional Accommodation Maintenance Services contract.

53. At the time when each of the enfranchisement notices was served, DIHL had no capital, no income, no bank account and no employees. Furthermore, no invoices had been rendered or paid under the facilities management agreement dated 14 December 2021.

54. In a MoD briefing note dated 26 September 2022 proposals were made for funding DIHL in relation to the common parts of the Cranwell site. The company needed an injection of equity so that it could meet its obligations for

maintenance charges. It was estimated that the charges would amount to around £20,000 a year. In response to a request from the SoS, on 13 October 2022 the directors of DIHL resolved to allot 75,000 ordinary shares of £1 each to the SoS. Because DIHL did not yet have a bank account, the SoS held the subscription price of £75,000 to the order of DIHL. The SoS says that this working capital was required to meet the costs associated with the purpose of DIHL's business, namely property holding and management. DIHL needed working capital for the maintenance and management of the common parts demised by the sub-underlease of 14 December 2021, including landscaping and trees, communal areas (e.g. playgrounds) and parking areas and replacement of equipment.

55. The arrangements regarding DIHL could give rise to three issues: (i) whether the veil of incorporation should be pierced, (ii) whether DIHL should be treated as part of the Crown, and (iii) whether the "*Ramsay* principle" applies.

56. The circumstances in which the veil of incorporation may be pierced are limited (see *Prest v Petrodel Resources Limited* [2013] 2 AC 415). The claimants accept that DIHL's corporate veil should not be pierced, whether in relation to the transfer of the freeholds of any of the Cranwell or Bristol properties, or the sub-underlease of the common parts of the Cranwell site, or the outsourcing agreement.

57. However, APL and the claimants do contend that in view of the complete control which the SoS has over DIHL, that company should be regarded as part of, and indivisible from, the Crown or the Government (see *Town Investments Limited v Department of the Environment* [1978] AC 359). On that basis the claimants say that the freeholds of the Cranwell and Bristol properties have remained in the ownership of the Crown throughout, whether in the form of the SoS or DIHL, and that both the underlease to the SoS and the sub-underlease to DIHL are held by the Crown. The subject of the indivisibility of the Crown affects a number of the issues which the court has to decide and so I will deal with it as a discrete topic before coming to the individual grounds of challenge.

58. Separately, the claimants contend that DIHL is a SPV under the absolute control of the SoS without any separate functions, such that it cannot be treated as being in actual occupation of the common parts of the Cranwell sites. Accordingly, it is argued that those parts are in the occupation of the SoS.

## The parties, participants and proceedings

59. APL was established by Nomura International plc for the purposes of the acquisition in 1996. It is the entity that holds the portfolio of properties acquired from the SoS. Its primary business consists of selling or letting out units released by the MoD from time to time and renting out the remaining units of the portfolio to the SoS. Currently the MoD leases about 38,000 units of SFA from APL. This represents about 95% of APL's properties and generates over 90% of the rental income of the Group to which APL belongs.

60. Annington Limited ("AL") is the parent company of the Annington Group. It is a holding company and does not carry on any business. AHGL is the "indirect parent entity" of AL.

61. On 11 March 2022 APL, AL and AHGL brought their first claim for judicial review (CO/889/2022) challenging the validity of the enfranchisement notices on the Cranwell properties and the decision to issue them. The SoS was the defendant.

62. The MoD's land estate is managed by the Defence Infrastructure Organisation ("DIO"), which is an operating arm of the Ministry. Mr. Graham Dalton was Chief Executive of the DIO until April 2022 and Ms. Kate Harrison remains its Finance Director. Both were directors of DIHL during the relevant period.

63. UK Government Investments Limited ("UKGI") is wholly owned by the Solicitor for the Affairs of HM Treasury as nominee for HM Treasury. It is an arm's length body with the objectives of providing corporate finance and corporate governance advice to government departments and their arm's length bodies. UKGI supplied the MoD with corporate finance and commercial advice in relation to the site rent review process and advice to the MoD on enfranchisement issues and the test cases. Mr. Robert Razzell is an Executive Director and the Chief Financial Officer of UKGI.

64. UKGI and DIHL are interested parties in the judicial review CO/889/2022.

65. On 9 May 2022 Choudhury J granted permission for the claimants to apply for judicial review in CO/889/2022.

66. On 5 July 2022 the claimants brought their second claim for judicial review (CO/2389/2022) challenging the validity of the enfranchisement notices on the Bristol properties and the decision to issue them. These proceedings are between the same parties as in the first judicial review.

67. On 11 March 2002 APL also issued a claim in the Chancery Division against the SoS under CPR Part 8 seeking *inter alia* declarations that the SoS was not entitled to enfranchise the Cranwell properties and that the notices are void and of no effect (PT-2022-000206).

68. On 9 June 2022 the SoS issued a claim in the Bristol County Court against APL under CPR Part 8 seeking an order that the SoS is entitled to enfranchise the Bristol properties. On 30 June 2022 the County Court transferred this claim to the Chancery Division. On the same day the High Court made a "boomerang order" in respect of PT-2022-000206. In order to overcome any jurisdictional issues this order transferred the High Court claim to the County Court and then immediately back to the High Court. The two Part 8 claims were then consolidated under the reference PT-2022-000206, with the SoS's claim standing as a counterclaim.

69. On 21 July 2022, sitting in the Chancery Division and the Queen's Bench Division, I gave directions for both judicial review claims and the Part 8 claim and counterclaim to be case managed and heard together, and for the parties to be able to rely in each claim upon the evidence served in any of the proceedings. The court also granted permission for the claimants to proceed with the second judicial review. Given the substantial degree of overlap between the claims, the parties were ordered to produce a single list of issues which they ask the court

to determine covering all proceedings. The parties were also directed to produce the ASF and agreed analyses of the agreements, property transactions, and statutory provisions.

70. I am most grateful to the parties and their respective legal teams for the very helpful agreed documents they produced. This material enabled the skeleton arguments to focus on the issues in the case and the oral advocacy to be completed in five days, albeit covering a wide range of issues. I would also like to express my gratitude to all counsel for the considerable assistance they provided through their written and oral submissions.

**The issues**

71. In summary, the claimants advance the following grounds of challenge (with cross references to the relevant issues in the List of Issues agreed by the parties):

**Ground 1 (Issue 1) – Whether the consent of APL to enfranchisement was required**

All eight of the enfranchisement notices are invalid because, on a true construction of s.33 of the 1967 Act and s.88 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), the SoS may not enfranchise any of the units held from APL as underlessor without the consent of APL; and/or

**Ground 2 (Issues 2 to 9) - Whether the Secretary of State satisfied the requirements in the 1967 Act for having a right to enfranchise**

**(i) Issue 2 – The effect of the decision in Gratton-Storey v Lewis**

Applying the decision in *Gratton-Storey v Lewis*:

(a) the notice relating to 1 Sycamore Drive was invalid because at the time when the s.5 notice was served, DIHL was only the beneficial owner of the freehold but was not the registered proprietor of the legal estate; and/or

(b) all 8 of the enfranchisement notices are invalid because, by reason of the indivisibility of the Crown, the SoS and DIHL are the same entity and therefore the Crown remained the freeholder of the residential units at all material times; and/or

**(ii) Issues 3 to 5 – Whether the Secretary of State's underleases were business tenancies (areas other than the common parts of the Cranwell site)**

Each of the 8 enfranchisement notices is invalid because at the date when it was served the relevant underlease held by the SoS included property occupied for the purposes of a Government department within s.56(3) of the 1954 Act and was therefore a business tenancy to which Part II of that Act applied (s.1(1B) of the 1967 Act); and/or

**(iii) Issue 6 – Whether the Secretary of State's underleases were business tenancies (the common parts of the Cranwell site)**

Each of the Cranwell enfranchisement notices is invalid (s.1(1B) of the 1967 Act) because the sub-underletting of the common parts of the Cranwell site to DIHL did not prevent the Cranwell underlease held by the SoS from being a tenancy to which Part II of the 1954 Act applied. In summary, the claimants contend that:

(a) by virtue of Crown indivisibility DIHL and the SoS were to be treated as the same entity; and/or

(b) occupation of any common part and/or the carrying on of a business by DIHL was to be treated as occupation by and/or the business of the SoS (s.23(1A) and (1B) of the 1954 Act); and/or

(c) occupation of any part by DIHL constituted occupation for "any purposes of a Government department" (within s.56(3) of the 1954 Act), whether the purposes of DIHL's occupation were all or any of the SoS's purposes or those of DIHL's own business; and/or

**(iv) Issue 7 – The *de minimis* principle**

Whether the *de minimis* principle alters any conclusions under issues 5 and/or 6 as to whether the Cranwell underlease is a tenancy to which Part II of the 1954 Act applied; and/or

**(v) Issues 8 and 9 – Section 1AA of the 1967 Act and the adjoining land test**

Each of the Cranwell enfranchisement notices is invalid because the SoS's tenancy of each of the Cranwell properties is an "excluded tenancy" within the meaning of s.1AA of the 1967 Act; and/or

**Ground 3 (Issue 11) – Tests applicable to compulsory acquisition**

The exercise of a right to enfranchise by a public authority such as the SoS involves a form of compulsory purchase or acquisition which is subject to a legal requirement that (i) the SoS be satisfied that there is a compelling case in the public interest for the exercise of that right and (ii) the right be exercised for the statutory purposes of the 1967 Act and not for a collateral purpose. The SoS did not comply with requirement (i) and so the decision to serve the 8 enfranchisement notices was unlawful. As to requirement (ii), see ground 4; and/or

**Ground 4 (Issues 12 to 14) – Improper motives**

The decision to serve each of the 8 enfranchisement notices was unlawful because it was made for improper purposes which were significantly material or so intertwined with any lawful purpose as to be inseparable; and/or

**Ground 5 (Issues 15 to 18) – Breach of legitimate expectations**

> The SoS's decision to serve each of the 8 notices unlawfully breached the claimants' substantive legitimate expectations
>
> (a) By virtue of the 1996 agreements and subsequent agreements between the parties, up to and including the 2021 settlement agreement, that APL will continue to receive rents for the MQE sites and continue to be able to acquire the freehold of all or part of these sites for a nominal amount; and/or
>
> (b) By virtue of guidance published by the Crown Estate in January 2016 "Non-excepted areas – policy and guidance" ("the 2016 Guidance"), the SoS cannot enfranchise the whole or any part of the MQE sites without the consent of APL as the immediate landlord of the SoS; and/or

**Ground 6 (Issues 19 to 20) – Whether there has been a breach of Article 1 of the First Protocol to the ECHR**

> In exercising any right under the 1967 Act to enfranchise the Cranwell and Bristol properties the SoS has acted in a manner which constitutes an unlawful interference with the Claimants' right to peaceful enjoyment of their possessions contrary to Article 1 of the First Protocol ("A1P1") to the European Convention on Human Rights ("ECHR"). The relevant possessions comprise (i) APL's leasehold in the MQE, (ii) APL's contractual rights to acquire released units, (iii) APL's marketable goodwill and legitimate expectation and (iv) the shares held by AHGL in APL.

72. Grounds 1 and 2 are common to the Part 8 claims in the Chancery Division and the two claims for judicial review. They are concerned with whether the SoS was entitled under the 1967 Act to enfranchise some or all of the Cranwell and Bristol properties, so that the interests acquired by the SoS would include APL's leasehold in those properties. Ms. Carss-Frisk KC on behalf of the claimants confirmed that the legal arguments under grounds 1 and 2 in the claims for judicial review are the same as those advanced in the Chancery Division for the purposes of establishing any entitlement to relief (Transcript Day 1 pp.27-28).

73. To the extent that the claimants succeed on grounds 1 and/or 2 in relation to any s.5 notice, the court would determine in the Chancery Division proceedings that the notice is invalid and set it aside. The SoS submits that the issues raised by grounds 1 and 2 are matters of private law concerning the interpretation and application of the 1967 Act. Although the indivisibility of the Crown is a matter of public law, its only impact in these proceedings is on whether a private law right to enfranchise has arisen. I agree with those submissions. In any event, if the SoS was not entitled under the 1967 Act to enfranchise a particular property, the claimants have not identified any difference between a decision in the Chancery Division that a s.5 notice is invalid and a decision in the Administrative Court that that notice is unlawful (Transcript Day 1, p.28). The effect on whether the SoS may pursue a claim to enfranchise is the same.

74. By contrast grounds 3 to 6 all involve public law grounds of challenge and arise solely in the claims for judicial review. Those grounds arise if, and in so far as, it is decided that one or more of the s.5 notices is valid in relation to grounds 1 and 2.

75. Although ground 4 alleges that the decision to serve each of the 8 enfranchisement notices was vitiated by improper purposes, the claimants have confirmed that they do not allege bad faith, fraud or corruption on the part of the defendant or anybody else. Ms. Carss-Frisk said that it was unnecessary for the claimants to go that far in this case.

76. Sir James Eadie KC confirmed on behalf of the defendant that if any of the public law grounds of challenge should succeed, the court is not asked to consider s.31(2A) of the Senior Courts Act 1981.

77. Issues 21 and 22 address the claimants' allegation that the SoS has adopted a wider scheme to override their contractual rights under the agreements, of which the 8 notices form a part. I will return to that issue after grounds 1 to 6.

## Statutory framework

*The Leasehold Reform Act 1967*

78. Section 1(1) begins:

> "This Part of this Act shall have effect to confer on a tenant of a leasehold house … a right to acquire on fair terms the freehold or an extended lease of the house and premises where …"

There then follows a number of qualifying conditions in a complex set of provisions.

79. Originally, the right to enfranchise was only conferred where the tenant held a "long tenancy" at a "low rent" in respect of a house with a rateable value not exceeding certain limits and which was occupied by the tenant as his only or main residence. However, successive amendments to the 1967 Act have extended the scope of the right to enfranchise considerably.

80. It is common ground that at the date of each of the s.5 notices, the SoS held a long tenancy in relation to each of the Cranwell and Bristol properties, which he had held for at least 2 years before giving those notices (s.1(1)(a), s.1(1)(b)(i) and s.3). It is also agreed that each of the properties qualifies as a "house".

81. The SoS's tenancies are not at a low rent (s.4). But s.106 of and sched.9 to the Housing Act 1996 amended the 1967 Act so as to confer "an additional right to enfranchisement in relation to tenancies which fail the low rent test…". Section 1AA of the 1967 Act provides:

> "(1) Where—

> (a) section 1(1) above would apply in the case of the tenant of a house but for the fact that the tenancy is not a tenancy at a low rent, and
>
> (b) the tenancy … is not an excluded tenancy,
>
> this Part of this Act shall have effect to confer on the tenant the same right to acquire the freehold of the house and premises as would be conferred by section 1(1) above if it were a tenancy at a low rent."

82. It is common ground that the SoS's tenancy of the Bristol properties is not an "excluded tenancy" (see s.1AA(1)(b)). But under issues 8 and 9 the claimants contend that the tenancy of the Cranwell properties is an "excluded tenancy" and so s.1AA does not confer any right to enfranchise in respect of the Cranwell properties.

83. A tenancy is an excluded tenancy if three conditions are all met. It is common ground that two of the conditions are satisfied. First, the Cranwell properties are located in an area designated by the Secretary of State as a "rural area" for the purposes of s.1AA(3)(a). Second, the SoS's underlease was granted on or before 1 April 1997 (s.1AA(3)(c)). The issue is whether the condition in s.1AA(3)(b) is satisfied. If it is, the SoS's tenancy of that house is an excluded tenancy and he has no right to enfranchise in respect of that property. Section 1AA(3)(b) provides:

> "(b) the freehold of that house is owned together with adjoining land which is not occupied for residential purposes and has been owned together with such land since 1st April 1997 (the date on which section 106 of the Housing Act 1996 came into force)"

This is referred to as "the adjoining land test".

84. As originally enacted the 1967 Act had made the right to enfranchise subject to a residence test. In most cases the 2002 Act repealed that requirement with effect from 26 July 2002. But where the tenancy of a house is a business tenancy, that is one to which Part II of the 1954 Act applies, s.1(1B) of the 1967 Act still requires the tenant to satisfy a residence test:

> "(1B) This Part of this Act shall not have effect to confer any right on the tenant of a house under a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies unless, at the relevant time, the tenant has been occupying the house, or any part of it, as his only or main residence (whether or not he has been using it for other purposes)—
>
> (a) for the last two years; or
>
> (b) for periods amounting to two years in the last ten years."

The SoS accepts that he cannot satisfy the residence requirement in relation to any of the 8 properties the subject of the s.5 notices.

85. Section 5 is entitled "General provisions as to claims to enfranchisement or extension." Section 5(1) provides:

> "(1) Where under this Part of this Act a tenant of a house has the right to acquire the freehold or an extended lease and gives notice of his desire to have it, the rights and obligations of the landlord and the tenant arising from the notice shall inure for the benefit of and be enforceable against them, their executors, administrators and assigns to the like extent (but no further) as rights and obligations arising under a contract for a sale or lease freely entered into between the landlord and tenant; and accordingly, in relation to matters arising out of any such notice, references in this Part of this Act to the tenant and the landlord shall, in so far as the context permits, include their respective executors, administrators and assigns."

Thus, where a tenant has the right to enfranchise his property, the service of a s.5 notice is binding on successors in title of both landlord and tenant.

86. Section 5(4) applies sched.1 where a tenant serves an enfranchisement notice in respect of a subtenancy, or there is a tenancy reversionary on his tenancy:

> "(4) The provisions of Schedule 1 to this Act shall have effect in relation to the operation of this Part of this Act where a person gives notice of his desire to have the freehold or an extended lease of a house and premises, and either he does so in respect of a sub-tenancy or there is a tenancy reversionary on his tenancy; but any such notice given in respect of a tenancy granted by sub-demise out of a superior tenancy other than a long tenancy at a low rent shall be of no effect if the grant was made in breach of the terms of the superior tenancy and there has been no waiver of the breach by the superior landlord."

87. Where a sub-tenant serves a notice to enfranchise, sched.1 applies relevant provisions of the 1967 Act, with modifications, to the rights and obligations of the owner and each tenant superior to the sub-tenant. Paragraph 1(1) provides:

> "(1) Where a person (in this Schedule referred to as "the claimant") gives notice of his desire to have the freehold or an extended lease of a house and premises under Part I of this Act, and does so in respect of a sub-tenancy (in this Schedule referred to as "the tenancy in possession"), then except as otherwise provided by this Schedule—
>
> (a) the rights and obligations of the landlord under Part I of this Act shall, so far as their interests are affected, be rights and obligations respectively of the estate owner in respect of the fee simple and of each of the persons in whom is vested a

> concurrent tenancy superior to the tenancy in possession (and references to the landlord shall apply accordingly); and
>
> (b) the proceedings arising out of the notice, whether for resisting or giving effect to the claim to acquire the freehold or extended lease, shall be conducted, on behalf of all the persons referred to in (a) above, by and through that one of them who is identified by this Schedule as "the reversioner"."

88. Where there is a reversionary tenancy on the tenancy in relation to which an enfranchisement notice is given ("the tenancy in possession"), para. 1(2) applies sched.1 as if the reversionary tenancy were a concurrent tenancy intermediate between the tenancy in possession and any superior interests.

89. The effect of sched.1 is that the rights and obligations of the landlord under Part I of the 1967 Act are deemed to be respectively the rights and obligations of the freeholder and also of any person holding a tenancy superior to that of the enfranchising tenant. The legislation designates one of the persons with a superior interest to be the "reversioner", who may then act on behalf of all those persons in relation to the subtenant's claim to acquire the freehold. Thus, all such parties are bound by the operation of Part I of the 1967 Act, without them being required to give their consent to enfranchisement.

90. By s.8 the landlord must convey the freehold of the house to the tenant, subject to the tenancy and the tenant's incumbrances, but otherwise free of incumbrances. Schedule 1 (paras. 1 to 7) adapts those requirements where a notice to enfranchise is given by a subtenant. The effect of s.8(1) and para. 1(1)(a) of sched.1 is that the landlord is bound to make, and the enfranchising subtenant to accept, a transfer of the freehold and intermediate interests on the prices and conditions laid down by the Act.

91. Paragraph 14 of sched.1 applies the provisions of that schedule where the tenancy in possession (that is the tenancy of the subtenant who served a notice to enfranchise) is a tenancy from the Crown (see Issue 1 below).

92. Section 9 lays down the basis upon which the purchase price is to be determined. There are three different regimes. Because the entitlement of the SoS to enfranchise depends upon s.1AA of the 1967 Act, the price payable by virtue of s.9(1C) is the sum of two components: first the price payable under s.9(1A) and second any additional amount payable under s.9A. In summary, the price payable under s.9(1A) is the open market value of the freehold of the house subject to the sub-tenancy and any intermediate interests, on the assumption that the subtenant has no right to enfranchise, but does have the right to remain in the property at the expiration of his term paying a rent. It is also assumed that the tenant has no liability to repair. Improvements for which the tenant has paid are disregarded. Under s.9A the landlord may be paid a reasonable sum to compensate him for (1) any diminution in the value of his interest in other property resulting from the enfranchisement and (2) any other loss or damage resulting from enfranchisement to the extent that it is referable to the landlord's interest in any other property. Paragraph 7(1)(b) of sched.1 requires a separate

purchase price to be determined for each interest superior to that of the subtenant.

93. In England, if the parties do not agree the amount of the purchase price under s.9, the dispute is generally to be determined by the First-tier Tribunal ("FTT") (s.21).

94. By s.20 of the 1967 Act, the County Court has jurisdiction to determine disputes about *inter alia* whether a person is entitled to enfranchise in respect of a house, to what property his right extends, and the performance or discharge of obligations arising out of a s.5 notice.

95. Section 33 of the 1967 Act deals with Crown land. Issue 1 is concerned with the extent to which s.33 confers a statutory right to enfranchise on a tenant who "holds a lease from the Crown". In cases where such a tenant does not have a statutory right to enfranchise he may be able to rely upon a published undertaking by the Crown to abide by the 1967 Act. But that undertaking does not bind other parties with an interest in the land superior to that of the tenant. The claimants say that s.33 does not confer a right to enfranchise on the defendant and so the consent of APL to enfranchisement pursuant to the Crown's undertaking is required. They also rely upon s.88 of the 1993 Act (see Issue 1 below), which enables all relevant parties to agree to confer jurisdiction on the FTT to determine *inter alia* the prices payable on enfranchisement, as supporting their interpretation of s.33.

*Part II of the Landlord and Tenant Act 1954*

96. Section 23 defines tenancies to which Part II of the Act applies:

> "(1) Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes.
>
> (1A) Occupation or the carrying on of a business—
>
> > (a) by a company in which the tenant has a controlling interest; or
> >
> > (b) where the tenant is a company, by a person with a controlling interest in the company,
>
> shall be treated for the purposes of this section as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant.
>
> (1B) Accordingly references (however expressed) in this Part of this Act to the business of, or to use, occupation or enjoyment by, the tenant shall be construed as including references to the business of, or to use, occupation or enjoyment by, a company

> falling within subsection (1A)(a) above or a person falling within subsection (1A)(b) above.
>
> (2) In this Part of this Act the expression "*business*" includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate.
>
> ….. "

97. Section 24 provides for a business tenancy to continue unless and until terminated under Part II of the 1954 Act. A landlord may serve a notice to terminate under s.25. A tenant may serve a request for a new tenancy under s.26 specifying the date on which that tenancy is to begin. Under s.27 a tenant under a fixed term tenancy may give at least 3 months' notice that he does not wish the tenancy to continue under s.24 beyond the date on which it expires by effluxion of time. Where a landlord has given notice under s.25 or a tenant has given notice under s.26, the tenant may apply to the court for an order granting a new tenancy (s.24(1)). The landlord may oppose the grant of a new tenancy on the grounds set out in s.30(1).

98. Any tenancy which the court orders to be granted under s.29 is limited to the "holding" (s.32). Certain of the grounds of opposition set out in s.30(1) are expressed by reference to "the holding" (e.g. grounds (f) and (g) where the landlord intends to demolish or reconstruct the holding or to occupy the holding for certain purposes). The "holding" is also the unit of property by reference to which compensation is determined under s.37 where the landlord opposes the grant of a new tenancy on certain grounds and the tenant quits.

99. Section 23(3) defines "the holding":

> "In the following provisions of this Part of this Act the expression "*the holding*", in relation to a tenancy to which this Part of this Act applies, means the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which this Part of this Act applies."

Generally the holding refers to that part of a tenant's demise which he or his employees occupy for business purposes.

100. Part IV of the 1954 Act contains "Miscellaneous and Supplementary provisions". Section 56 deals with the application of various parts of the 1954 Act to the Crown. In relation to Part II section 56(1) to (4) provides: -

> "(1) Subject to the provisions of this and the four next following sections, Part II of this Act shall apply where there is an interest belonging to Her Majesty in right of the Crown or the Duchy of Lancaster or belonging to the Duchy of Cornwall, or belonging to a Government department or held on behalf of Her Majesty

> for the purposes of a Government department, in like manner as if that interest were an interest not so belonging or held.
>
> (2) The provisions of the Eighth Schedule to this Act shall have effect as respects the application of Part II of this Act to cases where the interest of the landlord belongs to Her Majesty in right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall.
>
> (3) Where a tenancy is held by or on behalf of a Government department and the property comprised therein is or includes premises occupied for any purposes of a Government department, the tenancy shall be one to which Part II of this Act applies; and for the purposes of any provision of the said Part II or the Ninth Schedule to this Act which is applicable only if either or both of the following conditions are satisfied, that is to say—
>
> > (a) that any premises have during any period been occupied for the purposes of the tenant's business;
> >
> > (b) that on any change of occupier of any premises the new occupier succeeded to the business of the former occupier,
>
> the said conditions shall be deemed to be satisfied respectively, in relation to such a tenancy, if during that period or, as the case may be, immediately before and immediately after the change, the premises were occupied for the purposes of a Government department.
>
> (4) The last foregoing subsection shall apply in relation to any premises provided by a Government department without any rent being payable to the department therefor as if the premises were occupied for the purposes of a Government department."

Issues 3 to 6 include matters relating to section 56(3) and (4).

**The Ramsay principle**

101. During argument the claimants submitted that both the transfer of the freeholds of the eight properties to DIHL and the sub-underlease of the common parts of the Cranwell site were artificial transactions and that this was a factor to be taken into account when applying certain statutory provisions. The claimants made it clear that they were not alleging that any of these transactions was a sham, applying the test in *Snook v London and West Riding Investments Limited* [1967] 2 QB 786. It was therefore necessary to clarify whether the claimants were relying on the *Ramsay* principle and, if so, to what extent.

102. On Day 4 (Transcript pp.3-4) Ms. Joanne Wicks KC (who appeared on behalf of the defendant) announced that it had been agreed with Ms. Zia Bhaloo KC (who appeared on behalf of the defendant) that the claimants were not relying

upon the *Ramsay* principle as a "separate issue". Ms. Bhaloo did not disagree But ton the issue of "occupation" for the purposes of Part II of the 1954 Act, the claimants continued to rely upon *Rossendale Borough Council v Hurstwood Properties (A) Limited* [2022] AC 690, which expressly applied the *Ramsay* principle. In the circumstances, I should deal briefly with the subject.

103. The *Ramsay* principle has been explained in *Barclays Mercantile Business Finance Limited v Mawson* [2005] 1 AC 684, *UBS AG v Revenue and Customs Commissioners* [2016] 1 WLR 1005 and *Rossendale*. The principle is not confined to tax law, but is based upon the modern purposive approach to the interpretation of legislation (*Rossendale* at [9]). It is important to consider the context and the scheme of the legislation. Likewise, in *Barclays* at [32] the House of Lords stated that it is necessary to give the relevant provision a purposive construction to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which may include the overall effect of a number of elements) answers to that statutory description. At [36] the House agreed with the statement of Ribeiro PJ in *Collector of Stamp Revenue v Arrowtown Assets Limited* [2003] 6 HKCFAR 517 at [35]:

> "the driving principle in the *Ramsay* line of cases continues to involve a general rule of statutory construction and an unblinkered approach to the analysis of the facts. The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically."

104. In *Rossendale* the Supreme Court decided that the main purpose of s.45 of the Local Government Finance Act 1988, which imposed a liability for business rates on the owners of unoccupied premises, was to encourage such owners to bring their properties back into use for the benefit of the community ([22]-[30]). "Owner" was defined as the person entitled to possession of the property (s.65(1)) because the legislature's object was to impose liability on the person who had the ability in the real world to bring an unoccupied property back into use. Parliament could not have intended the term "owner" to refer to a SPV which is voluntarily wound up, or allowed to become "dormant", and so has no real or practical ability to exercise its right to possession.

105. Drawing upon *Rossendale*, the claimants submit that the purpose of Part II of the 1954 Act is to protect a tenant who makes actual use of his premises for the purposes of his business. They say that DIHL's occupation of the common parts of the Cranwell site does not answer to that description. Instead, I will address this contention under Issue 6 below.

106. The claimants do not rely upon the *Ramsay* principle in relation to the application of the "adjoining land test" in s.1AA(3)(b) of the 1967 Act. Nor do they rely upon the principle in relation to the application of the decision in *Gratton-Storey*. A subtenant cannot acquire a freehold interest which he already owns. The Court of Appeal decided that the 1967 Act does not entitle such a person to enfranchise so as to be able to acquire intermediate interests. But the claimants accept that this ruling does not apply where a subtenant has

transferred his freehold interest to a nominee or to a SPV. It is common ground that, as a matter of private law, a subtenant can acquire intermediate interests under the 1967 Act in that way. Such an arrangement does not offend the ruling in *Gratton-Storey*. The position is analogous to *Westbrook Dolphin Square Limited v Friends Life Limited (No.2)* [2015] 1 WLR 1713 in which the court held that a SPV was a qualifying tenant entitled to exercise a right to enfranchise, notwithstanding the fact that the company had been set up and a lease granted to it solely to enable an enfranchisement claim to be made. The *Ramsay* principle did not defeat that arrangement.

107. The question arises why should the legal analysis be any different where the subtenant is the Crown, or more particularly a Government minister? The claimants respond that because of the principle that the Crown is indivisible, the minister and DIHL are not different legal entities. They both form part of the same entity, the Crown or the Government, and *Gratton-Storey* cannot be distinguished. I turn next to examine the arguments on Crown indivisibility.

## The indivisibility of the Crown

108. The claimants seek to apply the doctrine of Crown indivisibility by submitting that DIHL is not a separate legal entity from the SoS. They say that the legal consequences are:

(i) The transfer of the freehold reversions to the 8 properties to DIHL did not result in there ceasing to be a Crown interest in the land for the purposes of section 33 of the 1967 Act and so the defendant is not entitled to rely upon the first limb of s.33(1) (Issue 1 below);

(ii) The underleases of the Cranwell and Bristol sites and the freehold of the Cranwell and Bristol properties are both vested in the same entity, the Crown, and so applying *Gratton-Storey* the SoS is not entitled to enfranchise any of those properties under the 1967 Act (Issue 2 below);

(iii) The occupation of the common parts of the Cranwell site pursuant to the sub-underlease amounts to occupation by the SoS for business purposes, applying s.56(3) of the 1954 Act, so that the underlease vested in the SoS is a business tenancy to which Part II of that Act applies and the SoS is not entitled to enfranchise the Cranwell properties (Issue 6(2)(i) below);

(iv) When applying the adjoining land test in s.1AA(3)(b) of the 1967 Act, the common parts of the Cranwell site sub-underlet to DIHL and the freehold of the Cranwell properties transferred to DIHL are to be treated as owned by the SoS (Issues 8 and 9 below).

109. The leading cases in this jurisdiction on Crown indivisibility are *Town Investments Limited v Department of the Environment* [1978] AC 359 and *M v The Home Office* [1994] 1 AC 377. They establish two fundamental points. First, Crown indivisibility is a matter of public law, not private law (*Town Investments* at p.380F and 397B). Second, whether Crown indivisibility is applicable must depend on the legal context (see *M* at p.415B-D).

110. In *Town Investments* legislation imposed a limit on rent payable under a tenancy which included premises occupied by the tenant for the purposes of a business carried on by him. Two leases were granted to the Secretary of State for the Environment "for and on behalf of Her Majesty". That Minister was responsible for acquiring and managing buildings for occupation by other government departments. The two buildings were so occupied. They were not used by civil servants working for the Department of the Environment. The House of Lords held that the lessee in each case was the Crown and the use of the buildings by civil servants in other Government departments constituted occupation by the Crown. Accordingly, the tenant and the occupier were the same, the Crown, and the rent control legislation was applicable.

111. Lord Diplock gave the leading speech with which three other Law Lords agreed. He said that instead of referring to "the Crown" it would be preferable to speak of "the Government", a term apt to embrace both ministers and the civil servants carrying on the work of departments under their direction (p.381B):

> "Where, as in the instant case, we are concerned with the legal nature of the exercise of executive powers of government, I believe that some of the more Athanasian-like features of the debate in your Lordships' House could have been eliminated if instead of speaking of 'the Crown' we were to speak of 'the government' - a term appropriate to embrace both collectively and individually all of the ministers of the Crown and parliamentary secretaries under whose direction the administrative work of government is carried on by the civil servants employed in the various government departments. It is through them that the executive powers of Her Majesty's government in the United Kingdom are exercised, sometimes in the more important administrative matters in Her Majesty's name, but most often under their own official designation. Executive acts of government that are done by any of them are acts done by 'the Crown' in the fictional sense in which that expression is now used in English public law."

The executive act of the Secretary of State had been to accept the grant of the leasehold interests. The tenant here was the Government, or the Crown, acting through that Secretary of State. The persons working in the office buildings were "government servants" or "servants of the Crown". The use of the premises by government servants for government purposes constituted occupation by the Crown (p.382H-383A).

112. Accordingly, in *Town Investments* there was no issue as to whether a company incorporated by a Secretary of State and which he controls completely through owning all the shares and appointing the directors, is to be treated as forming part of the Crown and therefore indivisible from the Secretary of State or his department. Lords Diplock, Kilbrandon and Edmund-Davies expressed no view on that issue. *Town Investments* is only an authority on Crown indivisibility in the context of the relationship between different Government departments and their ministers.

113. Lord Simon of Glaisdale agreed with Lord Diplock (p.396H) before going on to set out his reasoning in some detail. However, no other member of the House agreed with his speech. Mr. James Maurici KC (on behalf of the claimants) focused on a number of passages between p.399A and p.400B, but that discussion was concerned with the treatment of servants or agents of the Crown.

114. It was at p.400B that Lord Simon began to refer to the constitutional doctrine that the Crown in the United Kingdom is "one and indivisible." In that context, he stated that departments of state with ministers at their head form part of the Crown. He too regarded the Crown as a single entity, in his view a corporation aggregate (p.400C). But he did not suggest that an entity outside his explanation of the Crown, such as a company, itself forms part of the Crown. That was not the issue before the House of Lords.

115. It is also significant that at p.400F Lord Simon said that "*prima facie* in public law a minister or Secretary of State is an aspect or member of the Crown". In other words, the indivisibility of the Crown is not an absolute principle.

116. This last point was emphasised by the House of Lords in *M v The Home Office*. Lord Woolf stated that there is no reason in principle why, if a statute places a duty on a specified minister (or other official) which creates a cause of action, an action cannot be brought for breach of that duty claiming damages or an injunction against the specified minister personally. He considered that there are likely to be few situations in which a duty is placed on the Crown in general rather than on a specified minister (pp.412H to 413A). He went on to distinguish *Town Investments* as dealing with a very different situation, namely the consequence of the grant of a lease to a named department "which can make the Crown and not the department the tenant" (p.415B).

117. It is apparent that the doctrine of Crown indivisibility is capable of being disapplied or modified, for example, by Act of Parliament. This much is common ground. Mr Rainey provided an example. Section 10 of the Military Lands Act 1892 empowers the Crown Estate Commissioners, or the Duchies of Lancaster or Cornwall to lease land to the SoS.

118. Standard principles of public law also demonstrate that Crown indivisibility may not apply even within a single Government department. For example, where the law requires a minister himself to take into account a particular consideration in making a decision, the knowledge of his officials about that matter is not to be imputed to him (*R (National Association of Health Stores) v Secretary of State for Health* [2005] EWCA Civ 154). Often it is necessary for information to be communicated to the minister by some form of briefing.

119. So the claimants' case depends upon establishing two propositions: firstly, that Crown indivisibility has a wider ambit than was identified by the House of Lords in *Town Investments* and secondly, if so, that a corporate body with a separate legal identity established by a Government minister is to be treated as indivisible from, or part of, the Crown or the Government because the minister controls the company and the company carries out Government functions. On the first proposition, the claimants have not identified any authority which supports the wider application of Crown indivisibility which they assert. On the

second proposition, I take as a starting point one of the foundations of our company law, that a company incorporated under the Companies Act 2006 as a corporation aggregate has a separate legal existence and personality from persons who control the company and its shareholders.[3] A company is not to be treated, for example, as an agent of its shareholders. I also understood Mr. Maurici to accept that, even on the claimants' case, there is no principle to the effect that Crown indivisibility prevents a minister from setting up a structure to discharge governmental functions as a separate entity outside the Crown. For example, he accepts that a minister may incorporate a company as an arm's length body with sufficient independence so as not to form a part of the Crown or Government.

120. On the first proposition, Sir James Eadie referred to *British Medical Association v Greater Glasgow Health Board* (1998) SLT 538, a decision of the Second Division of the Inner House. The issue was whether the Board formed part of the Crown and was entitled to Crown immunity under s.21 of the Crown Proceedings Act 1947. Under the relevant legislation the Board had been set up by the Secretary of State to exercise certain of his functions for the administration of the health service. The Secretary of State had "virtual control" in that the Board had to comply with regulations made by him and any directions he might give, but he had less control over day to day operations (p.539 K-L).

121. The Lord Justice Clerk held at p.540J-L:

> "In my opinion, even although a health board falls to be regarded as providing services on behalf of the Crown, it does not follow that the health board falls to be accorded Crown status. The respondents contended that if a body was performing functions of the Crown and only functions of the Crown, then they were Crown bodies. In my opinion, however, that submission is fallacious. *It is necessary to distinguish, as the Lord Ordinary did, between the nature of the functions performed on the one hand and the status of the person who performed them on the other hand. It is not every body which performs functions on behalf of the Crown which falls to be treated as the Crown. A body which is acting on behalf of the Crown may be entitled to claim Crown immunity so long as it is acting on the instructions and at the direction of the Crown, but that does not mean that such a body falls to be treated as being the Crown*. In *Lord Advocate v. Strathclyde Regional Council*, Lord Cullen held that Crown immunity could only be claimed in respect of the actions of an independent contractor who had been engaged by the Crown to carry out work and who was acting at the direction of representatives of the Crown. That does not mean, however, that the independent contractor falls to be treated as the Crown or accorded the status of the Crown." (emphasis added)

[3] Such a company is a different entity from the Secretary of State incorporated as a corporation sole by s.2 of the Defence (Transfer of Functions) Act 1964 (see [254] below).

He referred to Lord Diplock's speech in *Town Investments* at [1978] AC p.380 and continued (p.541 G-H):

> "In my opinion what Lord Diplock states regarding English public law is also true of Scottish public law. In Scotland as in England I am of opinion that "the Crown" covers ministers of the Crown and members of the civil service acting under the direction of ministers. However, I see no justification for holding that "the Crown" also covers bodies such as health boards which exercise some of the functions which have been delegated to them by the Secretary of State. In my opinion, for the purpose of determining who are included in the expression "the Crown" it is important to draw a distinction between government departments on the one hand and bodies like health boards on the other. Counsel for the respondents expressly stated that they were not contending that a health board was a government department or part of a government department. The Crown and a minister who requires to discharge statutory duties can only act through servants or agents, but I see no justification in principle for holding that every agent or servant of the Crown falls to be equiparated with the Crown itself. As Lord Diplock pointed out in *Town Investments v. Department of the Environment*, the Crown will embrace certain civil servants employed in various government departments, but I see no justification for holding that every body or person who is a servant or agent of a Secretary of State should be held to have Crown status."

At p.542 B-C the Lord Justice Clerk concluded:

> "To hold that a health board is the Crown would be to extend Crown status further than it has been extended before. No doubt a health board is performing functions on behalf of the Secretary of State, but it is not everyone who performs functions on behalf of the Secretary of State who is the Crown. I see no justification in principle or on authority for extending the concept of the Crown beyond those persons comprehended in the description of the Crown given by Lord Diplock in *Town Investments v. Department of the Environment*."

Lord Dunpark and Lord Mayfield delivered concurring opinions.

122. Thus, the decision of the Inner House is persuasive authority against the ambit of Crown indivisibility being any wider than was identified in *Town Investments.* The House of Lords dismissed an appeal by the Health Board ([1989] 1 AC 1211). Lord Jauncey, delivering the leading speech, decided the case on a narrower basis, namely that Parliament had legislated that health boards were made liable as principals, and to be sued in their own name, in respect of any liabilities incurred in the exercise of their functions (p.1226 H). Accordingly, the claim fell outside the scope of s.21 of the Crown Proceedings Act 1947 altogether. Having reached that conclusion he did not find it necessary

to decide the case on the basis adopted by the Inner House, while making it clear that he was not in any way criticising their analysis (p.1227 E-F).

123. Mr. Maurici relied heavily upon a decision of the New Zealand Court of Appeal, *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297. In that case the issue was whether the Council was entitled to rely upon a statutory exemption from income tax as a "public authority", an expression which the legislation defined as including "every *other department or instrument* of the Executive Government of New Zealand." So the issue was whether the Council was entitled to rely upon an immunity conferred upon an "instrument of the Executive Government", not whether it formed an indivisible part of the Government. It was in that context that Keith J considered the concept of Crown agency to be relevant (p.328-330).

124. In a passage in *Medical Council of New Zealand* cited by Mr. Maurici, the court relied upon Professor Hogg's book "Liability of the Crown". In the second edition he had said that "…the question of whether a public corporation is an agent of the Crown depends upon the nature and degree of control the Crown exercises over it" (see [1997] 2 NZLR at p.327). Rather more pertinent is this passage at p.462 of the fourth edition in the chapter devoted to the same subject:

> "The term "agent of the Crown" has become the common usage for a public corporation that enjoys *the attributes* of the Crown. Agent of the Crown in this context is a synonym for "servant of the Crown", and the latter phrase is sometimes used. Occasionally, the question is said to be whether the corporation is "within the shield of the Crown" or is an "instrumentality of the Crown" or an "emanation of the Crown". *These graphic phrases falsely suggest that the issue is whether the corporation is the Crown or a part of the Crown. It is more accurate to accept that the corporation is a separate entity from the Crown itself.*" (emphasis added)

I agree with that approach. It is consistent with *Town Investments* and with the decision of the Inner House in the *Greater Glasgow Health Board* case.

125. For the same reasons I do not think that the authorities cited in Lord Simon's speech in *Town Investments* at p.399A to p.400A assist the claimants. As I have said, this passage precedes the point in his speech where Lord Simon turned to Crown indivisibility. It largely dealt with agents of, or trustees for, the Crown or analogous situations and *in that context* the degree of control exercised by the Crown (see e.g. *Commissioner of Public Works v Pontypridd Masonic Hall Company Limited* [1920] 2 KB 233; *The Hornsey Urban District Council v Hennell* [1902] 2 Ch 377; *Bank voor Handel en Scheepvaart N.V. v Administrator of Hungarian Property* [1954] AC 584). No one would suggest that, for example, a person in the position of Colonel Hennell forms an indivisible part of the Crown. Typically those cases were concerned with whether a person or body was able to reply upon the immunity of the Crown from a statutory liability or obligation and not whether that person should be treated as a part of the Crown. Mr. Maurici accepted, rightly, that an agent of the Crown can be an entity separate from the Crown (Transcript Day 5 p.144).

126. Mr. Maurici emphasised this passage in Lord Simon's speech at p.399H-400A:

> "The mere fact of incorporation, which is only for administrative convenience, does not make a Secretary of State or a minister or a ministry an entity separate from the Crown".

But the issue Lord Simon was considering there was whether the incorporation of a Secretary of State (i.e. as a corporation sole), which is one mechanism by which a minister may hold title to property, had the effect of separating the *Minister* from the Crown. He was not dealing with the setting up of a company by a Minister with the deliberate aim of creating an entity outside the Crown.

127. In any event, the two cases cited by Lord Simon do not assist the claimants' case. First, *Pontypridd* simply decided that the Commissioners of Public Works, as agents of the Crown, could reply upon the Crown's immunity from the Statute of Limitations.

128. Second, the issue in *Baccus S.R.L. v Servicio Nacional Del Trigo* [1957] 1 QB 438 was whether the defendant was entitled to rely upon state immunity. The Spanish Ambassador gave evidence that the defendant was a department of the Spanish state. The plaintiffs did not deny that point (p.472). The question was whether the fact that the defendant had been incorporated, had a legal personality and was entitled in its own name to enter into contracts, to sue and be sued, was inconsistent with it being a department of state. The court held that it was not, pointing out that many UK ministers are constituted corporations sole (pp.466 and 472). Thus, Jenkins LJ considered that whether a particular ministry is a corporate or an unincorporated body is "purely a matter of governmental machinery" (p.466) or, as Lord Simon put it, "administrative convenience". That approach is entirely consistent with Lord Diplock's analysis in *Town Investments* that a Government department is part of the Crown. The circumstances and reasoning in *Baccus* have nothing to do with whether an incorporated body which is *not* itself a department of state or Government department is indivisible from, or forms part of, the Government or the Crown. *Baccus* does not lend any support to the suggestion that the ambit of the Crown indivisibility principle may be wider than the explanation given by Lord Diplock.

129. I also note that in *Town Investments* Lord Kilbrandon did not consider the concepts of agency or trusts to be relevant to the status of ministers in their relationship to the Crown, even as analogues ([1978] AC at p.402A).

130. Mr. Maurici sought to rely upon other authorities concerned with whether state immunity applies to "state controlled enterprises with legal personality". They do not assist with the question of whether a body forms part of the Crown or the Government, or with the ambit of the indivisibility of the Crown principle.

131. The claimants have not referred to any authority which treats the Crown as an entity embracing more than the departments and their ministers which make up the Government. Although the claimants have failed on that first issue, I turn to address their second proposition.

132. The DIHL arrangements which the SoS has put in place do not involve any reliance upon Crown immunity. Instead, the SoS has sought to replicate measures which private individuals and companies may lawfully put in place in order to be able to claim a right to enfranchise in accordance with the legislation (for example, transferring the freehold reversion to a SPV and granting a subtenancy to that company of those parts of a tenanted property which may be treated as occupied for business purposes).

133. The claimants rely upon the statement by Laws J (as he then was) in *R v Somerset County Council ex parte Fewings* ([1995] 1 All ER 513 at 524) that the actions of a public body, unlike those of a private person, must be justified by "positive law". The Court of Appeal restated this principle more precisely by reference to the position of a local authority, the issue with which the case was concerned ([1995] 1 WLR 1037, 1042G-H).

134. However, the position of a Minister of the Crown is different. He may rely not only upon any relevant statutory powers, but also prerogative powers. In addition he may do anything that a natural person may do, unless prohibited by statute from doing so or by public law constraints or the competing rights of other parties (*R v Secretary of State for Health ex parte C* [2000] 1 FCR 471, 476; *R (Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government* [2008] 3 All ER 548 at [44], [48]-[49], [72]-[74] and [78]-[81]; and see also Wade & Forsyth's Administrative Law (12th Edition) pp.38-9).

135. The ability of the Crown to do anything that a natural person may do, subject to the constraints referred to, is linked to the Crown's entitlement to exercise contractual, property and other private law rights and to participate in the commercial market. This was considered recently by the Privy Council in *The State of Mauritius v The (Mauritius) CT Power Limited* [2019] UKPC 27, dealing with a legal challenge to a decision by the Minister of Energy to refuse to enter into an agreement guaranteeing prices payable for the electricity to be supplied by a new power station project. At [63] Lord Sales JSC said:

> "63. The power of the Minister of Energy to undertake negotiations with CT Power as part of the conduct of the business of the Government is a wide one, conferring on the Minister a very wide discretion as to how best to proceed. The implication is that the Minister is permitted to participate in the commercial market in the usual way, i.e. through the exercise of the full bargaining power available to the Government in order to secure the best commercial deal possible and thereby promote the public interest. With that end in view, a court should be astute to ensure that application of public law standards in relation to the Minister does not cut down or undermine that bargaining power. Nor should public law standards be applied in such a way as to give a potential contracting counterparty a negotiating advantage which has not been bargained for."

The relevant "standards" are addressed under Issues 12 to 14 below.

136. Mr. Maurici emphasised undisputed facts relevant to this issue. The SoS is the sole shareholder. Its directors are senior civil servants within the MoD and under the control of the defendant. The SoS has complete control of DIHL. It had capital of only £1, no employees and no bank account. It is funded by the MoD. DIHL is not an arm's length body operating with any degree of independence from the MoD and its Secretary of State.

137. Mr. Maurici accepted that the claimants' case has to be that whenever a minister or Government department incorporates a company to carry out a Government function and the minister or department has full control of that company, the effect of the principle of Crown indivisibility is that the company is part of the Crown and not a separate entity (Transcript Day 5 p.128). Consequently, where as a matter of private law, an individual would be able to comply with or take advantage of a statutory scheme, such as the 1967 Act, whether by transferring his freehold reversion to a SPV or to a bare nominee, the Crown is unable to do so. Mr. Maurici accepts that that would be the consequence of his argument on control whenever a SPV holds land for a Government purpose, here MQE held for the purposes of the armed forces. But he suggests that there may be cases where the SPV does not carry out a Government function (Transcript Day 5 pp.151-154). However, in my judgment it is difficult to envisage a situation where such a company would hold land for a non-governmental purpose.

138. But the real issue here was identified by Sir James Eadie. What is the normative principle of public law which would justify the operation of the Crown indivisibility principle in this way? Likewise, why is it justified to borrow the concepts of control and function from the law on Crown agency (which Mr. Maurici accepts does not preclude an agent being treated as a separate entity – Transcript Day 5 pp.144-145) or from the law on state immunity, in order to determine the ambit of Crown indivisibility? With respect, the claimants did not satisfactorily address these questions.

139. Ultimately, the claimants are asking the court to widen the ambit of Crown indivisibility beyond that laid down by the House of Lords in *Town Investments*, but they have not provided a coherent justification for doing so, certainly not in the circumstances of this case. For these reasons I am unable to accept the claimants' submissions on the doctrine as a matter of legal principle. Nevertheless, I will revisit the subject where it has been raised on a particular legal issue to see whether the relevant statutory context points to a different conclusion.

## Issue 1 (Ground 1) – Whether the consent of APL to enfranchisement was required

140. The claimants submit that by virtue of s.88(2)(c) of the 1993 Act, the consent of APL as the landlord of the SoS is required to confer jurisdiction on the FTT to determine any issues falling within the scope of s.21 of the 1967 Act, notably the price payable for APL's interest in the Cranwell and Bristol properties. The claimants say that this provision applies where a tenant under a lease from the Crown wishes to enfranchise but has no right to do so. It is a situation in which the tenant needs to rely upon the voluntary undertaking given by the Crown to act in accordance with the 1967 Act. That undertaking does not bind any other owner of an interest superior to the tenant's lease and so s.88(2)(c) recognises

that enfranchisement will not proceed pursuant to the Crown's undertaking unless other parties with superior interests agree to that course.

141. This issue raises the question to what extent does a tenant or subtenant holding a tenancy from the Crown have a *right* under s.33 of the 1967 Act to enfranchise and so does not need to rely upon the Crown's undertaking.

142. A statute does not bind the Crown unless it says so expressly or by necessary implication (*BBC v Johns (Inspector of Taxes)* [1965] Ch 32; *Lord Advocate v Dumbarton District Council* [1990] 2 AC 580).

143. On 31 May 1967 the Minister of Housing and Local Government gave an undertaking that Crown authorities would agree to enfranchisement and extensions of leases for qualifying leaseholders holding from the Crown on the terms provided for in the 1967 Act, except in certain cases, for example, where the house is of special architectural or historical interest.

144. On 2 November 1992 (during the passage of the Bill which became the 1993 Act) the Secretary of State for the Environment gave an undertaking superseding the 1967 undertaking. The Government undertook that the Crown would agree, subject to certain exceptions, to the voluntary enfranchisement or extension of long leases held from the Crown under the same terms and qualifications as provided by the legislation. Often this undertaking is relied upon by tenants of leases holding directly from the Crown.

145. Section 33 of the 1967 Act defines specific circumstances in which the Act does apply to a tenancy held from the Crown:

> "**33. Crown land.**
>
> (1) In the case of a tenancy from the Crown this Part of this Act shall apply in favour of the tenant as in the case of any other tenancy if there has ceased to be a Crown interest in the land, and as against a landlord holding a tenancy from the Crown shall apply also if either—
>
> > (a) his sub-tenant is seeking an extended lease and the landlord, or a superior landlord holding a tenancy from the Crown, has a sufficient interest to grant it and is entitled to do so without the concurrence of the appropriate authority; or
> >
> > (b) the appropriate authority notifies the landlord that as regards any Crown interest affected the authority will grant or concur in granting the freehold or extended lease.
>
> (2) For purposes of this section "tenancy from the Crown" means a tenancy of land in which there is, or has during the subsistence of the tenancy been, a Crown interest superior to the tenancy, and "Crown interest" and "the appropriate authority" in relation to a Crown interest mean respectively—

> (a) an interest comprised in the Crown Estate, and the Crown Estate Commissioners;
>
> (b) an interest belonging to Her Majesty in right of the Duchy of Lancaster, and the Chancellor of the Duchy;
>
> (c) an interest belonging to the Duchy of Cornwall, and such person as the Duke of Cornwall or the possessor for the time being of the Duchy appoints;
>
> (d) any other interest belonging to a government department or held on behalf of Her Majesty for the purposes of a government department, and the Minister in charge of that department."

These provisions have not been amended since the 1967 Act was passed. At the time the 1967 Act was enacted there was no provision corresponding or similar to s.88 of the 1993 Act. There was simply the general provision in s.1(5) of the Lands Tribunal Act 1949 for that Tribunal to act as an arbitrator under a reference by consent, for example, where enfranchisement took place on a non-statutory basis pursuant to the Crown's undertaking.

146. Paragraph 14 of sched.1 to the 1967 Act applies where a s.5 notice to enfranchise is given by a subtenant holding "a tenancy from the Crown":

> "14(1) This Schedule shall apply notwithstanding that the tenancy in possession is a tenancy from the Crown within the meaning of section 33 of this Act; and, where under section 33(1)(b) the appropriate authority gives notice that as regards a Crown interest the authority will grant or concur in granting the freehold or an extended lease, then in relation to the Crown interest and the person to whom it belongs this Schedule shall have effect as it has effect in relation to other landlords and their interests, but with the appropriate authority having power to act as reversioner or otherwise for purposes of this Schedule on behalf of that person:
>
> Provided that paragraph 4(1)(a) above shall not apply to the execution of a conveyance or lease on behalf of the person to whom a Crown interest belongs.
>
> (2) A conveyance or lease executed in pursuance of paragraph 4(3) above shall be effective notwithstanding that the interest intended to be conveyed or bound is a Crown interest or a tenancy from the Crown."

147. Section 88 of the 1993 Act provides:

> "**88. Jurisdiction of .... tribunals in relation to enfranchisement etc. of Crown land.**
>
> (1) This section applies where any tenant under a lease from the Crown is proceeding with a view to acquiring the freehold or an extended lease of a house and premises in circumstances in which, but for the existence of any Crown interest in the land subject to the lease, he would be entitled to acquire the freehold or such an extended lease under Part I of the Leasehold Reform Act 1967.
>
> (2) Where—
>
> (a) this section applies in accordance with subsection (1), and
>
> (b) any question arises in connection with the acquisition of the freehold or an extended lease of the house and premises which is such that, if the tenant were proceeding as mentioned in that subsection in pursuance of a claim made under Part I of that Act, the appropriate tribunal ... would have jurisdiction to determine it in proceedings under that Part, and
>
> (c) it is agreed between—
>
> (i) the appropriate authority and the tenant, and
>
> (ii) all other persons (if any) whose interests would fall to be represented in proceedings brought under that Part for the determination of that question by such a tribunal, that that question should be determined by such a tribunal,
>
> the appropriate tribunal shall have jurisdiction to determine that question."

In England the "appropriate tribunal" is generally the First-tier Tribunal (s.88 (6A)). Section 88(6) defines "lease from the Crown" in terms which are not materially different from the definition of "tenancy from the Crown" in s.33(2) of the 1967 Act.

148. Section 33(2) of the 1967 Act defines a "tenancy from the Crown" as a tenancy of land in which there is, or has during the subsistence of the tenancy been, a Crown interest superior to the tenancy. So the expression covers the situation where the Crown disposes of its superior interest at some point during the tenancy.

149. It is common ground, and I agree, that section 33(1) has three limbs. The first limb provides that where there ceases to be a Crown interest in the land before the tenant wishes to enfranchise, Part I of the 1967 Act applies in favour of the tenant as in the case of any other tenancy. This limb was enacted in order to prevent the principle in *Clark v Downes* from applying. In that case it had been

held that the immunity of the Crown from the Rent Act legislation applied to the dwelling *in rem* and so a purchaser of the Crown's interest was also not bound by the legislation. It will be noted that the first limb of s.33(1) applies in favour of both a tenant who held directly from the Crown as well as a subtenant.

150. I also agree with the parties that under the first limb of s.33(1) the tenant is able to exercise a *right* to enfranchise under the statute once there ceases to be a Crown interest in the land, subject to meeting the relevant conditions for enfranchisement. He has no need to rely upon the published undertaking given on behalf of the Crown and s.88 of the 1993 Act is not engaged (Transcript Day 1 pp 101 and 114). Section 88 only applies where a tenant does not have a right to enfranchise and so is relying upon the Crown's undertaking. It follows that where the first limb of s.33(1) applies, the enfranchising tenant does not need to obtain the consent of any other party and there would be no requirement for APL to consent to enfranchisement by the SoS.

151. The defendant says that by virtue of the transfer of the freehold of the Cranwell and Bristol dwellings to DIHL there ceased to be a Crown interest in those properties superior to his underlease and so the first limb of s.33(1) enables him to exercise any right to enfranchise conferred by the 1967 Act.

152. The claimants disagree. Firstly, in relation to 1 Sycamore Drive, Cranwell they say that at the time when the SoS served his s.5 notice, his Crown interest in the freehold reversion had not ceased to exist. The application to register the transfer of the SoS's freehold interest in 1 Sycamore Drive, Cranwell to DIHL was made on 16 December 2021, the same day as the s.5 notice was served, but after that service had taken place. The transfer of ownership was registered on 26 January 2022 and backdated to 16 December 2021. However, it is common ground that because the application to register was made after the s.5 notice had been served, when that notice was given the SoS, not DIHL, was the legal owner of the freehold reversion to 1 Sycamore Drive. At that point in time the SoS held the legal estate on trust for DIHL. I therefore agree with the claimants that (a) technically there had not ceased to be a Crown interest in the freehold reversion of 1 Sycamore Drive when the s.5 notice relating to that property was served and (b) the defendant was not entitled to rely upon the first limb of s.33(1). Instead, for that property he needs to rely upon s.33(1)(b).

153. Secondly, in relation to all 8 properties the claimants say that because of Crown indivisibility, DIHL's interest at the time of the s.5 notice was a Crown interest. For the reasons set out above and under Issue 2 below, this argument fails.

154. Thirdly, and as an alternative to their second point, the claimants argue that, applying s.33(2)(d), DIHL held the freehold reversions in respect of the 8 properties "on behalf of Her Majesty for the purposes of a government department" and so there had not ceased to be a Crown interest in those properties. On this basis the claimants say that the SoS cannot rely upon the first limb of s.33(1) and has to rely upon s.33(1)(b).

155. Section 33(2)(d) requires that the owner holds his interest in property "on behalf of Her Majesty" and not merely "for the purposes of a Government department". It is common ground that DIHL was set up as a SPV and separate entity from

the SoS (or the Crown). It is also common ground that DIHL did not hold its property in trust for the SoS (or Her Majesty). It follows that as a matter of ordinary private law when the SoS transferred the freeholds of the 8 houses *away from the Crown* to DIHL there ceased to be a Crown interest in the properties superior to the SoS's underleases. In *Town Investments* Lord Diplock dealt with a different situation at [1978] AC 381F to 382F: property held *by a Minister* on behalf of, or "on trust for", Her Majesty or the Crown should be understood in the public law sense. That is where the indivisibility of the Crown principle applies. Accordingly, on the facts of this case, the claimants' third argument does not add anything to their second. The language in s.33(2)(d) simply describes one type of Crown interest as that of a Government department in a manner entirely consistent with *Town Investments*. Section 33(2) does not treat property belonging to an entity which does not form part of the Crown as a Crown interest. Section 33(2) should not be interpreted or applied in such a way as would extend the concept of Crown indivisibility by the back door.

156. The upshot is that the defendant is entitled to rely upon the first limb of s.33(1) in relation to 3 Sycamore Drive and all 6 of the Bristol properties and APL's consent was not necessary under s.88(2)(c) of the 1993 Act. However, in case my conclusions in [154]-[155] are incorrect, I shall consider the application of s.33(1)(b) to those properties as well as to 1 Sycamore Drive.

157. The second and third limbs apply where there continues to be a superior Crown interest in the land.

158. The second limb (see s.33(1)(a)) applies where a subtenant seeks an extended lease, not the freehold, and a superior landlord holding a tenancy from the Crown has a sufficient interest to grant such a lease (a term of 50 years) and is entitled to do so without the agreement of the "appropriate authority" (in this instance the SoS). The second limb of s.33(1) fits with para. 10 of sched.1 to the Act which provides that, in general, a lease extension "shall be granted by the landlord having an interest in point of duration which is not superior to another such interest." Thus, the second limb does not require any consent by or on behalf of the Crown or, indeed, any other party.

159. I agree with Mr. Mark Sefton KC, who appeared on behalf of the claimants, that the second limb of s.33(1), like the first, enables a subtenant to exercise a right to enfranchise under the 1967 Act. In this situation, the subtenant has no need to rely upon the Crown's undertaking and so s.88 of the 1993 Act does not apply.

160. So where either the first limb or second limb of s.33(1) applies, the legislation does not require consent to be given by the owner of any interest superior to that of the enfranchising tenant, including a mesne landlord in the position of APL.

161. The third limb (see s.33(1)(b)) applies where:

(i) Either a subtenant seeks an extended lease of a length which a superior landlord is not entitled to grant without the Crown's consent, or the subtenant seeks the freehold, and

(ii) The "appropriate authority" for the relevant Crown interest (here the SoS) notifies the landlord holding a tenancy from the Crown (here APL) that "as regards any Crown interest affected the authority will grant or concur in granting the freehold or the extended lease."

In this case the SoS did serve s.33(1)(b) notices in relation to each of the 8 properties.

162. Mr. Sefton submits that the third limb, unlike the first or second limbs, does not enable a subtenant to exercise a right to enfranchise under the 1967 Act. Instead, he contends that where the third limb applies, the subtenant has to rely upon the Crown's undertaking to comply with the Act. Consequently, the notification of consent under s.33(1)(b) refers to the operation of that undertaking. He then submits that it follows that a case within the third limb (i) also falls within s.88(1) of the 1993 Act and (ii) the consent of other owners of interests superior to the subtenancy is required by s.88(2)(c). This applies to parties whose interests would fall to be represented in proceedings under s.21 before the FTT. If that consent is not given the Tribunal will have no jurisdiction to determine the price(s) payable for enfranchisement and effect cannot be given to the undertaking. On this analysis it is said that the consent of APL is required and, if that is so, plainly it will not be given.

163. How does Mr. Sefton arrive at this outcome? He says that it all depends upon the meaning of the words which immediately precede sub-paragraphs (a) and (b) of s.33(1). Those words operate so as to apply Part I of the 1967 Act "as against a landlord holding a tenancy from the Crown", but not as against the Crown. He contrasts those words with the way in which Part I of the 1967 Act is applied to cases falling within the first limb of s.33(1): "shall apply in favour of the tenant as in the case of any other tenancy." He says that that language is apt to confer a right to enfranchise under the 1967 Act, but not so the language which immediately precedes sub-paras. (a) and (b) in s.33(1). With respect, this argument is untenable for a number of reasons.

164. Sub-paragraphs (a) and (b) of s.33(1) apply where there is a subsisting Crown interest in the land superior to the subtenant's interest. The words upon which Mr. Sefton's argument depends apply both to sub-para. (a) and to sub-para. (b). In the absence of any indication in the 1967 Act to the contrary, those words have the same meaning and effect in relation to each sub-paragraph. There is no such contra-indication. They create a *right* to enfranchise.

165. Section 33(1) provides for Part I of the 1967 Act to apply as against a landlord holding a tenancy from the Crown in order to prevent the ruling in *Rudler v Franks* [1947] KB 530 having effect when a case falls within either sub-para. (a) or sub-para. (b). In that case the court held, following the approach taken in *Clark v Downes*, that because Crown immunity from the Rent Acts attaches to a dwelling *in rem*, that legislation did not apply to the subletting of a property held under a head tenancy from the Crown. Both the claimants and the defendant agree that that ruling is disapplied in relation to the second limb of s.33(1). Mr. Rainey KC submitted on behalf of the defendant that that is also the case for the third limb. Mr. Sefton made no submission to the contrary. In my view Mr. Rainey must be correct.

166. In relation to the second limb of s.33(1) it is necessary to make Part I of the 1967 Act apply to a mesne landlord in order to prevent him from relying upon *Rudler v Franks*. However, the concurrence of the Crown to the grant of an extended lease under the second limb is, by definition, unnecessary.

167. The third limb applies where the Crown's concurrence is necessary and the Crown has notified its consent to a mesne landlord under s.33(1)(b). Part I of the 1967 Act applies as against that intermediate landlord to prevent him from relying upon *Rudler v Franks*. Section 33(1)(b) read together with its introductory language makes it plain that such a landlord is bound by Part I of the Act irrespective of whether he consents to enfranchisement. That is the very purpose of s.33(1)(b). Parliament has made it clear that only the consent of the Crown is required.

168. It is unnecessary for the text immediately preceding sub-paragraphs (a) and (b) of s.33(1) to bind the Crown. Section 33(1)(a) is predicated on there being no requirement for the Crown to consent to an extended lease. Where under s.33(1)(b) the Crown gives its consent, it thereby becomes bound to dispose of its freehold or other superior interest to the sub-tenant in accordance with the 1967 Act. That is confirmed by para.14 of sched.1. First, that schedule is applied notwithstanding that the subtenant holds a tenancy from the Crown within the meaning of s.33. Second, where an "appropriate authority" gives a notice of concurrence under s.33(1)(b), sched.1 operates by the owner of the Crown interest having power to act as "reversioner" (see para. 2) or otherwise as one of the "other landlords" (see para.1(3)). Paragraph 1 of sched.1 confers the rights and imposes the obligations of a landlord under Part I of the 1967 Act as rights and obligations of the owner of the freehold and the owner of the tenancies superior to the subtenant's interest, including the owner of any Crown interest. Those obligations include the obligation under s.8 to execute a conveyance of the freehold in favour of the enfranchising subtenant.

169. On this analysis, the third limb of s.33(1) confers a right to enfranchise on the subtenant just as the first and second limbs do. There is no basis for distinguishing the third limb in this respect. The subtenant has no need to rely upon the Crown's undertaking.

170. The claimants accept that in the ordinary case where there is not (and has not been) a Crown interest in a house, a subtenant is entitled to exercise a right to enfranchise (pursuant to s.5(4) and sched.1) without the consent of a mesne landlord, such as APL. The claimants did not provide any explanation as to why Parliament should have intended in s.33(1)(b) to introduce such a requirement simply because the Crown has a superior interest in the land and its consent to the enfranchisement of its interest is required and given under the 1967 Act.

171. The claimants' interpretation of the legislation lacks coherence. There is no reason to think that Parliament intended the third limb of s.33(1) to apply where the Crown gives its consent to enfranchisement of its interest, and then expressly makes a landlord holding from the Crown bound by Part I of the 1967 Act, only to end up with that landlord's consent being necessary under s.88(2).

172. There is no basis for treating the arrival of s.88 of the 1993 Act as having altered any part of the above analysis. The 1993 Act made no alteration to s.33 or to sched.1. Section 88 simply deals with the jurisdiction of a tribunal in relation to issues falling within s.21 of the 1967 Act, by providing for consensual arbitration before that tribunal where a tenant can only enfranchise pursuant to the Crown's undertaking, as opposed to exercising a right to enfranchise conferred by the Act. In particular, s.88 did not alter the relationship between the three limbs in s.33(1), or alter the third limb so as to make that the subject of the Crown's undertaking rather than a provision conferring a right binding on the mesne landlord.

173. I do not accept Mr. Sefton's submission that s.94 of the 1993 Act is an aid to the construction of s.33 of the 1967 Act. It addresses Crown land in the context of two new regimes introduced by that statute, collective enfranchisement of flats in buildings (chapter 1) and lease extensions of flats (chapter II). He points to the fact that where there has ceased to be a Crown interest in land, s.94(1) (similar to the first limb of s.33(1) of the 1967 Act) applies to cases falling both within chapter I and chapter II, whereas s.94(2) (similar to the second and third limbs of s.33(1)), dealing with mesne landlords where there continues to be a Crown interest in the land, applies only to chapter II and not to chapter I. He then reads those provisions with s.94(9) and (10) of the 1993 Act (which operate in a similar way to s.88), in order to submit that Parliament has decided that in the case of collective enfranchisement it is necessary for the mesne landlord as well as the Crown to give his consent before the FTT has jurisdiction to assess a price. Without that consent the subtenant may not acquire the freehold (Transcript Day 1 pp.107-8).

174. This argument does not support the claimants' interpretation of s.33. Section 94(9) and (10) only apply where there is no right to enfranchise and so a tenant or subtenant can only rely upon the Crown's undertaking. Where a subtenant wishes to pursue collective enfranchisement of premises in which there is a superior Crown interest he cannot rely on s.94(2). For collective enfranchisement there is no equivalent in s.94 to s.33(1)(a) and (b), the second and third limbs of s.33(1). There is no equivalent dealing with, for example, a situation where the Crown agrees to transfer its freehold interest. Section 94(2) does not apply chapter I in that situation whether "as against a landlord under a lease from the Crown" or in any other form. By definition that is a situation where no right to enfranchise is conferred by the 1993 Act and so a subtenant has no choice but to rely upon the Crown's undertaking.

175. In any event, the relationship between s.94(2) and s.94(9) and (10) of the 1993 Act depends upon the meaning of the words "applies as against a landlord under a lease from the Crown", which is effectively the same language as the phrase in s.33(1) upon which the claimants' argument really hinges:

> "as against a landlord holding a tenancy from the Crown shall apply … "

The claimants' excursion into s.94 of the 1993 Act throws no light on the issue which the court has to address, the true meaning of s.33(1)(b) of the 1967 Act.

176. The claimants go on to submit that the principle of legality requires s.33 of the 1967 Act and s.88 of the 1993 Act to be read so that "the defendant's ability to exercise any statutory right must be subject to APL's consent" (para. 60 of skeleton and Issue 1(2)). That submission has not been formulated correctly. It is clear from s.88(1), and now common ground, that s.88 only applies where a tenant or subtenant does *not* have a statutory right to enfranchise and therefore has to rely upon the Crown's undertaking. What the claimants must mean is that applying the principle of legality to s.33(1), a case falling within the third limb does not involve a statutory right to enfranchise.

177. The claimants rely upon the following statement by Lord Hoffmann in *R v Secretary of State for the Home Department ex parte Simms* [2000] 2 AC 115, 131E:

> "Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document."

178. Similarly, in *S. Franses Limited v Cavendish Hotel (London) Limited* [2019] AC 249 Lord Sumption JSC stated at [16] that where protection conferred on a tenant interferes with a landlord's proprietary rights, that protection should extend no further than the statutory language and purpose require (see also *J v Welsh Ministers* [2020] AC 757 at [24]).

179. The principle of legality does not alter the conclusions I have reached on the meaning and effect of s.33(1) of the 1967 Act and s.88 of the 1993 Act. The language in the legislation with which we are dealing is not ambiguous. That language, like the submissions in this case on both sides, is highly specific. The carrying out of detailed analysis does not mean that the words used by Parliament are unclear. Properly read they are not. Ultimately the narrow question is whether there is some ambiguity in the text of the 1967 Act which could lead the court to treat the third limb in s.33(1) as describing a situation in which a subtenant can only rely on the Crown's undertaking rather than a statutory right to enfranchise. There is no such ambiguity. The interpretation I have adopted accords with the approach set out in *Cadogan v McGirk* [1996] 4 All E.R. 643, 648 and *Hosebay Limited v Day* [2012] 1 WLR 2884 at [6].

180. I conclude under Issue 1 that:

(i) The SoS is entitled to rely upon the first limb of ss.33(1) in relation to 3 Sycamore Drive and the 6 Bristol properties;

(ii) In any event, the SoS has served notices under s.33(1)(b) in relation to those 7 properties as a precautionary measure and is entitled to rely upon the third limb of s.33(1);

(iii) The SoS has served a notice under s.33(1)(b) in relation to 1 Sycamore Drive and is entitled to rely upon the third limb of s.33(1);

(iv) Section 88 of the 1993 Act does not require the SoS to obtain the consent of APL to enfranchisement pursuant to the 8 notices under s.5(1).

**Issue 2 (Ground 2(i)) – The decision in *Gratton-Storey v Lewis***

181. There are two issues for the court to determine:

(i) Whether by reason of the indivisibility of the Crown, the SoS and DIHL are to be treated as the same entity and therefore, applying *Gratton-Storey v Lewis*, all 8 notices are invalid; and

(ii) If DIHL does not form part of the Crown for the purposes of the 1967 Act, whether the notice in respect of 1 Sycamore Drive, Cranwell was invalid, applying *Gratton-Storey v Lewis*, because at that time the SoS remained the registered proprietor of the freehold, and DIHL was only the freeholder in equity entitled to be registered as the legal proprietor of the property.

182. I have already addressed the main arguments on the principles dealing with Crown indivisibility. The conclusions I have drawn now need to be applied in the context of the 1967 Act and the decision in *Gratton-Storey v Lewis*.

183. A private person who is both freeholder and subtenant is able to overcome the ruling in *Gratton-Storey* by transferring his freehold to a bare nominee and then serving his s.5 notice on both that nominee and the mesne landlord. The fact that his object is to acquire the interest of the mesne landlord does not render the notice invalid. The nominee in this situation has a separate legal personality, separate from that of the subtenant. So much is common ground.

184. Accordingly, the issue here is relatively narrow: does the doctrine of Crown indivisibility have the effect that where a minister (or government department) transfers his freehold interest either to a SPV or to a bare nominee so as to be able to rely upon the 1967 Act, that interest must nevertheless be regarded as being held by the Crown and not by a separate legal entity not forming part of the Crown.

185. It is well established that the Crown may take the benefit of a statute, unless the contrary intention appears in the legislation (Bennion, Bailey and Norbury on Statutory Interpretation (8th Edition) at p.223, s.31(1) of the Crown Proceedings Act 1947 and *Town Investments* in the Court of Appeal at [1976] 1 WLR 1126,

1142, 1146). There is no dispute that the Crown is entitled to rely upon a statutory right to enfranchise in accordance with the terms of the 1967 Act.

186. Nothing in the 1967 Act, its purposes or statutory context has been identified which would alter the way in which the general principles on Crown indivisibility apply, whether generally or in relation to Issue 2. There is nothing to indicate that the transfer by a government minister either to a SPV or to a bare nominee under his direction for the purpose of overcoming the effect of *Gratton-Storey* must be treated as a transfer to an entity of the Crown rather than to a separate entity.

187. Accordingly, I conclude in relation to all 8 notices that DIHL's freehold interest is not to be treated as being in the ownership of the Crown or the SoS for the purpose of the principle in *Gratton-Storey v Lewis*.

188. I turn to the second issue. The application to register the transfer of the SoS's freehold interest in 1 Sycamore Drive, Cranwell, to DIHL was made on 16 December 2021, the same day as the s.5 notice was served, but after that service had taken place. The transfer of ownership was registered on 26 January 2022 and backdated to 16 December 2021. However, it is common ground that because the application to register was made after the s.5 notice had been served, at the time when that notice was given the SoS, not DIHL, was the legal owner of the freehold reversion to 1 Sycamore Drive, holding the legal estate on trust for DIHL.

189. The defendant submits that it is legally possible for a person to transfer an interest in land held in one capacity, for example a freehold reversion held subject to a trust, to himself as the holder of an interest in a different capacity, for example a subtenancy held absolutely. Likewise, it is legally possible for a subtenant to make a claim to enfranchise against himself in a different capacity, for example as the owner of the freehold subject to a trust. At the time the s.5 notice was served the SoS had succeeded in altering his absolute ownership of the freehold reversion of 1 Sycamore Drive to holding that reversion as a bare trustee for the benefit of DIHL. But the claimants submit that a person cannot transfer a freehold which he already owns to himself.

190. In *Gratton-Storey* the subtenant owned the legal estate in the freehold reversion. The Court held that in the normal situation where the enfranchising subtenant does not own the freehold, the effect of s.8(1) is that the freeholder must convey to the subtenant an estate in fee simple absolute free of incumbrances, which term includes the intermediate interests of mesne landlords. The 1967 Act does not enable a subtenant to enfranchise where he is already the owner of the freehold.

191. But in the present case, unlike *Gratton-Storey*, the SoS is not the absolute owner of the freehold reversion. His ownership is subject to the trust for the sole benefit of DIHL. Here at the time when the s.5 notice was served, the beneficiary was entitled to become the registered proprietor of the legal estate and was bound by that notice, if otherwise valid. In the real world, the transfer of title has been registered and the notice would be carried into effect by DIHL as freeholder,

not the SoS. Accordingly, the claimants' legal argument does not reflect the reality of the legal relationships which existed when the s.5 notice was served.

192. Mr. Sefton placed emphasis on the decision in *Rye v Rye* [1962] AC 496 for the principle that A cannot convey or lease a property to A. But he accepted that the House of Lords did not have to consider, and did not decide, whether it is possible in law for A holding an estate in one capacity to convey that estate to A in a different capacity. I agree with Mr. Rainey's analysis of *Procter v Procter* [2021] Ch 395 at [22], [27], [35] and [74] to [79], *Ingram v Inland Revenue Commissioners* [2000] 1 AC 293 at 305 D-H, 310 G-H and Millett LJ in the Court of Appeal at [1997] 4 All ER 395 at 419h to 427j. Accordingly, I accept his submission that a transfer of the freehold by the SoS in his capacity as bare trustee for DIHL to the SoS as the underlessee, or in other words an acquisition by the SoS of the freehold held by him in a materially different capacity, would be legally possible. For these reasons the s.5 notice in relation to 1 Sycamore Drive did not offend the principle in *Gratton-Storey*.

193. I conclude in relation to Issue 2 that the defendant was not precluded by *Gratton-Storey* from making a claim to enfranchise under Part I of the 1967 Act in relation to any of the 8 properties.

**Issues 3 to 5 (Ground 2(ii)) – Whether the Secretary of State's underleases were business tenancies (areas other than the common parts of the Cranwell site)**

194. The overall issue is whether the underlease of either the Cranwell site or the Bristol site is a business tenancy falling within Part II of the 1954 Act. If the answer is "yes" then, because it is common ground that the SoS has not occupied any of the houses as his only or main residence, there would be no right to enfranchise (s.1(1B) of the 1967 Act). It is common ground, and I accept, that the parties' agreement to exclude ss.24 to 28 of the 1954 Act (authorised by court orders under s.38) does not have the effect of preventing Part II of the 1954 Act from applying to either underlease.

195. The claimants seek to argue that Part II of the 1954 Act is applicable in a number of different ways (Issues 3 to 7). Before addressing those issues it is helpful to consider the legislation and certain key principles as they apply in relation to business tenancies, before considering how the legislation is modified to deal with Crown land.

*General principles in Part II of the 1954 Act for the protection of business tenancies*

196. Section 23(1) applies Part II of the 1954 Act to any tenancy where the demised property is or includes premises "occupied" by the tenant for the purposes of a business carried on by him or for those and other purposes. To satisfy that test any business occupation must constitute a significant purpose of the occupation and not be merely incidental to a non-business purpose, such as residential occupation (*Cheryl Investments Limited v Saldanha* [1978] 1 WLR 1329, 1333H, 1338H-1339A).

197. Section 23(2) defines a "business" as including a "trade, profession or employment" and "any activity carried on by a body of persons, whether

corporate or unincorporate." A similar definition in the rent freeze legislation considered in *Town Investments* led to an issue in that case as to whether accommodation used by civil servants to conduct public or government business was a relevant "activity" (see s.56(3) considered below). But that definition did not purport to be exhaustive and Lord Diplock emphasised the breadth of the ordinary meaning of "business".

198. As set out above ([98]-[99]), the ambit of certain grounds for a landlord to oppose the grant of a new tenancy, the court's order granting a new tenancy and a tenant's entitlement to compensation upon termination are delimited by reference to the tenant's holding. The definition of "holding" in s.23(3) excludes from the property comprised in the tenancy any part which is not occupied by the tenant, or by a person employed by him, for business purposes.

199. Accordingly, the concept of "occupation" lies at the core of the provisions dealing with the circumstances in which Part II of the 1954 Act applies, and the entitlement to the grant of a new tenancy after the expiration of the existing tenancy.

*Occupation*

200. The leading authority remains *Graysim Holdings Limited v P&O Property Holdings Limited* [1996] AC 329. Lord Nicholls, with whom all the other Law Lords agreed, stated that "occupation" is not a legal term of art. Its meaning may depend on the statutory context in which it is being used. Both the purposes of drawing a distinction between occupation and non-occupation and the consequences of applying that test will throw light on what sort of activities are, or are not, to be regarded as occupation in that particular context. "Occupation" in Part II of the 1954 Act carries "a connotation of some physical use of the property by the tenant for the purposes of his business" ([1996] AC at p.334G to 335C). In the context of s.23(1), the purposes of the occupation are those of the tenant as occupier.

201. In some cases the issue may be whether property is occupied at all or is simply unoccupied ([1996] AC 335C). The question of whether the tenant has shown a sufficient degree of presence on a property may depend on the nature of the premises, as in the case of *Wandsworth London Borough Council v Singh* [1991] 62 P&CR 219, 230.

202. Where there are two potential candidates to be treated as the occupier, it may be necessary to consider the nature and degree of control exercised by each over the premises for a business purpose ([1996] AC 335E) as in the case of *Groveside Properties Limited v Westminster Medical School* (1983) 47 P&CR 507.

203. Cases where the business of one person consists of allowing others to use his tenanted property for their business purposes, so that both exercise rights over the same property for the purposes of their own separate businesses, form a spectrum between at one end, the tenant remaining in occupation of the whole of his premises and at the other, a tenant subletting the whole. The question whether the tenant is sufficiently excluded and the other is "sufficiently

present", for the latter to be regarded as the occupier in place of the former, is one of fact and degree ([1996] AC 335F to 336C). As Lord Nicholls put it:

> "The degree of presence and exclusion required to constitute occupation, and the acts needed to evince presence and exclusion, must always depend upon the nature of the premises, the use to which they are being put, and the rights enjoyed or exercised by the persons in question."

204. Where a landlord grants a tenancy, the tenant will normally be the occupier, not the landlord. This is because the tenant normally has "a degree of sole use of the property sufficient to enable him to carry on his business there to the exclusion of everyone else." In the case of a licence the rights granted to a licensee may be less extensive and it may be easier for the licensor to establish that he still occupies the premises ([1996] AC 336D-F).

205. The scheme of Part II of the 1954 Act does not allow for two parties holding different interests both to be occupiers of the same property for business purposes, and thus both able to obtain the grant of a new tenancy of the same premises ([1996] AC 336G-338C and 341F). This is referred to as the "single business tenancy principle."

206. Where a tenant sublets flats or offices and simply retains common parts in order to manage and provide services to those sublet areas, that business purpose will cease once those areas are excluded from his holding, he will not be entitled to the grant of a new tenancy of his holding and he will cease to be tenant of the sublet areas. A qualifying business purpose cannot be one which is brought to an end by the process of ascertaining the holding ([1996] AC 338H to 340B; *Bagettes Limited v GP Estates Limited* [1956] Ch 290, 301).

*Deemed occupation*

207. There are a number of provisions in the 1954 Act where occupation of the demised premises and the carrying on of business by someone other than the tenant is deemed to be occupation by that tenant for the carrying on of his business. In such cases the continuation provision in s.24 applies and the tenant may apply for an order granting a new tenancy. Each of these examples conforms to the "single business tenancy principle" established in *Graysim.*

208. By s.41(1) of the 1954 Act where a tenancy is held on trust, occupation and the carrying on of a business by all or any of the beneficiaries of the trust is treated for the purposes of s.23 as equivalent to occupation and the carrying on of a business by the tenant trustees, and so their tenancy continues under s.24 and they may apply for the grant of a new tenancy when an existing tenancy is about to expire.

209. Ms. Wicks relied upon *Frish Limited v Barclays Bank Limited* [1955] 2 QB 541. There the Court of Appeal had to deal with the parallel provision in s.41(2) which enables trustees who hold the landlord's interest to oppose the grant of a new tenancy to their tenant by relying upon ground (g) of s.30(1), the intention of a *beneficiary* of the trust to occupy the holding for the purposes of his

business. The Court held that some limit had to be placed upon the ambit of "beneficiary." It does not cover all beneficiaries however remote. A beneficiary must have such an interest in the trust as would either entitle him to be put into occupation, or justify the trustees letting him into occupation without more. So, a person who was simply one of the objects of a discretionary trust, and to whom the trustees intended *to grant a tenancy*, did not have an interest engaging s.41(2). He would be occupying *qua* tenant and not *qua* beneficiary under the trust. The Court of Appeal rejected the landlords' submission that they could rely upon intended occupation by any beneficiary as falling within ground (g) even if that occupation would in reality depend upon the trustees granting that beneficiary a tenancy (pp.547-551).

210. In order to reach that conclusion the Court of Appeal found it necessary to consider s.41(2) in the context of s.41(1) and similar provisions in s.42 dealing with groups of companies. It is that analysis which is so illuminating for the purposes of the present issue.

211. At pp.549 to 550 Lord Evershed MR stated:

> "It is, to my mind, quite plain, with all respect to Mr. Blundell's argument, that subsection (1) of section 41 is dealing, and dealing only, with the case where, although the tenancy is vested in someone who is properly described as the tenant, nevertheless it is found that the tenant himself happens to be a trustee and the premises are actually occupied by, and the business is actually being, carried on, not by the tenant trustee himself, but by the beneficiary or beneficiaries, or one of them, for whom the tenant is a trustee. Inevitably, as it seems to me, the occupation by the beneficiary is an occupation which derives its existence from the fact of the trust and the interest of the beneficiary under the trust. It was suggested by Mr. Blundell that section 41(1) contemplated a beneficiary subtenant, a person being a beneficiary to whom the tenant had granted a subtenancy to put him in occupation. In my judgment, that cannot be right. *If there was found in possession AB carrying on a business there and owing his right of occupation to his subtenancy, then that subtenancy would be the tenancy, and the only tenancy, to which Part II of the Act applied.*
>
> I therefore approach subsection (2), which deals with the corresponding case of the landlord, bearing in mind that what subsection (1) has said, putting it quite shortly, is that a tenancy shall not be taken out of the Act and lose the benefit of renewal which the Act gives by reason of the circumstance that the actual occupant, the person carrying on the business, is, in truth, a beneficiary under a trust and is doing so because he is such a beneficiary. If that is right, then I think one naturally approaches subsection (2) with exactly the same notion. What the second subsection is doing is not to deprive the landlord of his chance of successful opposition merely because in the case of the landlord's interest, as had been set out in the case of the tenant's

> interest, the legal and equitable interests are distinct and the actual reversioner, the person who under section 44 is the landlord because he owns the reversion, does so as trustee for someone else, and it is that someone else, *by virtue of his beneficial interest*, who intends to carry on the business in the future. If one reads this section in its context, that inevitably seems to be the parliamentary intention, and the way in which the subsection is expressed supports that view." (emphasis added)

212. Under s.42(2) where a tenancy is held by a member of a group of companies (as defined in s.42(1)) occupation of, and the carrying on of a business on, the property by another member of the group of companies is treated as equivalent to occupation or the carrying on of a business by the tenant. But, as in the case of s.41(1), that provision does not apply where the second company occupies the property pursuant to a subtenancy. Instead, that subtenancy itself qualifies for separate protection under Part II of the 1954 Act. As Lord Evershed MR said in relation to s.42(2) at p.551:

> "That makes it plain, in my view, that what is intended is that the protection for the tenancy is not to be lost by the circumstance that the tenant is company A, but the actual occupant is company B, not by virtue of a subtenancy (*because, as I have said in the case of a trust, if there was a subtenancy, then that subtenancy would qualify as the tenancy for section 23*), but by virtue of the commercial association between companies A and B." (emphasis added)

213. Section 23(1A) and (1B) provide that occupation or the carrying on of a business by a company in which the tenant has a controlling interest or, where the tenant is a company, by a person with a controlling interest in that company, shall be treated as equivalent to occupation or the carrying on of a business by the tenant. I accept the submission of Ms. Wicks that, following the analysis in *Frish* of s.41 and s.42, s.23(1A) and (1B) only apply where either the company in which the tenant has a controlling interest, or the person with a controlling interest in the tenant company, does not hold a sub-tenancy. However, if either such party holds a subtenancy by which they occupy the property and carry on a business, it is that subtenancy is protected under Part II of the 1954 Act. In those circumstances there is no scope for the deeming provision in s.23(1A) and (1B) to apply. That would be contrary to the statutory scheme, in particular the single business tenancy principle. If the deeming provision were to apply, there would be two tenants entitled to an order granting a new tenancy of the property. Part II of the 1954 Act contains no machinery for selecting between two or more competing rights to be granted a new tenancy, because it proceeds on the basis that only one tenant can be so entitled.

214. On the basis of the clear language of the legislation, I consider the analysis by Ms. Wicks of s.23(1A) and (1B) to be correct. But it is also supported by the decision of HHJ Matthews in *Smyth-Tyrrell v Bowden* [2018] L&TR 313 at [60]-[62]. The authors of Reynolds & Clark: Renewal of Business Tenancies

(6th ed) agree with that decision (see para. 1-094 drawing a parallel with s.41 and s.42 and see also paras. 1-110 to 1-112).

215. The claimants addressed the interpretation of s.23(1A) and (1B) in para. 43 of their skeleton and through oral submissions in reply by Ms. Bhaloo (Transcript Day 5 pp. 209 to 215). She criticised the analogy drawn by the Court of Appeal in *Frish* between ss.41 and 42 of the 1954 Act. Even if it were to be appropriate for me to do so, which it is not, I see no basis for criticising that part of the decision. The single business tenancy principle, as subsequently explained in *Graysim*, underlies both s.41(1) and s.42(2). Ms. Bhaloo did not suggest otherwise.

216. Instead, Ms. Bhaloo relied upon a passage in *Frish* at pp.551 to 552. But that deals with a difference between the wording of s.41(2) and s.42(3). Those provisions deal with a *landlord's* entitlement to rely upon ground (g) in s.30(1) to oppose the grant of a new tenancy, and not the *tenant's* entitlement to rely upon s.23. Lord Evershed MR explained the difference of language between s.41(2) and s.42(3) as relating to "machinery". It is plain that that part of the judgment in *Frish* does not in any way undermine the analogy drawn by the Court of Appeal between s.41(1) and s.42(2) in relation to a tenant's right to rely upon s.23. It does not undermine the principle which the defendant drew from *Frish* and applied to s.23(1A) and (1B). I note that Lord Evershed said this at p.552:

> "But if the conception is to be uniform - as I feel myself clearly it is - then just as the essential thing by virtue of which the occupation is to be had under section 42 is the qualification as an associated company, so, I think, if the intended occupation is to be that of a beneficiary, it must be shown that it is the intention that he should so occupy by virtue of his quality or right as a beneficiary."

217. Ms. Bhaloo did not challenge the application of the single business tenancy principle to cases falling within s.23(1A) and (1B). There is no reason why that principle should not apply in relation to s.23(1A) and (1B) just as in the case of s.41(1) and s.42(2). These deeming provisions simply enable the actual tenant to treat the occupation and/or the carrying on of a business by a related party as entitling them to rely upon s.23(1) and the consequential rights to continuation of the existing tenancy and the grant of a new tenancy. They do not apply where the related party is in occupation pursuant to its own subtenancy.

218. Lastly, the claimants criticise the correctness of the decision in *Smyth-Tyrrell* because it is said to be inconsistent with the principle that the "premises" which may be occupied by a tenant for business purposes are not confined to land, but may include an incorporeal hereditament. The claimants did not explain or develop the point, either in their skeleton or oral submissions. In *Pointon York Group v Poulton* [2007] 1 P&CR 6, the Court of Appeal held that an incorporeal right to use car parking spaces contained in a lease of offices was capable of being occupied and fell within s.23(1), contrasting a lease simply of a right of way (*Land Reclamation Co. Limited v Basildon District Council* [1979] 1 WLR 767). It has not been shown that the reasoning in *Smyth-Tyrrell* ignored any

relevant incorporeal right. The decision flowed from a straightforward reading of s.23(1A) and (1B). Furthermore, the claimants have not relied upon any incorporeal right in the present case which could affect the operation of s.23(1A) and (1B) of the 1954 Act.

*Section 56 of the 1954 Act – the application of Part II of the 1954 Act to the Crown*

219. Section 56(1) applies Part II of the 1954 Act *inter alia* where there is an interest belonging to a Government department or held on behalf of His Majesty for the purposes of a Government department, as if it did not so belong. Part II applies to the Crown as so defined, whether as a landlord or as a tenant, subject to the remainder of s.56 and ss.57-60 which make specific provisions for the Crown.

220. Section 56(3) falls into two parts. They both modify the application of provisions in Part II of the 1954 Act in relation to a department's position as a tenant, not as a landlord.

221. The first part of s.56(3) applies where two conditions are satisfied. First, the tenancy must be held by or on behalf of a Government department. Plainly that condition is satisfied in relation to the underleases held by the SoS. Second, the property comprised in the tenancy must be or include property occupied for the purposes of a Government department. Where both conditions are satisfied the tenancy is one to which Part II of the 1954 Act applies. Section 56(3) does not require the occupier of the premises for the purposes of a Government department to be the tenant. One object of this provision is to extend protection to a tenant which is a Government department but where another Government department is in occupation for its purposes. Section 56(3) therefore reflects the principle of Crown indivisibility as explained in *Town Investments*. Both departments form part of a single entity, the Crown or the Government. This approach also allows necessary flexibility to accommodate the reorganisation of Government departments from time to time. The first part of s.56(3) also avoids any issue as to whether the activity of a Government department qualifies as a "business" for the purposes of s.23(1), s.23(3) and related provisions.

222. The second part of s.56(3) relates to those specific provisions in Part II of the 1954 Act which *only* apply if either or both of two conditions apply:

(a) Any premises have *during any period* been occupied for the purposes of the tenant's business; and/or

(b) On any change of occupier of any premises the new occupier succeeded to the business of the former occupier,

Condition (b) relates to the compensation provisions in s.37 (see s.37(3)). Where condition (a) applies, the second part of s.56(3) deems that condition to be satisfied "during that period" when "the premises were occupied for the purposes of a Government department". Like condition (b), condition (a) relates very precisely to specific provisions in Part II, in this instance to provisions where it is relevant to apply the business occupancy test over a period of time. One such provision is s.37(3). Another is the five-year bar to a landlord's ground of opposition (g) in s.30(1) (see s.30(2) and (2A)). Condition (a) could also

apply to s.43(3). The second part of s.56(3) does not apply more generally in the application of Part II of the 1954 Act.

223. It is the first part of s.56(3) which is relevant to the issues in this case. Where the whole or part of the premises let to a Government department is occupied for the purposes of that department or another Government department, "the tenancy shall be one to which Part II of [the 1954 Act] applies". That is essentially the same language as we find in the exclusion of houses from Part I of the 1967 Act (in s.1(1B)). It is necessary to tread carefully here. The protagonists in this case are looking at this issue to see whether a right to enfranchise is or is not excluded. But the approach taken by the court to this question of interpretation affects the interests of landlords and tenants in relation to Part II of the 1954 Act more generally. The wider the scope given in this case to s.56(3) (and also s.56(4)) so as to exclude a claim to enfranchise under the 1967 Act, the wider the protection given to Government departments as business tenants as against their landlords.

224. As Ms. Wicks submitted, s.56(3) was intended to avoid Government departments being put at a disadvantage relative to other business tenants, owing to the flexible nature of the ways in which Government property is occupied for Government purposes. But where the effect of a legal agreement would be to extend protection for a Government department substantially beyond that normally available to business tenants, it is necessary to ask whether that was the intention of Parliament as expressed through the language of the statute.

225. I have already referred to the significance of the single business tenancy principle. I see nothing in s.56 or any other provision of the 1954 Act, to disapply that principle where a tenancy granted to the Crown or a Government department falls within the scope of Part II of that Act. I return to this subject under Issue 6 below.

226. There are two issues between the parties:

(i) Is the test in s.56(3) whether premises are "occupied for any purposes of a Government department" to be considered from the viewpoint, or through the lens, of the occupier (as the defendant contends) or through the lens of the tenant Government department or the Crown (as the claimants contend)? and

(ii) The true interpretation and effect of s.56(4).

*Section 56(3) of the 1954 Act*

227. The claimants say that the difference in language between s.23(1) and s.56(3) reflects different statutory purposes. The purpose of s.23(1) is to protect occupation by a tenant for the purposes of his business. The purpose of s.56(3) is to provide protection in respect of "the purposes of the Government served by the occupation, not the purposes, of the occupant." In this respect the claimants seek to draw a parallel with s.57. If the claimants are correct, they say that occupation may serve the purposes of a Government department without

that being the purpose of the actual occupier (claimants' skeleton para. 25). Indeed, Ms. Bhaloo submits that the effect of s.56(3) is that it does not matter who is in occupation of the premises, provided that they are occupied for any purposes of the Government (Transcript Day 1 p.186).

228. The defendant submits that s.56(3) requires that the purposes of the occupation of the premises, as viewed from the perspective of the occupier, be those of a Government department.

229. The claimants submit that the effect of the defendants' submission is to reword s.56(3) as if it read "premises occupied *by* a Government department" instead of "premises occupied for any purposes of a Government department." The defendants submit that the effect of the claimants' submission is to reword s.56(3) as if it read "premises which it serves the purposes of a Government department to have occupied."

230. Ms. Wicks illustrated the difference between the parties by reference to the 6 Bristol properties. They comprise 6 semi-detached houses with their gardens. If the SoS were to sublet each of the properties in the open market to civilians, the defendant would say that the subtenants are the occupiers and the purpose of their occupation is residential for their own benefit. The purpose would not be that of a Government department. However, the claimants would say that, irrespective of whether the occupier of each property is a civilian tenant, the purpose of the occupation has to be looked at from the perspective of the relevant Government department, here the MoD. On their case it is a Government or MoD purpose to sublet on the open market void properties which are not currently required for service personnel. They rely upon *Territorial and Auxiliary Forces Association of the County of London v Nichols* [1949] 1 KB 35, 47 which treated this as a Crown purpose when deciding that the Association was an emanation of the Crown benefiting from the Crown's immunity from the Rents Acts. I will return to *Nichols* under Issue 5(3) below.

231. I have no hesitation in rejecting the claimants' approach. It involves an unjustifiable disconnect between the requirement that the tenanted premises be occupied for the purposes of a Government department and the occupier the subject of that occupation.

232. Neither s.56(1) nor s.56(3) are entirely freestanding provisions. They operate within the context of Part II of the 1954 Act. Section 56(3) does not refer to the requirement in s.23(1) that the qualifying purpose of the occupation of the premises be that of the tenant. But whether we are dealing with s.23(1) or s.56(3) there must still be occupation for a qualifying purpose. That requirement has not been disapplied by s.56(3). The usual tests for occupation, such as physical presence or absence of the occupier, and the exercise of control of the use of the premises by the occupier, can only be applied in relation to someone who is in occupation, the occupier. This is so obviously the natural import of the word "occupied" that it was unnecessary for the draftsman to spell that out by expressly referring to the "occupier" in s.56(3). The defendant's interpretation does not involve rewriting s.56(3) as if to require that the premises be "occupied by a Government department."

233. The question under s.56(3) remains whether the occupier of premises is in occupation for the purposes of a Government department. An occupier who is not a Government department may still be in occupation for such purposes. But if the wrong lens is used the answer given to the statutory question will be flawed by improper reasoning. It can lead to results which cannot have been the intention of Parliament.

234. Where a tenant which is not part of the Crown sublets the whole of office premises to a subtenant which occupies those offices to the exclusion of the tenant, the tenant will not be protected by Part II of the 1954 Act. There is nothing in s.56 to suggest that Parliament intended the result to be any different if a Government department sublets surplus office accommodation to a subtenant in the private sector which occupies the whole of the property. But on the claimants' interpretation of s.56(3), it would be irrelevant to ask what are the purposes of the occupation as viewed by the occupier. The court would be confined to asking what are the purposes of the Government department which sublets. If the purposes of the actual occupier were to be disregarded, and the matter considered only from the perspective of the relevant Government department, the test in s.56(3) would generally be satisfied.

235. There is a further, fundamental problem with the claimants' interpretation. In the example where offices are sublet by a Government department, s.56(3) would confer protection under Part II of the 1954 Act on the department's head tenancy. The sub-tenant would also qualify for protection under s.23(1) in relation to the subtenancy. There is nothing in the legislation to indicate that the single business tenancy principle does not apply in the context of s.56 ([225] above and [374]-[375] below). There is no machinery in the Act for dealing with the grant of two new tenancies in respect of the same property. The solution provided by Parliament is to apply the occupation test in s.56(1) and (3) from the perspective of the subject of the occupation, the occupier.

236. The claimants also seek to rely upon s.57 of the 1954 Act as an aid to the construction of s.56(3). Under s.57 where the interest of a landlord or any superior landlord belongs to or is held for the purposes of a Government department, or is held by a local authority (or certain other statutory bodies), the Minister or Board in charge of any Government department may certify that it is requisite for the purposes of the Government department or the authority that the use or occupation of the property shall change by a specified date. The general effect is that the tenant cannot be granted a new tenancy lasting beyond that date. The claimants submit that the concept of "purposes of the Government department" used in the certification provision does not depend upon that department resuming occupation of the demised premises. The claimants then say that the same phrase when used in s.56(3) is not dependent upon occupation by a Government department. Thus, the focus of "occupation" in s.56(3) is the purposes of the relevant department, not those of the occupier.

237. I do not accept that s.57 provides any assistance in construing s.56(3). The object of s.57 has nothing to do with the object of s.56(3). Section 57 is concerned with the position of a Government department (or certain other public bodies) as a landlord (or superior landlord) seeking to change the use or occupation of property in the public interest on some future date. The fact that

this certification provision does not depend upon the landlord resuming occupation tells us nothing about how the qualifying condition in s.56(3) "occupied for the purposes of a Government department" is to be understood in the context of the operation of s.23 and related provisions.

238. The defendant's construction of s.56(3) accords with the approach taken by Scott J (as he then was) in *Linden v Department of Health and Social Security* [1986] 1 WLR 164 at 175C to 177A when he decided that the district health authority in that case was the occupier of the premises and that their occupation was in furtherance of one of the functions or purposes of the Secretary of State. That involved looking at occupation from the perspective of the occupier, but did not involve rewriting s.56(3) so as to require the Secretary of State or his department to be in occupation.

*Section 56(4) of the 1954 Act*

239. As is clear from the opening words of s.56(4), that subsection has to be read in conjunction with s.56(3). It affects the way in which s.56(3) is to be applied. Section 56(4) is not a freestanding provision. The claimants have not contended in their pleadings that Part II of the 1954 Act applies to either the Cranwell or the Bristol underleases by applying s.56(4) (see e.g. Transcript Day 4 p.3). Nevertheless, because Ms. Bhaloo says that s.56(4) illuminates s.56(3), and because both parties made submissions about the interpretation of s.56(4), I will deal with the matter.

240. In *Linden* Scott J rejected the submission for the Secretary of State as tenant that s.56(4) applied simply because he had "provided" the premises to the district health authority rent-free and so it was to be presumed that the premises were occupied for the purposes of a Government department, without more. As we have seen, he went on to decide in favour of the Secretary of State by applying s.56(3) to the facts of the case and the occupation of the district health authority. He did not rely upon s.56(4).

241. The effect of the tenant's submission in *Linden* on the interpretation of s.56(4) was that if premises are simply provided for no rent by a Government department, Part II of the 1954 Act applies whether or not those premises are occupied for any purpose of a Government department. The judge said that would be a very odd result which could not be right (p.172 C-E). I agree.

242. Although Ms. Bhaloo criticised the particular way in which the judge expressed himself, that does not go to the essence of what he was saying. Indeed, the broad interpretation which the claimants in this case sought to give to s.56(4) amply demonstrate why Scott J was right to be concerned about an over-literal interpretation of this provision. Ms. Bhaloo submitted that the qualifying condition in s.56(4) is simply that the Government "provides" its tenanted premises to "someone" without any rent being payable. Occupation does not form part of that condition. The premises only need to be "provided rent free" by a Government department. So, she submits that where a department holds a long lease of land to meet some future needs and, in the meantime, provides it to a local youth football club for their use, the department's tenancy is protected by virtue of s.56(4) (Transcript Day 1 p.204).

243. On the claimants' interpretation of s.56(4), I do not see why that provision would not be applicable irrespective of whether the relevant Government department intended to use the land for its purposes at some point in the future. Section 56(4) does not impose any restriction to that effect. On Ms. Bhaloo's reading s.56(4) simply requires a government department to provide its tenanted land to someone else rent free.

244. Like Scott J, I do not think that this is how Parliament could have intended s.56(4) to operate. In practical terms the reading which Ms. Bhaloo advances would operate as a freestanding route to protection under Part II of the 1954 Act. The only requirement derived from s.56(3) would be that a tenancy must be held by or on behalf of a Government department. The claimants' approach would extend protection for the Crown way beyond the scope of the general protection afforded by s.23(1), even as extended by s.23(1A) and (1B), s.41, s.41A and s.42. Although the object of s.56(3) is to facilitate protection for Government departments where premises are occupied for the purposes of a department, according to the claimants s.56(4) could extend the protection to cases where premises are not used by the occupier for any Government purpose.

245. Scott J sought to provide an alternative reading of s.56(4) at [1986] 1 WLR 172G to 173F, although he recognised that there were difficulties with it, not least that it did not accord with the analysis in *Town Investments*. He suggested that s.56(4) applied where one government department grants a tenancy to another government department rent free.

246. Ms. Bhaloo invited the court to decide that the interpretation proffered by Scott J in *Linden* is incorrect. Ms. Wicks asked me to do the same, albeit on a different basis. She submitted that whatever s.56(4) means, it is not concerned with a subtenancy created by a tenant department as Scott J appears to have suggested. When the draftsman wished to refer to a tenancy he did so. This, after all, is legislation dealing with property law. Ms. Wicks submits that s.56(4) does not apply to the subletting by the SoS of the Cranwell common parts to DIHL (Transcript Day 3 pp.211 to 212).

247. For my part, and with great respect, I have difficulty in agreeing with the judge's construction in *Linden*. It does not accord with the language used by Parliament and would offend the single business tenancy principle. I also accept the submissions of Ms Wicks. But this does not mean that the court is driven to accepting the claimants' interpretation.

248. In my judgment s.56(4) has to be read in the context of s.56(3) properly construed. The tenanted property must be held by or on behalf of a Government department. Section 56(3) requires that the property must be occupied, or must include premises which are occupied, for the purposes of a Government department. The occupation test in s.56(3) requires there to be an occupier and is to be applied from the perspective of that occupier. Section 56(4) is a modest provision which makes it clear, for the avoidance of doubt, that s.56(3) applies to rent-free occupation for Government purposes by a department or other occupier. In other words, s.56(4) simply facilitates the satisfaction of the occupation test in s.56(3) by informal arrangements of that kind. The draftsman appears to have thought it advisable to acknowledge in s.56(3) and (4) both

Crown indivisibility and the ways in which Government property is used in practice for Government purposes. What the draftsman did not do was to introduce a nonsensical regime which would allow for a non-Government purpose of an occupier to be treated as occupation for a Government purpose, *a fortiori* given that a tenant department in occupation would only be protected by s.56(3) if its occupation was for a Government purpose.

249. At all events, my conclusion that s.56(4) of the 1954 Act does not assist the claimants' case rests upon my rejection of their interpretation of that provision. It does not depend upon the interpretation I have set out in [248] above.

250. In the final analysis, given that the claimants do not contend that s.56(4) is a freestanding provision, the key point for this case is that in applying s.56(3), occupation and its purposes must be assessed from the perspective of the occupier. For the reasons I have given, it is unnecessary to read the words "premises occupied for the purposes of a Government department" as meaning "premises occupied by a Government department" (see Issue 4).

251. I now turn to consider the various questions raised under Issue 5. In doing so I reject the suggestion that those questions should be answered disregarding who was actually in occupation.

**Issue 5(1) – Houses occupied by service personnel**

252. In relation to this and other types of property the ASF provides much useful information which need not be set out in detail in this judgment. In the light of that agreed material the parties did not find it necessary to take the Court to many of the source documents in their submissions.

253. Essentially the issue is whether a service person is to be treated as the occupier of his or her house and to be occupying the property for residential purposes, or whether the SoS is to be regarded as the occupier, being in occupation for the governmental purpose of providing accommodation to service personnel. This is agreed to be a question of fact and degree. However, the claimants also submit that, in any event, occupation of any of the 8 properties by a service person is akin to that of a service licensee and so deemed as a matter of law to be occupation by the SoS. The claimants' oral submissions placed a good deal of emphasis on this second point, which I will deal with before addressing the issue of occupation. But first I will summarise certain aspects of the legal and policy framework.

*Legal and policy framework*

254. By an Order in Council made under the Defence (Transfer of Functions) Act 1964 the SoS has general responsibility for defence and for establishing a Defence Council to exercise on behalf of the Crown its powers of command and administration over the armed forces. By s.2(1) the SoS was incorporated as a corporation sole for all purposes relating to the acquisition, holding, management or disposal of property. By s.2(3) of the 1964 Act the purposes for which land may be taken, purchased or used under various statutes includes any purpose of his department or any of the armed forces. Part II of the Military

Lands Act 1892 (which provides for the making of byelaws in connection with the use of land for "military purposes") applies to land under the management of the SoS as if any such purpose were a "military purpose" within Part II of the 1892 Act.

255. Section 1 of the 1892 Act gives the SoS power to purchase land for the "military purposes" of any part of the armed forces. By s.23 "military purposes" includes "the building and enlarging of barracks and camps" and "other accommodation" and "any other purposes connected with military matters approved by the Secretary of State." There appears to be no dispute that the provision of SFA is a "military purpose." Section 14 confers power on the SoS to make byelaws regulating the use of land for any military purpose to which it is appropriated. "Appropriated" means allocated for a particular purpose. It has nothing to do with the current use of land (*DPP v John* [1999] 1 WLR 1883, 1890).

256. In my judgment these statutory provisions do not lend any support to the claimants' case. The most that can be said is that they authorise the acquisition and holding of land to provide *inter alia* SFA and potentially to regulate the use of land. They do not address the nature and degree of control over land or the question whether the SoS is the occupier of SFA units.

257. Service personnel are Crown servants appointed by the Crown under the Royal prerogative. There is no contract of employment.

258. The Armed Forces Act 2006 ("the 2006 Act") creates a single system of law for the three services. Parts 1 to 13 deal with service discipline including criminal offences, service courts, powers of arrest, entry search and seizure, detention, trial and punishment. Parts 14 to 17 deal *inter alia* with terms and conditions of enlistment and service (pursuant to regulations – see s.329) and the discharge of enlisted service personnel. In broad terms members of the regular forces are subject to service law. Persons residing or staying with service personnel are not subject to service law and are only "civilians subject to service discipline" in certain designated areas outside the British Isles" (ss.467 and 470 and sched.15).

259. Part 3 of the 2006 Act is concerned with powers of arrest, entry, search and seizure. Section 96 defines "service living accommodation" for the purposes of Part 3 of the Act. Such accommodation includes "any building or part of a building which is occupied for the purposes of any of His Majesty's forces but is provided for the exclusive use of a person" subject to service law (s.96(1)(a)). The definition also includes any other room or structure "which is occupied for" the same purposes and is used to provide sleeping accommodation. Thus, "service living accommodation" will include various types of accommodation, including barracks. By way of example, for the purposes of arresting a person in relation to a service offence, s.90 gives a service policeman power to enter and search "service living accommodation" and, indeed, other "premises occupied as a residence" by *inter alia* a person subject to service law. Some powers in Part 3 of the Act (e.g. the power in s.75 to stop and search for stolen articles or controlled drugs) are not exercisable in service living accommodation. Plainly powers conferred by Part 3 of the 2004 Act are not

dependent upon the SoS (or a service policeman) being in "occupation" of the premises where the power is exercised.

260. Accordingly, I do not consider that s.96(1)(a) of the 2006 Act indicates that the SoS, rather than a service person, is in occupation of an individual unit of SFA for the purposes of Part II of the 1954 Act. A definition section for the sporadic use in SFA of criminal investigation powers of this nature does not really go to the issue of who is the occupier of each individual house.

261. King's Regulations have been made for each of the three services, with which service personnel are required to comply. The Regulations address a wide range of subjects, including the structure of the services, the roles and duties of personnel, failings in professional or personal standards, misconduct, recruitment and assignment.

262. Not surprisingly, the Regulations go into considerable detail on matters which affect performance within the service (e.g. command structure and wearing of uniforms) and standards of behaviour more generally). For example, service personnel wishing to take up business appointments or off-duty employment must obtain approval from their commanding officers because of the need for each service to provide immediate and constant operational capability (para. J5.075 to J5.076 of King's Army Regulations). Requirements of this nature, which are typical of the King's Regulations, do not go to the question of who is present in any single unit of SFA or the nature and extent of their control over those premises.

263. The ASF states that service personnel have "inherently mobile lifestyles" and full-time regular service personnel have "100% liability for duty, which while not used all the time, means [they] may be called upon to work whenever and wherever the service requires as directed by their commanding officer." Service personnel and their families have no real choice where they serve, or when and how frequently they move.

264. However, these requirements apply irrespective of where a service person has his or her home. Paragraph 22 of App. F to the ASF states:

> "In recognition of this, SFA accommodation is offered to eligible and entitled service personnel, located in close proximity to the service person's duty station. Service personnel are however generally free to live where they want, regardless of the nature of their role, provided that they are able to carry out their duties. In complying with this requirement, service personnel can choose whether they live in SFA or private (owned or rented) accommodation. Indeed the MoD supports service personnel who wish to buy their own properties through the Armed Forces Help to Buy Scheme. According to a 2022 Armed Forces survey, 20% of service personnel live in property which they own, 29% live in SFA, 44% live in SLA with the remaining marked as other/ on board ship or submarine. ….."

265. In relation to the 8 properties, the Court has not been shown any evidence that any of the service persons in residence has been specifically required by their service to live at that particular address or in SFA.

266. Joint Service Publications ("JSPs") are authoritative rules, policy and guidance applying across the services and/or MoD. JSP 464 is the overall policy document for the provision of SFA, single living accommodation ("SLA") and substitutes therefor in the UK and overseas.

267. JSP 464 Volume 1 Part 1 Chapter 1 sets out general principles and responsibilities. Paragraph 0101 states:

> "**0101. Provision of Service Accommodation**. It is a condition of service in recognition of their inherently mobile lifestyles, frequently remote bases and terms of service, that Regular Service (including FTRS(FC)) personnel are provided with high quality subsidised accommodation."

This was one of a number of references which Ms. Bhaloo put forward as indicating requirements imposed on service personnel about the location of their residence (see e.g. Transcript Day 2 p.36 *et seq*). Instead the paragraph is describing an obligation *imposed upon the SoS* to *provide* accommodation as part of the conditions of service (see e.g. *Lai v Secretary of State for Defence* [2011] EWHC 145 (Admin) at [33]). Indeed, the Foreword to JSP 464 uses essentially the same language as para. 0101 and describes the accommodation as "a fundamental part of the package for service personnel."

268. Where a service person is provided with SFA he is required to abide by JSP 464 and to sign the licence to occupy as set out in the JSP and to abide by its terms and conditions. But "JSP 464 does not impose any obligation on service personnel to occupy SFA … SFA is instead one of a range of occupation options open to service personnel, which may include the service person renting private accommodation, or owning their own home" (ASF App.H paras. 18, 20 and 33).

269. SFA is provided to service personnel who are either "entitled" or "eligible." "Entitled" persons are those who are married or in a civil partnership and living with their spouse or partner, or single parents residing with a child for whom they have prime responsibility. Generally an entitlement to SFA is exercisable at the service person's "duty station", the location specified on their assignment order (JSP 464 Vol.1 Part 1 Para.0326 and ASF App. H para. 24). Entitled persons must have at least 6 months to serve at the duty station at which they qualify for SFA. "Eligible" service personnel may apply to occupy temporarily surplus SFA where it is available. All personnel who are single or in long-term relationships but not married or in civil partnerships are "eligible" (ASF App.H paras. 21 to 22 and 30). In addition "entitled" service personnel who choose not to take up their entitlement to SFA at their duty station may apply for surplus SFA at an alternative location in the UK (ASF App. H paras. 25 and 31 and JSP 464 Vol.1 Part 1 para. 0326).

270. Paragraph 0203 of JSP 464 states that SFA is to be provided as close as possible to the service person's duty station. The MoD seeks to make the initial offer

within a 10-mile radius. A local service commander can agree to SFA within a radius of up to 20 miles (subject to exceptional allocations beyond that distance with the approval of policy staff). Normally where SFA is not available within a 20-mile radius, a "Non-Availability Certificate" is issued, unless the service person has property available within the appropriate radius. The DIO is then responsible for procuring a suitable property in the private sector to offer to the service person as "substitute SFA" (App.H paras. 75 to 76). The arrangements for substitute SFA are to equate "as far as possible" to equivalent procedures for SFA, including location within an appropriate radius of the place of duty (JSP 464 Vol.1 Part 1 para. 0501).

271. In general, entitlement to the SFA in which a person resides ceases in relation to a duty station when he or she is assigned to a different duty station (JSP 464 Vol.1 Part 1 pac.0707). At that point they *may* make an application for SFA at the new station (JSP 464 Vol.1 Part 1 section II). A timescale is set for the making of any such application, but there is no obligation to make it.

272. In her first witness statement Ms. Harrison states at para. 3.4:

> "SFA is a fundamental part of the MoD's offer to service personnel. It is viewed as crucial to the MoD's ability to attract and retain talented personnel to deliver its objectives. Therefore, there is, and will continue to be, a long-term, large-scale requirement for the provision of accommodation to service personnel and their families."

273. In paras. 5.4 and 5.5 of his second witness statement, Mr. Richard Sewter, Central Regional Manager in the Accommodation Team at the DIO, says this:

> "5.4 However, I wish to make it clear that the MoD does not place any obligation on service personnel to live in SFA, or to live in SFA at the site of the base at which [they] serve. This would run contrary to JSP 464 which is designed to increase the flexibility and choice around where service personnel make their home, rather than restrict it.
>
> 5.5 To my knowledge, a service person and their family are free to live where they want, regardless of the nature of their role, provided they are able to carry out their duties. However, in complying with this requirement, they could choose to either live in SFA (provided they are eligible or entitled) or alternatively they could equally decide that is preferable for them and their family to live in private civilian accommodation. Service personnel who do not meet these criteria tend to live in Single Living Accommodation which are accommodation blocks near MoD bases. In my experience it is common for service personnel with families to elect to live in private civilian accommodation. Indeed, the MoD actively supports this choice. By way of an example, regular service personnel (subject to certain qualification criteria) can apply to the Forces Help to Buy scheme. This enables servicemen and women to borrow up to

> 50% of their salary, interest free, to buy their first home or move to another property on assignment or as their families' needs change ... ”

274. It is common ground that “JSP 464 does not impose any obligation on service personnel to live within 10 or 20 miles (or any other distance) of their duty station” (ASF App.H para. 28). A key reason for the provision of SFA is that service personnel are liable to be moved to different postings in the UK and overseas during their career. The absence of SFA from the offer would make it more difficult to attract and retain personnel. As a matter of common sense, the policy in JSP 464 seeks to offer SFA in reasonable proximity to a person’s duty station. Convenience of location generally benefits all personnel occupying SFA. It *may* also be advantageous for the service concerned in some circumstances. But this would be insufficient to demonstrate that the SoS occupies any of the properties (see e.g. *Chapman v Freeman* [1978] 1 WLR 1298).

275. Ms. Bhaloo submitted that the provision of accommodation to service personnel is “fundamental to the way service personnel are enabled to perform their duties”, relying upon paragraph 29 of the claimants’ skeleton but without taking the court to the sources referenced. They need to be read carefully and not out of context:

(i) The statement in *Lai* at [32] that para. 0101 of JSP 464 is a “general rule of fundamental importance to the way service personnel are enabled to perform their duties, and are treated while doing so,” was in the context of a complaint by a service person that the SoS had failed to provide accommodation in accordance with his obligation;

(ii) The next reference purports to be the UK Armed Forces Defence Accommodation Strategy published in October 2022. Not all the snippets provided come from that document. One comes from an offering circular relating to APL. The relevant quotation from the Strategy states:

> “Defence provides Service personnel with subsidised accommodation and support to *aid workforce mobility, operational readiness and capability. Service personnel change jobs frequently, sometimes at short notice and in multiple, and sometimes remote locations.* To mitigate the impact of this, Defence provides subsidised high-quality housing and support to Service personnel and their families. It is a key part of our offer as is the help we give to Service personnel who wish to buy their own properties through the Forces Help to Buy scheme. In supporting our people through the scheme, Defence gives them greater choice over their accommodation. (emphasis added).”

For the claimants’ skeleton to have relied selectively on the words I have emphasised gave a misleading impression;

(iii) The quotation from JSP 770 is concerned with "welfare" in a very broad sense, not simply the provision of SFA.

276. The claimants have asked the court to consider a large number of references. It would not be appropriate in this judgment to refer to each and every one of them. I have taken all of them into account. It is reasonable for the court to assume that they represent the best points that the claimants can advance in support of their case.

*Service Licence*

277. A person who lives in a house is a service licensee and, as a matter of law, the licensor is deemed to be the occupier if either (1) it is essential to the performance of his duties that, as a matter of fact, he should occupy the particular house or a house within a particular perimeter, or (2) he is required by contract to occupy the house and, as a matter of fact, by doing so he is better able to perform his duties to a material degree (*Commissioner of Valuation for Northern Ireland v Fermanagh Protestant Board of Education* [1969] 1WLR 1708, 1722 and *Ludgate House Limited v Ricketts* [2021] 1WLR 1750 at [64]). Ms. Bhaloo stated that the claimants rely upon the second and not the first of those two principles.

278. Ms. Wicks submits that because a service licence deems the licensor to be the occupier as a matter of law, it is incompatible with the factual nature of the enquiry required by the occupation test according to *Graysim*. I do not need to decide this interesting point as the claimants' argument fails in any event.

279. I accept Ms. Bhaloo's submission that it is not essential to the second principle for there to be a contract of employment between the licensor and licensee (see *Ludgate House* at [65] to [67]). Similarly in *Langley v Appleby* [1976] 3 All ER 391 Fox J held that there is no requirement for the relationship to be that of master and servant. The holder of an office can be a service licensee (p.406f-407b). Although a police officer is not a servant of the police authority, the judge considered the relationship to be analogous to that of master and servant (p.402j). The same applies to service personnel. It is therefore necessary to consider the terms of service. In *Langley* the court considered the relevant regulations governing police officers (p.411j to 412b).

280. Ms. Bhaloo relied upon a declaration which appeared at the end of each licence for SFA:

> "I have read and agreed to the terms of this Licence. I understand that this Licence is to be granted because my occupation of the Property is required for the better performance of my service with the Crown and that this Licence is not a tenancy."

This does not assist the claimants' case. It is not a requirement in the terms of service for service personnel. It is a provision in the licence which a service person signs *if they apply for SFA* and that accommodation is provided to them by the SoS. The declaration begs the question whether the terms of service

require a service person to live in SFA in the first place. Plainly JSP 464 does not. I deal below with the other sources relied upon by the claimants.

281. Furthermore, a clause similar to that declaration was contained in the occupation licences granted to the 6 teachers in the *Fermanagh* case ([1969] 1WLR at p.1713B). The House of Lords held that the clause did not alter the terms of employment or service. Those terms did not require any of the teachers to occupy the house as a condition of his employment. Like the service personnel in the present case, the teachers could choose to apply to live in one of the houses and they could leave the accommodation and live without imperilling their employment (p.1723).

282. Ms. Bhaloo relied upon para. 993 of Chapter 15 of the RAF King's Regulations entitled "Discipline". Sub-paragraph (1) states that service personnel will be required to occupy "public accommodation where this is appropriate for service reasons …" and sub-para. (2) defines certain categories of single and married *unaccompanied* personnel who are to occupy public accommodation. Sub-paragraph (1) is subject to sub-para. (3) by which commanding officers are required to avoid unnecessarily restricting the freedom of choice of their personnel. Paragraph 4c of Appendix H to the ASF notes that there is no evidence that any of the service personnel at the Cranwell site or the Bristol site was subject to paragraph 993 at the relevant time.

283. I agree with Ms. Wicks that these provisions proceed on the basis that there is no general requirement in the King's Regulations for service personnel to live in public accommodation, or more specifically in SFA. Paragraph 993(2) applies to persons who do not appear to be entitled to SFA. The nature of the requirements in paras. 993(1) and (2) suggest that they are not addressed to SFA as opposed to other public accommodation in the form of, for example, barracks. The SFA scheme is for the provision (not imposition) of family accommodation to people who are "entitled" or "eligible" and make an application for that purpose. The whole tenor of the material put before the court is that service personnel are entitled to choose where they live. The claimants have not shown how para. 993 detracts from e.g. para. 20 of App.H to the ASF.

284. I conclude that the terms of service for service personnel do not include a general requirement, or any requirement applicable to the 8 properties, that service personnel live in service accommodation, in particular SFA. The position in *Langley* was very different. There the court found that there was an obligation in the terms of service for each police officer to live where he was directed to live, otherwise he would be obliged to resign ([1976] 3 All ER at pp.411g-412g).

285. Accordingly, the claimants' case fails on the first limb of the two tests that have to be applied and I need not go any further. However, I would say shortly that the claimants' submissions have not persuaded me that, looking at all relevant circumstances, occupation of SFA was for the better performance of duties as service personnel, whether as a generality or specifically in relation to the 8 properties.

286. The parties referred to one case in which it was accepted that a licence to occupy service accommodation is a service licence. *Secretary of State for Defence v Nicholas* [2013] EWHC 2945 (Ch) involved two claims for possession, one relating to a unit of SFA. Given that the statutory protection in the Housing Act 1985 and the Housing Act 1988 did not apply to Crown properties, the case was essentially concerned with defences based on articles 8 and 14 of the ECHR and the Human Rights Act 1998 ("the 1998 Act"). The licence to occupy the property contained the same declaration referring to a service licence as we find in the licences for the 8 houses in this case and which I have already addressed. The defendant argued that the document had in fact created a tenancy ([20(i)]). There does not appear to have been any argument that if that contention should be rejected the contract created a licence rather than a service licence. Burton J rejected the contention that a tenancy had been granted and relied upon the declaration to treat the contract as a service licence (see [21(i)]). The judge identified the test as being whether the contract of employment required the service person to occupy the dwelling for the better performance of his duties ([39(ii)]). But he did not in fact consider the terms of service. He merely relied upon the declaration in the licence. He did not mention the *Fermanagh* case in the House of Lords. The explanation appears to be that these points were not in issue as between the parties.

287. In the Court of Appeal ([2015] 1 WLR 2116) the appellant sought to argue that the legislation exempting Crown tenancies from statutory security of tenure was incompatible with the HRA 1998. But that depended upon the appellant being able to show that her Convention rights had been violated ([17] to [24]). The appellant argued again that her husband had been a Crown tenant rather than a Crown licensee. Lewison LJ stated that that submission was not open to her because there had been no tenancy ([25]). In relation to the discrimination argument under Article 14, the Court took as a comparator a service licence from a private sector provider. That too would not have gained any security of tenure and so the appellant failed to establish a breach of Article 14. Once again there was no issue as to whether the tests for a service licence were satisfied and the Court of Appeal did not decide that point.

288. Accordingly, there is nothing in the decisions in the *Nicholas* case which would alter the analysis set out above. For all the above reasons the contention that service personnel occupy SFA under a service licence must be rejected.

*Occupation*

289. The SoS provides SFA for use by service personnel as residences. At first blush that could be described as a government purpose. However, it does not follow that the SoS makes physical use of the individual houses or is present in, or controls, or is in occupation of, those properties. That depends upon the terms of the licence and other relevant documents, along with the factual circumstances. Nor does it follow that the occupation was for the purposes of a Government department within s.56(3). That depends upon identifying the occupier and considering the purposes of his occupation from his perspective.

290. The licence is made between the service person, the licensee, and the DIO on behalf of the SoS. The licence gives the licensee the right to occupy the dwelling

for the duration of the licence. Other persons such as the licensee's spouse or civil partner and children may also occupy the property in accordance with JSP 464. The licensee is required to pay a charge for the SFA by a deduction from service pay.

291. By clause 6.1.4 the licensee must only use the property as a single private dwelling for himself, his spouse or civil partner and any dependent children as defined in JSP 464. The licensor must not use the property for any other purpose, nor allow anyone else to do so, without the prior written consent of the SoS. Likewise the licensee must not carry on or allow any person to carry on a trade or a business at the property (clause 6.3.4). But consistent with the user restrictions, a licensee may have "visitors" staying for no more than 28 days in any period of 93 days.

292. Clause 6.3.1 states that the licence is personal to the licensee. He cannot transfer the licence or the rights of occupation, nor share occupation with anyone else (other than the permitted occupants), without prior consent.

293. Turning to the obligations of the SoS, clause 9.1 states that for so long as the licensee complies with the terms of the licence, the SoS will allow the licensee to occupy the property subject to the terms of the licence. This is similar to a covenant for quiet enjoyment.

294. The SoS is liable for the maintenance and repair of the property, including internal and external decoration and installations. But he is not liable for damage to the property caused by the licensee or anyone the latter allows into the house (clause 9.3).

295. The licensee is responsible for negligent, wilful or accidental damage to the property caused by himself or members of the household (clause 6.1.10). The licensee is also liable for maintaining any enclosed gardens of the SFA. The contractor engaged by the MoD is responsible for the maintenance of any front gardens which are unenclosed.

296. The licensee and his family have all the keys to the property and control access thereto (ASF para. 20).

297. Under clause 6.1.9 the licensee must allow access to the property for the SoS's agents and contractors on 24 hours' notice save in an emergency. Ms. Bhaloo relied on a statement in JSP 464 Vol.1 Part 1 para. 0606 about this right of access. The SoS's agents may enter "for legitimate reasons such as repair and renovation, public economy or safety, or for any other legitimate purpose" on 48 hours' written notice, save in an emergency. Ms. Bhaloo accepted that such a provision would be consistent with the grant of a tenancy with exclusive possession if the purpose of the right of access was limited to something in the nature of repairs (i.e. an activity which the licensor is obliged to carry out). But she says that the phrase "any other legitimate purpose" is one indicator that the licensee does not have exclusive possession and that the SoS is in occupation of the dwelling.

298. I disagree. "Legitimate purpose" in that extract from the JSP must be read in the context of the licence as a whole. The phrase does not detract from, for example, the licensee's right to occupy the unit as a private dwelling or his entitlement under clause 9.1 to occupy the property. It is difficult to see how the right of access could go beyond that which is necessary in order for the licensor to comply with his obligations under the licence (or possibly JSP 464) in relation to the property. Neither the word "legitimate" nor clause 6.1.9 are open-ended. Moreover, I accept Ms. Wicks' submission that the reservation of a right of access is generally an indicator that the grantee has been given a right of exclusive possession. I also note that the rights of access reserved in *Street v Mountford* [1985] AC 809, 815, which were just as wide if not wider than clause 6.1.9, were consistent with the so-called "licensee" in that case having exclusive possession.

299. Ms. Bhaloo decided to focus on clause 6.1.2 (Transcript Day 2 p.66) which provides:

> "6.1.2. You must observe and comply with all security or other instructions issued by the Services, Us or by Our representatives or agents and ensure that members of Your household and any visitors also do so."

Ms. Bhaloo submitted that because of the width of the phrase "all … other instructions" this provision was a clear indication that the licensee does not have the right to exclusive possession. But the position here is similar to clause 6.1.9. "Instructions" do not have such a wide ambit as to detract from the licensee's rights to occupy the dwelling property as a private dwelling and under clause 9.1. Neither clause 6.1.2 nor 6.1.9 purport to give the SoS a right to occupy the dwelling or to control the occupation of each SFA unit for the purposes of a dwelling. That would be inconsistent with the rights conferred on the licensee. In my judgment, when read properly in context clause 6.1.2 is an incidental provision which simply concerns matters of security and similar matters or compliance with the licensee's obligations under the licence. Those obligations are compatible with a grant of exclusive possession to the licensee and so is clause 6.1.2.

300. I consider that the control of the duration of stays by visitors and of the parking of caravans on DIO estates and also the provisions dealing with death in service are consistent with the licensee having exclusive possession of a SFA unit. Reference was made to the power to make byelaws under s.14 of the Military Lands Act 1892, but that power has not been exercised in relation to Cranwell or Bristol.

301. The claimants have made vague suggestions that the "command structure" had some bearing on the occupation issue. These were not developed in argument, no doubt a reflection of their lack of merit. Instead, the court was left to consider some references given in the skeleton. In relation to the command structure there are general limits on the lawfulness of orders (*R v Canning* [2022] 1WLR 3729 at [8] *et seq*). But no example has been given of an order which would materially alter a licensee's control of the dwelling in relation to the issue of occupation. The possibility of exclusion of a service person alleged to have committed

domestic abuse does not take the matter any further. The relevant RAF policy refers to exclusion on a temporary basis for up to 28 days. Occupation by the partner and any children would continue during that period. The policy does not lend any support to the contention that the SoS is the occupier of each SFA unit.

302. Negligent or wilful damage to an SFA unit is dealt with by the occupation licence. The fact that it may also be dealt with by the command structure and by service law does not indicate that the SoS rather than the service licensee is in occupation of the property.

303. The claimants made some additional oral submissions in relation to the Cranwell site. Reference was made to a road sign at an unspecified location prohibiting vehicular access; but the parties have agreed that the relevant roads are public highways. The claimants also referred to ASF App.F para. 10 in which it is agreed that the way in which SFA units are used and occupied does not materially differ as between those which are, and those which are not, within "the wire" (a secure perimeter through which access is controlled). That adds nothing on the nature and extent of any control exercised by the SoS in relation to the use and occupation of each dwelling.

304. I conclude that the licensee under the occupation licence for a SFA unit is granted the right of exclusive possession. Furthermore, and in any event, I have reached the firm conclusion that the licensee has exclusive occupation of his or her SFA unit. The premises in question are houses. They are physically used for that purpose by the licensees and their families. The SoS does not have any significant presence in, nor does he make any significant use of, the homes. The SoS does not control the use of the properties as houses to such an extent that he could be treated as occupying them.

305. Given that the licensee of each dwelling is the occupier of that property, the purpose of that occupation should be viewed from his perspective. The licensee occupies the property as a personal residence. He does not occupy it for Government purposes such as the provision of SFA to service personnel. The obligations and rights which go with the licensee's occupation are for the purposes of using the property as a private residence. In these circumstances s.56(3) is not applicable.

306. Under Issue 5(1) I conclude that none of the 8 properties was occupied by the defendant and/or for the purposes of a Government department at the time when each relevant enfranchisement notice was served.

307. The remaining subjects under Issue 5 are concerned with the Cranwell site and not the Bristol site.

### Issue 5(2) – Occupied garages at the Cranwell site

308. There are 37 garage units on the Cranwell site, of which 16 or 17 were "let" on the dates of the enfranchisement notices relating to 1 and 3 Sycamore Drive. They do not form part of any SFA unit or of the common parts. The units were available to "occupants of SFA" by a separate written licence agreement (ASF App. F para. 61).

309. Under the standard form agreement the licensee may only use the garage to keep a private motor vehicle or for personal effects and for no other purpose without consent. The licence of a garage terminates automatically when the licensee's licence to occupy a SFA unit ends. Ms. Bhaloo suggested that the licence could otherwise be terminated without any notice. That is incorrect.

310. The claimants said that the garages are sometimes used for service vehicles, relying upon para. 71 of the ASF (Transcript Day 2 p.20 but presumably referring to App.F or App.H). The reference given did not address that point and there does not appear to be any other supporting reference. At all events, in so far as this activity has taken place, the claimants did not suggest that it had been carried on by anyone other than a licensee. They have made no more than a vague unsupported assertion with no real indication of the extent to which this is, or even might be, taking place.

311. The claimants' overall position was that the licensed garage units were occupied for the purposes of the SoS under s.56(3) of the 1954 Act, essentially for the same reasons as they have advanced in relation to the units of SFA (Transcript Day 2 p.20 and p.69). Ms. Wicks submitted that the outcome of Issue 5(2) should be the same as for Issue 5(1), because the same reasoning applies (Transcript Day 4 p.104). I agree with that approach.

312. Under Issue 5(2) I conclude that none of the licensed garages were occupied by the defendant and/or for the purposes of a Government department at the time when each relevant enfranchisement notice was served.

**Issue 5(3) – SFA units at the Cranwell site sublet by the Secretary of State to private sector tenants**

313. At the time when the two Cranwell enfranchisement notices were served, 12 out of the 97 SFA units were sublet to private sector tenants. Because the Housing Act 1988 does not generally apply to a tenancy where the landlord's interest belongs to the Crown or to a Government department, or is held for the purposes of a Government department, an assured shorthold tenancy cannot be granted. Instead, the SoS grants short common law tenancies.

314. A typical tenancy agreement is for a tenure of 12 months followed by a monthly periodic tenancy. Clause 3.2(a) allows for the SoS to increase the monthly rent up to the market rent 12 months after the start of the tenancy and at 12 monthly intervals thereafter, subject to giving 2 months' notice. If the new rent is not agreed either party may end the tenancy in accordance with clause 10 by serving 2 months' notice. Clause 10.3 also contains a break clause exercisable up to 4 months from the start of the tenancy to bring it to an end 6 months from the commencement of the term.

315. The claimants accept that the SoS is not in occupation of the sublet units. Instead, they are occupied by the subtenants (para. 44 of skeleton). That must be correct. Each of the subtenants has the right to exclusive possession of their dwelling. If the purpose of the occupation is viewed from the perspective of the occupier, the subtenant, plainly it would be for residential purposes and not for the purposes of a Government department.

316. However, the claimants' case involves looking at the purpose of the occupation from the perspective of the SoS instead of the subtenant. They submit that the defendant is not a commercial landlord. He hands back units which are judged to be surplus, but that is subject to retaining a margin of voids to allow for redeployment of service personnel and "resilience." These particular units have not been left as voids and they have not been handed back to APL. Accordingly, the proper inference is that they are considered by the SoS to have a future role as part of the SFA estate, but in the meantime they are sublet in order to generate temporary revenue. The claimants submit that this is a relevant Government purpose falling within s.56(3) of the 1954 Act, relying by analogy upon *London County Territorial and Auxiliary Forces Association v Nichols* [1949] 1 KB 35.

317. As Ms. Wicks pointed out, the claimants' submission on sublet houses depends upon the correctness of their earlier argument that the purpose of the occupation should be considered from the perspective of the MoD as the relevant government department and not from the perspective of the occupier if different.

318. I have already rejected the claimants' submission that where premises are let to a Government department but are occupied by another party, the purposes of that occupation should be determined from the perspective of that department. Instead, those purposes are to be determined from the perspective of the occupier (see e.g. [231] to [235] above). Accordingly, the claimants' case on the sublet SFA units is flawed and fails. I would add one further point.

319. The *Nichols* case does not support the claimants' case. The issue there was whether the Association benefited from the Crown's immunity from the Rent Acts because both (i) it was an emanation of the Crown and (ii) in *letting* the premises it was acting for "Crown purposes" (pp.45 and 47). By definition any entitlement to rely upon Crown immunity could only have been considered from the perspective of the landlord. That issue could not have been answered by looking at the purposes of the occupying tenant. That is why the court distinguished rating cases because there the focus is on the use of property by the occupier (p.48). The *Nichols* case is of no assistance where the law requires the court to determine the purposes of occupation; *a fortiori* where that is be considered from the perspective of the occupier.

320. Under Issue 5(3) I conclude that none of the sublet SFA units were occupied by the defendant and/or for the purposes of a Government department at the time when each relevant enfranchisement notice was served.

### Issue 5(4) – Void SFA units and garages at the Cranwell site

321. According to the ASF, on the date of the enfranchisement notice for 1 Sycamore Drive there were 21 void SFA units and 21 void garages and on the date of the notice regarding 3 Sycamore Drive there were 23 void SFA units and 20 void garages. The issue is whether these properties were in the occupation of the SoS so as to attract protection under Part II of the 1954 Act or whether they were unoccupied and therefore falling outside the scope of Part II. The parties agree that the arguments on this issue are the same for all of the units and garages.

322. It is also agreed that the SoS's contractor, Amey, held the keys for the void units. The MoD did not have keys. All white goods (except for the cooker) and any furniture were removed from the houses and put into storage. Amey was required to maintain the void units so that they were at a standard suitable for new residents to move in. The company was to carry out inspections to check that void units were secure and not damaged. The NHPC did not give Amey any right of possession in respect of SFA units or any proprietary interest in them. On the date of the Cranwell enfranchisement notices, 3 Sycamore Drive was a void property (ASF App. F paras. 56 to 57 and Mr. Sewter's first witness statement paras. 10.3 to 10.4). On the date of both notices Amey was responsible for maintaining the void garage units (ASF App. F para. 63).

323. If occupation by the SoS through his agent Amey is established, the claimants submit that it is for the purposes of a Government department, namely maintaining a stock of void units, both SFA dwellings and garages, rather than treating them as surplus to requirements, to allow for flexibility in meeting accommodation needs arising from redeployment of service personnel and maintenance schedules, as well as resilience planning and future demand. However, para. 39 of the claimants' skeleton is based upon a highly selective extract from the SoS's "UK Armed Forces Defence Accommodation Strategy" (October 2022). When the original text (at pp.11 and 22) is read fairly and as a whole, it is plain that the SoS regards the current level of voids (19% of SFA units) as being too high. The MoD is committed to reducing this by about one half to 10% by September 2023 "through an occupancy-led strategy, or a disposal-led strategy if necessary." The MoD will consider setting "an even more stretching target" in the next version of the Strategy if appropriate. In the same vein p.11 of the document refers to "some void properties" being kept deliberately to create the management margin needed. These statements in the October 2022 Strategy accord with similar concerns expressed over the years in other documents before the Court about the excessive level of SFA voids.

324. It follows that it cannot be assumed that all void SFA units, or indeed garages, are being held because they are necessary for the "management margin" or for "flexibility." Some are surplus (c.f. the assertion to the contrary in the claimants' submissions on Day 2 at p.68). On the other hand, there is no material before the court to enable it to say at this stage which properties contribute (or may contribute) to the margin and which do not, or what the relative proportions might be. Accordingly, the surplus point does not assist in the resolution of Issue 5(4) in these proceedings.

325. The issue therefore turns on whether the void properties are occupied or not, in relation to which the parties rely upon the facts summarised above.

326. The claimants seek to gain support from the *Wandsworth* case. There the authority's tenancy related to 500 sq m of public open space which had been used for at least 13 years by local inhabitants for leisure and recreation. The space was enclosed and a gate was used to control access. There were park benches and the authority had made a number of improvements to the planting. They used contractors for regular horticultural work (once a week for 16 weeks in the summer and once a fortnight over a period of 32 weeks). A parks manager also made regular inspections. Plainly the property was not a "void". It was in

active use for its intended purpose, namely recreational open space for the public.

327. The Court of Appeal held that the issue was whether, in a case where the tenant had not parted with exclusive possession to another party, it was physically present on site and exercising control to such an extent as would reasonably be expected for occupation having regard to the nature of the premises, the terms of the tenancy and the purpose of Part II of the 1954 Act (pp.229-230). The court decided that the authority was physically present on and exercised control over the land through their agents as much as would reasonably be expected for the management of open space for use by the public. The court distinguished the decision in *Trans-Britannia Properties Limited v Darby Properties Ltd* [1986] 1 EGLR 151.

328. In *Trans-Britannia* the tenant's business was the letting of lock-up garages. The site in question had 46 garages. Some were sub-let, others were void. The tenant had no offices or living accommodation on site but did occupy one garage as a store. The tenant would visit from time to time to deal with new sublettings and maintenance. The Court of Appeal held that the tenant was not in occupation of the land for the purposes of its business. It provided little in the way of services for the occupied garages. The tenant gained little support from the finding at first instance that it did what was required by the nature of its business. The Court of Appeal stated that the nature of that business and the manner in which it was conducted meant that the tenant's control of the premises was of a very limited nature. Ultimately, the degree of presence and control was insufficient to qualify as "occupation" for the purposes of Part II of the 1954 Act.

329. Ms. Bhaloo sought to make a virtue of the fact that nobody else was in occupation of the void units, suggesting that the requirements for satisfying the occupation test were thereby rendered less onerous than might otherwise be the case (Transcript Day 2 p.68). But, with respect, this bald proposition fails to have regard to the nature of the land use, which is an important consideration. For example, in *Wandsworth* there was no occupation competing with that of the local authority because of the nature of the use being made of the land, that is public open space. In that context no one could sensibly say that members of the public were in occupation of the public open space.

330. Whereas the open space in *Wandsworth* was actually being used for its purpose, the same is not true in the present case. The residential units are not being used as houses. No one is living in them. On the claimants' own case, the houses are simply being maintained in readiness for their potential use in future as houses. If and when that use comes about then, for the reasons set out under Issue 5(1), the occupiers will be the individual residents, not the SoS. It therefore seems perverse to be suggesting that maintenance by the SoS's contractor to enable void homes to be reoccupied in the future is sufficient for the SoS to become protected under Part II of the 1954 Act whilst those properties are not in use as dwellings. He did not have that protection when the houses were previously occupied by service personnel and he will lose that protection again when they are re-used for that same purpose. In those circumstances how can the underlessee be any better off under the 1954 Act when the houses are empty?

The short answer is that the void properties are not being occupied by anyone. They are simply empty.

331. Even looking at the void periods in isolation, I do not consider that, on the evidence before the court, the level of physical presence, activity and control over the empty homes exercised here on behalf of the SoS is sufficient, as a matter of fact and degree, to qualify as occupation for the purposes of Part II of the 1954 Act, whether under s.23 or under s.56(3).

332. Accordingly, I consider that the claimants' case on the void houses does not accord with the purpose for which protection under Part II of the 1954 Act is available, as explained in *Graysim*.

333. It is agreed that there is no material difference in relation to the garages.

334. Under Issue 5(4) I conclude that none of the void SFA units and garages were occupied by the defendant and/or for the purposes a Government department at the time when each relevant enfranchisement notice was served.

**Issue 5(5) – Contact Houses at the Cranwell site**

335. Two of the SFA units at the Cranwell site, 22 and 24 Sycamore Drive, have been appropriated for use as "contact houses." They are three-bedroom furnished houses available to be booked by service personnel and their families for a fee for short-term stays. They can be reserved for different welfare and community support purposes. The most common use is for divorced or separated service personnel, who do not live in SFA, to spend time with their children.

336. The claimants submit that, as a matter of fact, the contact houses are in the occupation of the SoS for the purposes of administering and maintaining HM's armed forces. The defendant submits that they are in the occupation of a charitable trust, the RAF Cranwell Contact Houses Service Fund ("the CCHSF"), and are not occupied for the purposes of a Government department.

337. The parties have agreed in the ASF a good deal of factual material relevant to this issue. Ms. Wicks said that there are no factual issues in the evidence which the court is asked to resolve. Instead, the difference between the parties concerns the factual inferences which should be drawn from that material. Ms. Bhaloo did not disagree. The parties based their respective oral submissions on relatively small parts of the evidence.

338. Ms. Bhaloo advanced essentially two points. First, paras. 40 to 41 of her skeleton rely upon a number of references which indicate that the "unit in command" at RAF Cranwell is responsible for the properties and designated as a "proxy occupant" and the sole trustee of the CCHSF is the Commandant of RAF Cranwell. The premises are maintained by the defendant, and the keys are kept by the RAF Cranwell guardhouse. Accordingly, it is submitted that the defendant is the occupier of these two properties. Second, even if the CCHSF is the occupier of the two contact houses, the trust has charitable status because its

objects are "wholly or mainly to promote the efficiency and well-being of service personnel", which is a Government purpose.

339. Ms. Wicks particularly relied on the fact that contact houses are a non-public welfare facility as explained by Warrant Officer Shaun Turner of the Air Service Funds Team in his witness statement. As such, the operating costs of the contact houses cannot be funded by the MoD or other public funds. Ms. Wicks submits that the properties cannot be occupied for the purposes of a Government department if that occupation cannot be funded by a Government department.

340. In my judgment, when considering the wide range of material produced on the contact houses, it is necessary to keep firmly in mind three points which the parties have agreed in the ASF App. F:

(i) The Cranwell contact houses are operated and managed by the CCHSF (para. 45);

(ii) Contact houses are a non-public welfare facility, the operating costs of which cannot be met from public funds, such as the MoD (para. 42);

(iii) It is necessary to create a service fund to manage and operate a non-public welfare facility, such as the contact houses at Cranwell (para. 43), hence the establishment of the CCHSF.

341. The Cranwell contact houses are former SFA units which have been "appropriated" by the DIO from their SFA stock for use as a welfare facility (ASF App. F para. 34). Appropriation is described in JSP 464 (Vol.1 Part 1 Chapter 2). The process begins with a request with a business case from the unit at a base. Appropriation may be to:

(i) Single living accommodation as a temporary solution in the form of a mess or barracks where there is a surplus of SFA;

(ii) Welfare accommodation (admissible categories, maintenance and finance are dealt with in Vol.1 Part 2 Chapter 2 Annex C);

(iii) SLA for a seriously injured or disabled single service person. The property is occupied by that person as an entitlement.

342. Where appropriation is agreed the SFA is handed over to an "administering unit" which will act as a "proxy occupant" (JSP 464 Vol.1 Part 1 para. 0211). The parties disagree on who is the proxy occupant for the Cranwell contact houses. The claimants say that that it is "the unit" on behalf of the MoD, the defendant says that it is the CCHSF. But it is necessary to bear in mind (i) that para. 0211 applies to a range of different appropriations, (ii) specific arrangements have been put in place for welfare services, in particular contact houses, and (iii) the agreements between the parties reached in the ASF (see e.g. [340] above).

343. Warrant Officer Turner describes the differences between public and non-public welfare funding in the services. In this context "welfare" refers to "personal and

community support structure that secures and improves the well-being of service personnel and the service community" (witness statement para. 4.2). Given that broad definition, it is unsurprising that in JSP 462 (the "Financial Management and Charging Manual") the MoD divides welfare facilities and activities into two categories:

(i) "Publicly funded welfare" that is paid for from the defence budget approved by Parliament and must be in support of "defence objectives";

(ii) "Non-publicly funded welfare" "that is not in direct pursuit of defence objectives" and cannot be funded from the public purse. This has to be funded by service personnel and their families and/or charitable donations.

344. Where a welfare facility is provided for the benefit of service personnel living at a base the DIO is able to provide infrastructure in the form of a building and furnishings. But the operation of the facility is non-public in that its purpose is for the use and enjoyment of service personnel in their own time and does not further a "defence requirement". A fee is paid to the DIO for the use of the building (Turner witness statement para. 4.8 and see below).

345. It is in this context that the parties have agreed that the contact houses at Cranwell are a non-public welfare facility. Warrant Officer Turner also explains (para. 4.12) that an appropriated house continues to be maintained under the NHPC, just as in the case of SFA units. No doubt it was thought efficient to make use of a resource responsible for sites such as Cranwell in any event. The service fund that operates the contact houses is responsible for paying the operating costs from non-public money. Those costs include the DIO's fee for each day the house is used, adaptations, utilities, cleaning, furniture and grounds maintenance. The contact house fees paid by service personnel are collected by the CCHSF and used to pay the DIO fees and other operating costs. The CCHSF has also received some charitable funding (paras. 4.14 to 4.15).

346. Where a facility is not publicly funded it is necessary for a service fund to be set up to hold funds to pay operating costs. At a base such as Cranwell there are a large number of such funds. Typical examples of non-public welfare facilities requiring the setting up of large service funds are messes, sports clubs, and tea and bar facilities (paras. 5.2 to 5.3). Each fund operates a separate financial account (para. 5.4).

347. At a base like Cranwell there will also be in addition to those large service funds about 100 smaller funds covering a wide range of social and recreational functions, known as "banked funds". Funds for contact houses, such as the CCHSF at Cranwell, are banked funds (para. 5.8).

348. A service fund may qualify as an "excepted charity", and therefore does not have to be registered with the Charity Commission, if *inter alia* it is "wholly or mainly concerned with the promotion of the efficiency of the Armed Forces of the Crown." The fund also has to adopt a service fund constitution. Having done so, the CCHSF is an excepted charity (paras. 5.9 to 5.12). Under the constitution of the CCHSF the objects of the charity include the provision of a welfare

establishment for any service personnel suffering marriage problems, or for single parents to be with visiting children, or for families to visit service personnel, and to provide a comfortable and safe environment to promote the efficiency and well-being of service personnel.

349. Paragraph 41 of the claimants' skeleton states that the Cranwell contact houses are used for "core" and "non-core" welfare functions with the latter not attracting public funding. That observation is based upon the witness statement of Warrant Officer Tracey Kenworthy (the Officer in charge of the Cranwell contact houses). A booking has to be made in accordance with the Terms and Conditions for the contact houses (paras. 5.7 to 5.14). They provide for four levels of priority. Priority 1, the highest, is "Cranwell welfare" and relates to the most serious cases, for example where there is a safeguarding concern or domestic abuse. This is referred to as "core welfare." It appears from the evidence that core welfare cases are infrequent or rare. But if such a case should arise, the DIO waives its fee and no charge is payable to the CCHSF. The other three levels, which include a single parent wanting access to children and service personnel visiting their families, are "non-core welfare" and have to be funded from non-public funds.

350. Details of bookings are sent to the guard room at RAF Cranwell which looks after the keys to the contact houses when they are not in use. Otherwise the keys are held by the service person occupying the home at the time (paras. 5.15 to 5.16).

351. Under the constitution of the CCHSF the Commandant for RAF Cranwell is the trustee of the charity. According to RAF King's Regulations his role is to supervise and control the committees formed for the management of service funds at the base. The contact houses are run by a committee comprising Warrant Officer Kenworthy, a property member, a secretary, a treasurer and three booking clerks. All of the members are volunteers. The treasurer maintains separate accounts for the CCHSF.

352. It is necessary to draw the strings together. The contact houses at Cranwell are operated essentially for non-core welfare services, the operating costs of which have to be non-publicly funded. The funds come from charges paid by individual service personnel and charitable donations. The MoD does not fund those costs. Maintenance is provided under the NHPC but in that respect the position is no different from the arrangements for SFA units, both occupied and void. The Commandant of RAF Cranwell is the trustee for the CCHSF but his role is limited to managing the business of the charity, furthering its objects (clause 5 of the constitution) and supervising and controlling the management committee of the charity.

353. Before they were appropriated to be contact houses, 22 and 24 Sycamore Drive were part of the SFA estate. They would have been in the occupation of any resident or, if void, unoccupied. Either way, the SoS did not through the DIO and its contractors have sufficient presence and control to be in occupation. When the two properties were appropriated to be contact houses, they remained in use as living accommodation for temporary welfare and social purposes, according to demand from individual service personnel. That use does not

further a “defence requirement” (see [344] above). The use has had to be managed and operated separately by the CCHSF as a trust. The use is controlled by the trust through its trustee and committee. On the evidence the SoS did not have at the relevant dates a significant level of presence in, or control of, the contact houses. The Trust was the occupier and not the SoS.

354. I reject the claimants’ submission that even if the trust was the occupier, its occupation was for the purposes of a Government department within s.56(3). The issue has to be looked at from the perspective of the trust as the occupier. The occupation of the CCHSF was for the purposes of the charitable objects set out in its constitution. The running of the contact houses in pursuit of those purposes cannot be funded by the MoD or from the public purse. That can only be funded by personal contributions from service personnel and their families and/or charitable donations. For these reasons a service fund structure has to be put in place, as in the case of other social and recreational purposes. The trust is an exempt charity because it is wholly or mainly concerned with promoting the efficiency of any of the armed forces. But that language at such a high level of abstraction does not alter the true nature of the trust’s activities, which are to do with the private lives of individual service personnel and their families and the provision of temporary accommodation to meet their individual requirements. That is not a Government purpose.

355. Under Issue 5(5) I conclude that neither of the contact houses at the Cranwell site were occupied by the defendant and/or for the purpose of a Government department at the time when each of the relevant enfranchisement notices was served.

**Issue 6 (Ground 2(iii)) – Whether the Secretary of State’s underleases were business tenancies (the common parts of the Cranwell site)**

356. The common parts of the Cranwell site and the transactions entered into have been summarised at [49] to [54] above. The common parts included 24 off-road parking spaces, 16,269 $m^2$ of grassed areas with 66 trees, estate roads (which were adopted as publicly maintainable highways), a play area, street lighting and a bicycle rack.

357. The defendant describes the business of DIHL as holding, managing and maintaining the common parts. The defendant accepts that DIHL is not an arm’s length company. It is common ground that DIHL is under the absolute control of the SoS. The defendant says that DIHL was created as an SPV to enable the enfranchisement of the Cranwell properties. The defendant’s object in relation to the sub-underlease of the common parts was to prevent enfranchisement being excluded by s.1(1B) of the 1967 Act.

358. Mr. Sewter states that the DIO is responsible for managing the SFA. It meets its management and repairing obligations primarily through contracting with private sector providers to service and maintain the estate (para. 5.7 of first witness statement). The NHPC with Amey was one such contract. In June 2021 it was the DIO that decided to replace that contract when it expired the following year (para. 5.10).

359. Under the NHPC Amey contracted with the SoS to provide services for the SFA estate across the country. In relation to the Cranwell common parts, Amey was obliged to carry out regular inspections, maintain and repair the common parts, ensure the safety of the playground, mow and maintain the grassed areas and dispose of refuse. Amey subcontracted much of the work to local contractors, but was still present on an almost daily basis on the Cranwell site. Amey provided an estate manager who was based 12 miles away in Waddington. There was no dedicated site office. The manager would visit the estate several times a week. No doubt these inspections related to all of Amey's responsibilities at Cranwell under the NHPC and not just the common parts the subject of the 2021 sub-underlease. The DIO also carried out "regular" inspections of the common parts at Cranwell to ensure that Amey was complying with its obligations under the NHPC (Mr. Sewter's first witness statement paras. 11.2 to 11.6).

360. Pursuant to the sub-underlease dated 14 December 2021 DIHL covenanted with the SoS to repair and maintain the common parts. Given the well-established and complex arrangements in the NHPC for the carrying out of maintenance, DIHL outsourced its maintenance obligations under an agreement with the SoS made on the same day whereby the latter would provide services in relation to the common parts equivalent to those set out in the NHPC. Amey continued to provide the same services to the SoS. The SoS was to invoice DIHL for those services, which the latter was obliged to pay within 30 days.

**Issue 6(1), (3), (4) and (5) – Occupation of the common parts of the Cranwell site**

361. It is common ground that the carrying out of maintenance on the common parts of the Cranwell site may amount to a business activity sufficient to support occupation of that land for the purposes of Part II of the 1954 Act. I agree with the parties on this point. Such circumstances may be analogous to those in the *Wandsworth* case. But that still leaves the question whether anyone was in occupation for that purpose and, if so, who? Certainly the parties are agreed that the common parts of the Cranwell site were occupied (see e.g. Transcript Day 4 pp.117-118). But they differ as to the purposes of the occupation and how that affects the identification of the occupier.

362. Ms. Bhaloo submitted that certain rights over the common parts reserved to the SoS in sched.3 of the sub-underlease (e.g. the right to use facilities on the estate designated for use by its residents and licensees) showed that he was in occupation. I disagree. That reservation was simply necessary to enable the SoS's licensees to use those facilities.

363. The SoS has accepted that the sub-underlease and outsourcing agreement are artificial arrangements. The object was to remove any business activity on the common parts from his occupation under the sublease granted in 1996 by making DIHL a business tenant. This model had been suggested by the arbitral tribunal in relation to the hypothetical letting it had to consider in the site rent reviews (see [49] above). The claimants have not contended that the DIHL arrangements would breach or offend any purpose or principle of, or any prohibition or disqualification in, the 1954 Act or the 1967 Act, or any interaction between the two statutes. This is not a case where the *Ramsay* principle could be used to disregard a step in a sequence of transactions when

determining their overall effect as a matter of substance (contrast *Gisborne v Burton* [1989] QB 390). The legislation does not seek to prevent a tenant from arranging his affairs so as to avoid the application of s.1(1B) of the 1967 Act and enable him to make an enfranchisement claim.

364. Ms. Bhaloo sought to draw an analogy with *Rossendale* (see [104]-[105] above). On a purposive construction of Part II of the 1954 Act she submits that "occupation" connotes some actual use of the premises by the tenant for the purposes of his business.[4] Even if a subletting to a SPV might qualify, Part II of the 1954 Act could not apply to a SPV which effectively does nothing in its own capacity and for the purposes of its own business. DIHL's directors are civil servants who are under the complete control of the SoS. It has no employees. It has no funds or bank account. No invoices were rendered or paid. All that the company has done is to outsource at the outset its obligations to maintain the common parts to the SoS under an agreement which relied upon the NHPC to define the extent of the services which the SoS would provide and the fee structure.

365. Ms. Wicks submits that the court must consider the vertical chain by which maintenance services are provided as a whole and the function of DIHL as a SPV. Starting at the bottom there are Amey's subcontractors, then Amey's obligation to provide maintenance services nationally, the SoS and finally DIHL. She says that the court cannot stop at one level in the chain, such as the NHPC between Amey and the SoS. When read as a whole the carrying out of maintenance by Amey and its sub-contractors is to be attributed to DIHL. The defendant's primary submission is that DIHL is the occupier of the common parts for the purposes of its business.

366. But what would happen if the contractor should fail to comply with its maintenance obligations? On the basis of the arrangements being operated when the 8 notices were served, I doubt whether the SoS would enforce DIHL's covenant in the sub-underlease to maintain the common parts of the Cranwell site, or whether DIHL would enforce the SoS's contractual obligations to provide the very same services. In reality the maintenance of the common parts has been, and would be, achieved by the SoS, through the DIO, ensuring that Amey (or its successor) complies with its obligations under the NHPC. But that is an inherent feature of the artificial structure which, the defendant accepts, he has created.

367. I doubt whether the arrangements in place at the time when the Cranwell notices were served resulted in DIHL being in occupation of the common parts if we were to treat its business as being solely concerned with the maintenance of the common parts (see e.g. *Wandsworth* and *Trans-Britannia*). There is little evidence of DIHL taking steps to manage and be responsible for the maintenance of the common parts so as to satisfy the statutory test in s.23(1). However, that particular doubt could be overcome if DIHL's maintenance obligations in the sub-underlease were to be discharged by a separate contract between DIHL and the maintenance contractor. DIHL could be funded by MoD to pay for those services and it, rather than the DIO, could actively be involved

[4] In fact that proposition can be derived from *Graysim* itself (see [200] above).

in managing that contract. Ms. Wicks explained that this was not done at the time because of the complicated nature of the pre-existing NHPC with its national coverage.

368. But dealing with the circumstances as they were when each of the 8 enfranchisement notices was given, "reality" must be considered by reference to all relevant circumstances. The matter must be looked at as a whole. Those circumstances include the SoS's purposes in entering into the arrangements for the common parts of the Cranwell site, the purposes of DIHL and the application of s.56(3).

369. It is unusual for a tenant to create a sub-tenancy of part of the area demised to him in order to attract protection under Part II of the 1954 Act for that sublet part, but to avoid protection for the remainder of his demise. In reality, the additional arrangements relating to the common parts of the Cranwell site have only been made to prevent s.1(1B) of the 1967 Act from applying and to enable the SoS to serve enfranchisement notices in relation to SFA dwellings.

370. In these circumstances, the purposes of the SoS were not only to provide and maintain the Cranwell common parts, but also (a) to sub-underlet those areas to DIHL as a SPV occupying those premises, so that (b) s.1(1B) of the 1967 Act would not apply to the underlease and the SoS could enfranchise the Cranwell properties, without (c) interfering with the operation of the NHPC with Amey. These were also the purposes of DIHL as the occupying SPV. They were its raison-d'être. On this basis I conclude that DIHL was the occupier of the common parts under s.23(1) of the 1954 Act and so the Cranwell underlease is not excluded from enfranchisement by s.1(1B) of the 1967 Act.

371. In her oral submissions Ms. Bhaloo said that s.56(3) applies to DIHL's sub-underlease. It is held by the company on behalf of the MoD and "occupied for its purposes" (Day 2 pp.71 to 73). The sub-underlease is held by "a creature of the department", the directors of which have a duty to act as directed by the SoS. "Regardless of Crown indivisibility" DIHL "is a vehicle of the Crown". "The purpose is enfranchisement" (that is of the SoS's underlease).

372. Ms. Wicks submitted that if Ms. Bhaloo is correct in saying that the sub-underlease is held on behalf of the SoS and DIHL is in occupation of the common parts for the purposes of the SoS and not its own business, then s.56(3) applies to DIHL's sub-underlease (Transcript Day 4 pp.127-128 and 131). But she points out that the effect of s.56(3) is to apply Part II of the 1954 Act to DIHL's sub-underlease, not the SoS's underlease. In other words, the SoS's underlease is not a business tenancy.

373. For the reasons set out in [155] above, I do not accept that DIHL held the sub-underlease of the Cranwell common parts on behalf of a Government department. Accordingly, s.56(3) cannot apply to that interest. But even putting that point to one side, where would the claimants' argument lead? I agree with Ms. Wicks that the consequence of s.56(3) applying to DIHL's sub-underlease would be that Part II of the 1954 Act applies to *that tenancy* by virtue of s.23(1) and not the SoS's underlease.

374. Ms. Wicks submits that consistently with the single business tenancy principle laid down in *Graysim*, the SoS's underlease of the Cranwell site could not also be a tenancy to which Part II of the 1954 Act applies. Accordingly, it is necessary for Ms. Bhaloo to argue that the principle does not apply in s.56(3) cases. She does so on the basis that *Graysim* did not address s.56 directly (which is true) and, more particularly, that the purpose of s.56(3) is different to s.23, namely to protect the position of a Government tenant. She says that it would subvert the purpose of s.56(3) to give protection to a sub-tenant holding from a Government department but not the tenant department itself (Transcript Day 2 p.83).

375. I do not accept Ms. Bhaloo's submission. First, the effect of s.56(3) is to deem that the relevant tenancy (here the sub-underlease) falls within s.23(1). Section 56(3) (and also s.56(4)) does not operate to confer a right to protection under Part II of the 1954 Act independently of s.23 and its related provisions. Second, the single business tenancy principle permeates the 1954 Act. It is also to be found in the deeming provisions in s.23(1A) and (1B), s.41 and s.42 (see [207] to [218] above). Third, there is nothing in the 1954 Act to indicate that the single business tenancy principle does not apply where s.56(3) is engaged. Fourth, it has not been shown that there is any need for more than one business tenancy to be granted where s.56(3) applies in order to protect the tenant department. Here, the sub-underlease held "by or on behalf" of the department is protected for the purposes of the MoD. Fifth, there is no machinery in the Act for dealing with multiple rights to protection in respect of the same area of land. Accordingly, I agree with the defendant's submission that s.56(3) together with s.23(1) applies Part II of the 1954 Act to DIHL's sub-underlease, but not to the SoS's underlease.

### Issue 6(2)(ii) – The application of s.23(1A) and (1B) of the 1954 Act

376. Alternatively, if DIHL is in occupation of the Cranwell common parts, the claimant rely on s.23(1A) and (1B) (see skeleton at para. 43). They submit that that provision deems the SoS's underlease to be a business tenancy because occupation of the common parts by DIHL, and/or the carrying on of any business there by DIHL, is to be treated as equivalent to occupation by, and/or the carrying on of a business by, the SoS.

377. For the reasons set out in [213] to [218] above, s.23(1A) to (1B) of the 1954 Act does not apply to occupation by DIHL of the common parts of the Cranwell site for the purposes of the MoD. DIHL's occupation of those parts is pursuant to its own sub-underlease and so those provisions do not apply. Furthermore, s.56(3) applies to that sub-underlease, as the parties agree, which is therefore deemed to be a tenancy to which Part II of the 1954 Act applies.

### Issue 6(2)(i) – The indivisibility of the Crown

378. Ms. Wicks submitted, and in my judgment it follows from the above analysis, that the claimants can only succeed under Issue 6 by showing that, by virtue of the principle of Crown indivisibility, DIHL forms part of the Crown or the MoD, with the consequence that the sub-underlease of the Cranwell common parts is

to be treated as if it were held by the SoS and so the exclusion from enfranchisement in s.1(1B) of the 1954 Act applies.

379. I have already analysed the principles regarding Crown indivisibility in some detail at [108] to [139] above. The claimants have not identified any provision in, or purpose of, the 1954 Act which would have the effect of treating DIHL as part of the Crown or the MoD. On my reading of the legislation there is no such provision or purpose.

380. Indeed, the enactment of s.56(3) recognises that property may be held by an entity on behalf of a Government department in circumstances where that entity is carrying out a Government function but does not form part of the Crown as, for example, in *Linden*. It does not appear that Parliament intended to give a wider ambit to the principle of Crown indivisibility for the purposes of the 1954 Act.

**Overall conclusion on Issues 5 and 6**

381. I conclude that Part II of the 1954 Act does not apply to either the Cranwell underlease or the Bristol underlease and so the exclusion from enfranchisement in s.1(1B) of the 1967 Act does not apply to any of the 8 notices to enfranchise.

**Issue 7 (Ground 2(iv) – The *de minimis* principle**

382. Issue 7 poses the following question:

> "Whether, if the answer to any issue within §§5-6 above would otherwise be "yes", the answer is different because some relevant occupation falls to be disregarded because of the *de minimis* principle. "

This issue was not developed in any detail. The court's answer is "no".

**Issues 8 and 9 (Ground 2(v)) - Section 1AA of the 1967 Act and the adjoining land test**

383. The effect of s.1AA of the 1967 Act in relation to this case was summarised at [81] to [83] above. These issues arise solely in relation to the two Cranwell properties. The parties' submissions addressed three matters:

(i) The land which is said to adjoin 1 and/or 3 Sycamore Drive;

(ii) Whether that land is "not occupied for residential purposes";

(iii) Whether the freehold of the house in question is owned together with that land.

*Adjoining land*

384. Mr. Sefton, on behalf of the claimants, identified two areas of land either of which, he submits, results in the SoS's underlease of 1 and 3 Sycamore Drive being an excluded tenancy, so that the SoS is unable to rely upon the right to enfranchise in s.1AA of the 1967 Act.

385. Numbers 1 and 3 Sycamore Drive are a pair of semi-detached houses located at the eastern end of that road. They are located in the eastern part of the MQE at Cranwell. The SoS has been the registered proprietor of that estate (under title number LL276734) since before 1 April 1997. On 12 February 2021 the SoS transferred part of the freehold LL276734, namely 1 and 3 Sycamore Drive together with their respective rear gardens, to DIHL. That transfer included small strips of grassed areas immediately in front of the southern facades of the houses. To the south of these strips lies an estate footpath (running east west) and some more grassed areas bordering the carriageway of Sycamore Drive, all of which remains in the freehold ownership of the SoS (LL276734). DIHL became registered proprietor of its freehold in relation to 1 and 3 Sycamore Drive under title LL410982 with effect from 16 December 2021 (but after the service of the enfranchisement notice for 1 Sycamore Drive). The freehold LL410982 is surrounded by the freehold LL276734. On 14 December 2021 the SoS granted the sub-underlease of the common parts to DIHL.

386. The first area of land relied upon by the claimants is a grassed area lying immediately to the north of the northern boundary of 1 and 3 Sycamore Drive ("area 1"). That boundary is marked by a tall wooden fence. The eastern boundary of area 1 is formed by North Drive and its western boundary by the gable end wall of a dwelling in Lime Close. Area 1 has about 5 or 6 trees. It lies within freehold title LL276734 and the area sub-underlet to DIHL, as do also the grassed areas between the southern boundary of the Cranwell properties and Sycamore Drive and, indeed, many other areas of amenity land interspersed between dwellings on the estate.

387. The second area ("area 2") is a very small part of the freehold title number LL276115. That title comprises an extensive area, namely that part of RAF Cranwell which lies to the north of Cranwell Avenue. The title includes a grassed airfield, the main buildings of the Royal Air Force College, officers' mess, churches, sports and other facilities. The SoS has been the registered proprietor since before 1 April 1997. The MQE under title LL276734 is inset into the south-eastern part of this vast area. Title LL276115 surrounds the MQE on its western, northern and eastern boundaries. Immediately to the east of the eastern gable end of 1 Sycamore Drive lies a small area of grass land which falls within the freehold title of that property (LL410982). Further to the east there is the freehold ownership of the SoS (LL276734) comprising some more grassed amenity land, an estate footpath and the carriageway of North Drive. That carriageway marks the eastern boundary of LL276734 with LL276115. Area 2 is a small area of woodland running north south to the east of North Drive The western edge of the woodland is said to be about 20m from the boundary of 1 Sycamore Drive.

388. The parties agree that there are no Parliamentary or other materials to help explain the purpose of the excluded tenancy provisions in s.1AA(3). Plainly, Parliament removed the low rent test as a requirement for enfranchisement. But at the same time it excluded from "the additional right" to enfranchise created by s.1AA certain houses in rural areas where the freehold had been owned together with adjoining land since 1 April 1997 and that land is not occupied for residential purposes. Where the freehold of a house is owned together with adjoining non-residential land, the tenant of the house may not enfranchise unless his tenancy passes the low rent test.

389. There is only one authority on s.1AA, *Lovat v Hertsmere Borough Council* [2012] QB 533. The council owned the freehold of a public park which was held for public recreational purposes ([4]). It had granted a long lease of a house within the park together with 1.4 acres of grounds. Those grounds wholly surrounded the house and were in turn surrounded by the park ([5]). The claimant served a notice to enfranchise the house and its grounds. It was agreed that the freehold of the house and its grounds and of the surrounding park was owned by the defendant and have been so since April 1997. It was also agreed that the park was not occupied for residential purposes ([8] and [16]). The Court of Appeal noted that, in terms of s.1(1) and s.2(3) of the 1967 Act, the claimant's grounds, including garden, did not form part of the "house", but did form part of the "premises" let with the house ([9]).

390. The claimant argued that s.1AA(3) refers to the "house" and not "house and premises" and "adjoining" means "touching". Consequently, a tenancy would only be excluded if "non-residential land" touches the house, rather than a garden surrounding the house ([17]).

391. The defendant argued that that interpretation would have absurd consequences which Parliament could not have intended. Most houses in rural areas are likely to have gardens, but tenancies would only be excluded in relatively rare cases where e.g. at least one flank wall of the tenanted house is built hard up against the boundary of the tenanted land so as to adjoin non-residential land. However, where a house is separated from non-residential land by its garden or by a pathway or roadway, the tenancy could not be treated as excluded. So where a terrace of six houses with front and rear gardens is surrounded by non-residential land in a designated rural area and the external flank walls of the end of terrace properties touch that land, the tenancies of those flanking properties would be excluded but not the tenancies of the four intervening dwellings. There was no discernible policy reason for requiring in that example the tenants of the two end of terrace properties to satisfy the low rent test in order to claim enfranchisement, but not the mid-terrace properties ([19]-[20]).

392. The defendant therefore submitted that "house" in s.1AA(3) should be read as referring to "house and premises," so as to include the surrounding garden land. The claimant tenant responded that this approach would still produce anomalies. For example, where a residential estate comprises houses each surrounded by its own garden, and the estate itself is surrounded by non-residential land, tenancies of houses on the periphery of the estate with gardens touching that land would be excluded from s.1AA but not the remainder ([23]). The Court of

Appeal agreed that that would be anomalous and without any obvious policy justification ([26]).

393. The Court decided that the language used in the legislation did not enable "house" in s.1AA to be extended to include "premises" ([27]). Instead, the anomalies and absurdities were to be avoided by interpreting "adjoining" as meaning "neighbouring" and not "touching" ([28] and [39]). Applying that interpretation, there was no dispute that the park was adjoining land in relation to the claimant's house ([40]).

394. Not surprisingly, it is common ground that area 1 is adjoining land in relation to the Cranwell properties. But the parties disagree on whether area 2 is also adjoining land.

395. The ordinary sense of "neighbouring" refers to a person or thing that is near to another, or, as the defendant in *Lovat* expressed the statutory test, "the relevant non-residential rural area … sufficiently close to the house as to be regarded as neighbouring it" ([24]). Similarly, "adjacent" is not confined to places contiguous with another property, but can include "places close to or near". The necessary degree of proximity depends upon the circumstances (Luxmoore J in *Ecclesiastical Commissioners for England's Conveyance* [1936] Ch. 430, 440-441 and see also *CAB Housing Limited v Secretary of State for Levelling Up, Housing and Communities* [2023] EWCA Civ 194 at [35]). It is a question of fact and degree, a matter of judgment.

396. The issue is not simply a function of distance. It also concerns the nature of the intervening area or areas of land. In *Lovat* there was no difficulty in finding that the surrounding park was "adjoining land" in relation to the house. The only land which separated the two was the garden surrounding the house.

397. Number 1 Sycamore Drive forms part of a residential estate and, like other dwellings there, is surrounded by features of that estate. Area 2 is separated from the house at 1 Sycamore Drive by a grassed area belonging to the house, the eastern part of its rear garden enclosed by a fence, amenity land belonging to the SoS (Title LL276734), an estate footpath and the adopted highway, North Drive. I conclude that area 2 is insufficiently near or close as to "neighbour" the house at 1 Sycamore Drive.

398. Turning to 3 Sycamore Drive, the position is *a fortiori*. That property is additionally separated from area 2 by 1 Sycamore Drive and its enclosed garden.

399. We are not here dealing with a single house and garden which has been let off separately from a park of which it had originally formed a part (see *Lovat* at [4]). Instead, the properties in question form part of a housing estate divided by, *inter alia* informal amenity areas, footpaths, adopted highways and other facilities. *Lovat* warns against the application of the adjoining land test so as to create arbitrary distinctions between different parts of an estate (e.g. [20], [23] and [26]).

400. I conclude that area 2 is not "adjoining land" and so cannot be relied upon by the claimants as excluding the SoS's tenancy of ether 1 or 3 Sycamore Drive from the right to enfranchise under s.1AA of the 1967 Act.

*"Not occupied for residential purposes"*

401. The next issue is whether the adjoining land at area 1 is "not occupied for residential purposes". Mr. Sefton submitted that the "touchstones" for "residential purposes" include the use of a property for the usual activities of living, such as sleeping, eating and washing. He bases that upon the decision of Mann J in *Westbrook* [2015] 1 WLR 1713 at [183], [187] and [194]. On this approach he submits that area 1 is not occupied for residential purposes, but is simply incidental amenity land.

402. *Westbrook* was concerned with collective enfranchisement under the 1993 Act by the owners of flats in a block. It was not concerned with the enfranchisement of a house under the 1967 Act, nor, in particular, with the exclusion of houses in certain rural areas under s.1AA(3). Section 1 of the 1993 Act confers a right to collective enfranchisement on "qualifying tenants" in "flats" contained in "premises" to which Chapter 5 applies, that is a self-contained building or part of a building (s.3), subject to exclusions in s.4. Section 4 provides, in summary, that Chapter I does not apply to "premises" falling within s.3, if part is neither occupied for "residential purposes" nor comprised in common parts, and the area of that part exceeds 25% of the floor area of the premises. The passages in the judgment upon which the claimants seek to rely ([178] to [195]) are simply concerned with the application of that exclusion in s.4.

403. Accordingly, the statutory context in which *Westbrook* was decided was simply the use of part of a *building* for non-residential purposes. It is unsurprising, therefore, that the judge gained assistance from case law discussing use as "residential *accommodation*" (e.g. [183] to [185], [187] and [194]). The judge declined to formulate a test for "residential purposes." It was sufficient for his decision to apply the concept of usual living activities ([183]) to the areas in dispute ([203] and [206]). That decision is of no assistance in dealing with the occupation for "residential purposes" of "land" adjoining the house the subject of a claim to enfranchise. That land need not be, or form part of, "residential accommodation" or a building.

404. I prefer Mr. Rainey's analysis. The excluded tenancy provisions in s.1AA(3) will apply to a range of situations, including rural housing estates of the kind discussed by the Court of Appeal in *Lovat*. Typically such estates will include areas of landscaping and amenity land for the benefit of residents. Such areas may be used for informal recreation such as dog-walking or children's' games, or may simply provide a green or open setting for built development. In the context of the 1967 Act individual houses are likely to have been leased off and the amenity areas retained by the developer, or a management company. Parliament did not intend that properties within such an estate should be excluded from the right to enfranchise under s.1AA where the estate is surrounded by non-residential land, according to whether individual houses are located on the periphery on in the middle. Likewise, Parliament did not intend that a property within a rural housing estate be excluded from s.1AA because it

is close to a grass verge separating it from an estate road, such as the modest grass verges to the south of the pathway running past the front facades of 1 and 3 Sycamore Drive. Unless such grassed amenity areas are treated as occupied for residential purposes, all properties on a rural housing estate are likely to be disqualified from enfranchisement under s.1AA simply on the ground that they are near to verges or amenity land. There does not seem to be any policy or statutory justification for insisting that such properties satisfy the low rent test simply because of their proximity to amenity areas owned by the developer or an estate management company.

405. I agree with Mr. Rainey that area 1 is occupied in order to provide and maintain that space as ancillary amenity land for the enjoyment of inhabitants of individual dwellings for residential purposes.

406. In my judgment, and as a matter of fact and degree, area 1 is occupied for residential purposes. Accordingly, the claimants are unable to rely upon area 1 as excluding the SoS's tenancy of either 1 or 3 Sycamore Drive from the right to enfranchise under s.1AA of the 1967 Act.

*"Owned together with adjoining land" since 1 April 1997*

407. On the conclusions I have reached above it unnecessary for me to address this issue, but I will do so briefly given that the matter has been argued. However, I will refrain from addressing certain hypothetical issues which have been raised but which do not arise on the facts relating to the Cranwell properties.

408. Issues have been raised about the nature of the ownership of adjoining land to which s.1AA(3)(b) refers. In my judgment, the structure of that provision comprises three components: -

(i) the freehold of the house is owned together with adjoining land; and

(ii) that has been the case since 1st April 1997; and

(iii) the adjoining land is not occupied for residential purposes.

409. The draftsman did not include any specific language in (i) to indicate flexibility about the nature of the ownership of adjoining land. He made it plain that the property right relating to the house with which the adjoining land must be owned is limited to the freehold estate. The test is not engaged, for example, where adjoining land is "owned" together with a long leasehold interest in the house.

410. Plainly the draftsman packed into s.1AA(3)(b) a number of interconnected requirements. The drafting is compact. In my judgment, the words "the freehold of that house is owned together with adjoining land" is a composite expression, which is to be construed as a whole, and not by interpreting (and applying) separately its constituent parts (see Bennion, Bailey and Norbury at section 22.3 pp.656-659). The focus is on the freehold being owned of the house together with adjoining land. This concept of "being owned together" is then repeated in s.1AA(3)(b) in order to introduce the requirement about length of ownership. The natural reading of the composite expression used by the draftsman is that

the freehold of the house must be owned together with the freehold of the adjoining land. The connecting verb "owned" is consistent with that reading.

411. During the period from 1st April 1997 the freehold of the house and of the adjoining land may have been transferred. Section 1AA(3)(b) does not require the identity of the freehold owner to remain the same throughout the period. But where there is a change of ownership, the criterion that the freehold of the house be owned together with the adjoining land throughout that period will only be satisfied if the successor in title becomes the freeholder of both parcels at the same time.

412. I agree with the claimants that at the moment when the enfranchisement notice for 1 Sycamore Drive was served, the SoS's legal title to the freehold of that property constituted ownership of that freehold for the purposes of s.1AA(3)(b). At that point in time the SoS was also the freehold owner of areas 1 and 2, but for the reasons already given the SoS's tenancy of 1 and 3 Sycamore Drive was not "excluded."

413. I accept Mr. Rainey's submission that the focus of the ownership test in s.1AA(3)(b) is on interests superior to that of the enfranchising tenant. Even if, contrary to my view, ownership of adjoining land need not relate to the freehold for the purposes of para. (b), it would not include a subsidiary interest carved by the enfranchising tenant out of his own tenancy. Furthermore, the sub-underlease granted to DIHL did not exist on 1 April 1997. It was created on 14 December 2021, before any of the enfranchisement notices were served.

414. When DIHL became the registered proprietor of the freehold of 3 Sycamore Drive the SoS ceased to own that freehold together with any other neighbouring freehold which he then owned. I see nothing in s.1AA of the 1967 Act, or any related provisions, which would result in DIHL being treated as part of the Crown or indivisible from the SoS. The SoS is not to be treated as if he had remained the freehold proprietor of the Cranwell properties after that ownership had been vested in DIHL.

415. I conclude that the SoS's tenancy of 1 and 3 Sycamore Drive, Cranwell is not an excluded tenancy for the purposes of s.1AA(1) of the 1967 Act.

## Issue 10 – The validity of the 8 enfranchisement notices

416. I conclude that each of the 8 notices to enfranchise served in relation to the Cranwell properties and the Bristol properties was and remains valid and effective under the 1967 Act.

## Issue 11 (Ground 3) – Tests applicable to compulsory acquisition

*Submissions*

417. In their pleaded case the claimants submitted that the defendant's service of the 8 enfranchisement notices amounted to the use by the Crown of a power of compulsory acquisition. They then contended that (i) the SoS had to be satisfied that there was a compelling or overriding case in the public interest for the use

of that power, (ii) the power had to be used for the purposes of the 1967 Act, not for a collateral purpose and (iii) the power could only be exercised as a "last resort". Sir James Eadie said that point (ii) really arises under ground 4 and that is how the defendant has responded to it.

418. In the skeleton argument and in his oral submissions Mr. Maurici did not pursue point (iii). It had been taken from policy guidance on compulsory purchase orders made by public authorities other than Ministers. However, the claimants did pursue point (ii) under ground 4.

419. In relation to point (i), Mr. Maurici contends first that, although enfranchisement does not involve the making of a compulsory purchase order ("CPO"), it does amount to a compulsory acquisition. Second, he submits that it is a principle of our constitutional law that no citizen is to be deprived of his land by a public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands. Third, he points out that where the principle is engaged, the public authority is required to decide for itself whether there is a compelling case in the public interest justifying its proposed action. Consequently, the SoS ought to have applied the public interest test before serving any of the 8 enfranchisement notices. Fourth, Mr. Maurici submits that the SoS failed to do that. The defendant contends that the common law principle is not engaged by a decision to serve an enfranchisement notice.

420. Ground 3 is based upon a common law or judicial principle. At first blush, it would appear to be similar to the second rule in A1P1 which requires *inter alia* that no one is to be deprived of his possessions "except in the public interest" (see ground 6 below). But it is common ground that there is a significant difference. The common law principle requires the acquiring authority as decision-maker to decide whether there is a compelling case in the public interest for the proposed acquisition, subject only to public law principles of judicial review. Under A1P1 a failure by a public authority to apply the public interest test is not in itself a basis for holding that its decision was unlawful. In that event, the court can determine whether the public interest test is satisfied, just as it does in relation to any issue on proportionality. It is this difference which appears to explain why the claimants have relied upon ground 3 in addition to ground 6.

*Discussion*

421. It is necessary to begin by identifying the circumstances in which the common law principle has been held to apply. In *Prest v Secretary of State for Wales* (1982) 81 LGR 193 the claimant resisted a proposed CPO on his land for a new sewage works. He offered to make two alternative sites available. The Secretary of State rejected those alternatives because of increased construction costs, but failed to consider the additional costs of acquiring the necessary land, whether the CPO land or the alternative sites. The Court of Appeal decided that that was an obviously material consideration which the decision-maker had been bound to take into account. Lord Denning MR stated at p.198:

> "It is clear that no Minister or public authority can acquire any land compulsorily except the power to do so be given by

Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced – for or against compulsory acquisition – the decision – by whomsoever it is made – should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid: see *Attorney-General v. De Keyser's Royal Hotel Ltd* [1920] A.C. 508."

422. Essentially the same approach has been taken in subsequent cases such as *De Rothschild v Secretary of State for Transport* (1988) 57 P&CR 330, 337 (a CPO for a new road under Highways Act powers), *Chesterfield Properties Plc v Secretary of State for the Environment* (1998) 76 P&CR 117, 127-131 (a CPO for a new shopping centre under planning powers) and *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2011] 1 AC 437 at [10] and [38] to [39] (a CPO for a regeneration scheme also under planning powers). In *Chesterfield* Laws J stated that the law presumes that a constitutional right carries substantial weight, and so it is necessary for the decision-maker to be satisfied that a public interest of greater weight overrides it.

423. Compulsory purchase orders (and development consent orders under the Planning Act 2008) may authorise the expropriation of an existing property interest, such as the freehold or a leasehold, or may require a landowner to create a new right which is then compulsorily acquired by the acquiring authority. Similarly, dedicated legislation relating to energy projects may be used to authorise the compulsory grant of wayleaves in favour of an energy company for overhead lines *(R (Samuel Smith Old Brewery (Tadcaster)) v Secretary of State for Energy and Climate Change* [2012] EWHC 46 (Admin)).

424. The approach set out in *Prest* has also been applied where an authority decides to exercise a statutory power of appropriation linked to a provision overriding a restrictive covenant or an easement which would otherwise affect the appropriated land (*R v Leeds City Council ex parte Leeds Industrial Co-operative Society Limited* (1997) 73 P&CR). This overriding of a right inconsistent with the statutory purpose for which land has been appropriated makes it unnecessary for the authority to acquire land compulsorily (e.g. the dominant tenement) in order to overcome that right. But the effect of the appropriation is to deprive a landowner of the benefit of his right compulsorily. It is analogous to a compulsory acquisition of a legal estate. Normally the landowner entitled to the benefit of such a right may obtain compensation for injurious affection (e.g. s.10 of the Compulsory Purchase Act 1965).

425. Appropriation is analogous to compulsory acquisition in a second way. Where a statutory body has acquired land for one purpose, it cannot use the land for a different purpose unless authorised to do so, for example, by a power of appropriation (*Attorney General v Hanwell Urban District Council* [1990] 1 Ch 377). Indeed, where an authority has been authorised by a CPO to acquire land compulsorily for a particular purpose, the court may prevent it from acquiring

or using that land for a different purpose falling outside the scope of the order (*Grice v Dudley Corporation* [1958] Ch 329; *Simpsons Motor Sales (London) Limited v Hendon Corporation* [1964] AC 1088). In *Dowty Boulton Paul Limited v Wolverhampton Corporation (No.2*) [1976] Ch 13, Russell LJ explained at p.24 that where an authority no longer needs land for the purpose for which it had been compulsorily acquired it generally has to be dispose of it to the former landowners (whether under former nineteenth century legislation or the current Crichel Down policy). Statutory appropriation allows an authority to use land for a different purpose, so as to avoid the double step of having to sell the land to former owners and then obtaining further powers of compulsory acquisition for that new purpose.

426. These compulsory acquisition and appropriation procedures do not involve any right or entitlement conferred by Parliament. Instead, a provision for compulsory acquisition generally confers a discretionary power upon a public authority (or upon an acquiring body acting for statutory purposes) within certain important limits. First, the power may only be exercised for the purposes identified in the empowering legislation. It may not be exercised for an irrelevant or collateral purpose. Second, the legislation generally enables affected landowners to object to a proposed CPO. In that event, the merits of a draft CPO are subject to independent scrutiny and ultimately a decision by a confirming authority as to whether the order should authorise the promoting authority to exercise powers of compulsory purchase. It is in that context that the courts in *Prest* and related cases have laid down principles regarding the justification needed for a decision to make a CPO. It is intrinsic to the process of obtaining authorisation for the exercise of a power of compulsory purchase that the merits of the scheme be judged sufficient in relation to the statutory purposes of that power and the public interest, so as to justify the expropriation of private property. Discretionary powers of compulsory purchase do not themselves strike a balance between the constitutional rights of landowners and the public interest for each and every case where such a power may be exercised (contrast [597] – [603] below).

427. Although appropriation generally does not involve an objection process, *Leeds* shows that the authority must satisfy any statutory conditions for the exercise of the power and must consider whether the merits of the proposal make it necessary in the public interest to override any third party rights.

428. How then does a right to enfranchise stand in relation to this analysis of the authorisation of compulsory acquisition and appropriation? Mr. Maurici referred to *James v United Kingdom* (1986) 8 EHRR 123 at [38] where the ECtHR stated that the effect of enfranchisement notices is to deprive the applicants of their possessions within A1P1. In *Methuen-Campbell v Walters* [1979] QB 525 Goff LJ accepted that the 1967 Act was expropriatory and gives a right of compulsory purchase (p. 529G and see also Roskill LJ at p.541G and Buckley LJ at p.542F).

429. Undoubtedly, where a valid notice to enfranchise is served, the 1967 Act compels a landowner to sell his interest to the enfranchising tenant at the relevant statutory price, irrespective of whether he is willing to do so. In that sense the service of an enfranchisement notice results in a form of compulsory

acquisition. But in my judgment the scheme of the 1967 Act is not analogous to powers of compulsory purchase or appropriation in which the principle in *Prest* has been held to be applicable. There are very substantial differences.

430. In *Cadogan v McGirk* [1996] All ER 643 Millett LJ stated at p.648 that while the 1967 Act is to some extent expropriatory of the landlord's interest, it was nonetheless passed in order to confer benefits upon tenants. As Lord Carnwath JSC put it in *Hosebay Limited v Day* [2012] 1 WLR 2884 at [6], the 1967 Act is expropriatory in the sense that it confers rights on lessees to acquire rights compulsorily from lessors, but that does not give rise to any interpretative presumption in favour of lessors.

431. A key distinction between the 1967 Act and powers of compulsory acquisition and appropriation is that the former confers a right to enfranchise on all qualifying tenants, whether private individuals or public authorities. That right is a private law right. According to the language used by Parliament, a tenant, including a public body, only has to satisfy the conditions which give rise to a right to enfranchise. The Act does not confer a discretionary power to acquire land compulsorily as a matter of public law. Nor does it provide that the right to enfranchise can only be exercised for specified purposes or for some reason relevant to the purposes of the legislation. A statutory right of this kind is not analogous to a discretionary power which can only be used for the purposes of the empowering legislation.

432. In the same vein a tenant's exercise of his right to enfranchise is not subject to a requirement for independent authorisation under the 1967 Act. The legislation does not require the "merits" of a notice to enfranchise to be assessed against statutory criteria or purposes. Indeed, in *James* the ECtHR rejected the applicants' complaint that the 1967 Act failed to allow any scope for discretionary and variable implementation of enfranchisement according to the particular circumstances of each individual property and the parties involved (see [68] and [76]).

433. Accordingly, I do not accept the claimants' contention that the *Prest* principle applies where a right to enfranchise is exercised by a public authority. That circumstance does not alter the nature of the statutory scheme or its substantive effect. The ability to enfranchise is one of the incidents of a tenant's rights which Parliament has chosen to confer.

434. Mr. Maurici submits that a public authority in the position of the SoS has a choice as to whether to exercise the right to enfranchise. Furthermore, in the case of the 8 notices served to date, the defendant entered into additional transactions specifically to enable that right to become exercisable. Mr. Maurici submits that a decision to serve a notice to enfranchise is subject to public law principles, notwithstanding that the exercise of the same right by a tenant in the private sector is not. He draws an analogy with decisions by a public authority as landlord to serve a notice to quit (*Cannock Chase District Council v Kelly* [1978] 1 WLR 1) or to refuse consent under a covenant to approve a change of use (*R (Molinaro) v Royal Borough of Kensington and Chelsea* [2001] EWHC (Admin) 896).

435. Mr. Maurici's analysis is correct as far as it goes. Indeed, the defendant accepts that some public law principles are applicable to a decision to serve a notice to enfranchise and therefore such a decision is amenable to judicial review. But that begs the question what principles of public law are applicable to a decision taken by a public authority under a contract or to the exercise of a statutory right as a tenant? Mr. Maurici rightly accepts that there is no authority applying the constitutional principle in *Prest* outside compulsory purchase under a discretionary power (e.g. by CPO) or the exercise of the analogous power to appropriate. The analysis by Lord Sales in *Mauritius* (referred to in [135] above) indicates that the grounds upon which a court may intervene when reviewing a decision by a public authority to exercise a contractual or property right are limited, namely fraud, corruption, bad faith and possibly breach of legitimate expectation (see further under ground 4 below). The suggestion that the constitutional principle in *Prest* applies to a decision to enfranchise is inconsistent with the well-established approach of the courts to public law challenges to the exercise by a public authority of private law rights, *a fortiori* in a commercial context. For these reasons ground 3 must fail. The constitutional law principle in *Prest* does not apply to the exercise of a right to enfranchise by a public body.

436. However, if I had decided that that principle did apply, the claimants have not persuaded me that, as a matter of substance, the SoS failed to comply with it. True enough, Mr. Razzell states that he had not considered the guidance on compulsory purchase and CPOs to be relevant (para. 2.1 of his witness statement). But even without delving into the detail of the pleadings, it is plain that the claimant's case has shifted on this aspect, which no doubt has led to some confusion on how the matter should be handled (including the drafting of issue 11(3)). This aspect of ground 3 has been treated as falling with the improper purpose challenge under ground 4 and the defendant has responded on that basis. Sir James Eadie showed that the decision to serve the 8 notices as test cases was driven by the objectives of achieving VFM for taxpayers and achieving more flexibility in the management of the MQE. They were treated as important matters of public interest. In addition, the defendant had regard to the interference with APL's property rights which would result from enfranchisement. However, I do not find it necessary to base my rejection of ground 3 upon the matters contained in this paragraph.

437. Ground 3 of the challenge is rejected.

## Issues 12 to 14 (Ground 4) – Improper motives

## Issue 12 – Public law limits on the exercise of the right to enfranchise

438. The claimants submit that even if the criteria for enfranchisement in the 1967 Act were satisfied for each of the 8 notices, a tenant which is a public authority is not in the same position as a private citizen. A public authority must comply with any relevant principles of public law. In particular, the decision to serve an enfranchisement notice must not be taken for an improper motive or purpose.

439. Ms. Carss-Frisk relied upon the judgment of Laws J in *Fewings* (see [133] above). He stated that a public body, such as a local authority, does not have an

unfettered discretion to manage its land as in the case of a private individual. An authority must act reasonably and in good faith and upon lawful and relevant grounds of public interest ([1995] 1 All ER 513, 524c). An authority may take private law proceedings to give effect to its property rights, but, if it acts in good faith, it does so in order to vindicate the better performance of its functions for the fulfilment of which it exists. He regarded this legal analysis as underpinning the principal rules of judicial review. He referred in particular to *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 as an example of a statutory power being used for a motive or reason outwith the purposes for which the power had been conferred. Likewise, the central issue in *Fewings* was whether the local authority had decided to ban deer hunting on its land for reasons which were irrelevant to the statutory purposes for which it held that land.

440. *Fewings* is an example of the fundamental principle stated by Lord Bridge in *R v Tower Hamlets London Borough Council ex parte Chetnik Development Limited* [1988] AC 858 at 872. A statutory power conferred for public purposes is conferred as if it were upon trust, not absolutely. That is to say it can validly be used only in the right and proper way which Parliament intended.

441. In *Porter v Magill* [2002] 2 AC 357 the House of Lords accepted that politicians elected to a local authority may legitimately have in mind the effects of their decisions on public opinion. Councillors do not act improperly if, "exercising public powers for a public purpose for which such powers were granted, they hope that they will earn the support of their electorate and thus strengthen their electoral position". "But a public power is not exercised lawfully if it is exercised, not for a public purpose for which the power was conferred but in order to promote the electoral advantage of a political party". So although the local authority was entitled to exercise a statutory power to dispose of its housing to promote any public purpose for which the power was conferred, it could not lawfully do so to provide an electoral advantage for one of the political parties represented on the council ([21] to [22]).

442. Thus, the relevance of political advantage and reputation is sensitive to the legal context. That is also illustrated by the decision in *Padfield* upon which Ms. Carss-Frisk relied. Under the relevant legislation, a complaint made to the Minister on the operation of the Milk Marketing Scheme could only be considered and reported upon by a committee of investigation if the Minister directed them to do so. If the committee reported that *inter alia* any provision of the scheme was not in the public interest, the Minister was empowered to take remedial action, but not otherwise. Lord Reid stated that Parliament had given the Minister a discretion as to whether to refer a complaint to a committee, with the intention that it be used to promote the policy and objects of the legislation (p.1030). Accordingly, the Minister could not refuse to refer a complaint because if he did so the committee's report might cause him embarrassment (p.1032). Similarly, Lord Upjohn stated that although a Minister might have good "policy reasons" for refusing to refer a complaint to a committee, he could never refuse to do so for "purely political reasons", such as a fear of adverse reaction in Parliament to any remedial action recommended by the committee (pp.1058 and 1061). Thus, the House of Lords did not lay

down a general principle that political embarrassment or harm to political reputation is generally irrelevant to the exercise of a statutory power. Instead, the legal flaw in *Padfield* was that the Minister's concern about the political implications of a complaint being upheld was legally irrelevant to his responsibility to decide whether to refer a complaint under a statutory scheme set up to investigate and remedy potentially legitimate complaints. Those reasons for not taking action under the legislation were irrelevant to the purposes of that statutory scheme.

443. Ms. Carss-Frisk also relied upon *Molinaro*, a case where the claimant challenged the authority's refusal to give its consent to a change of use under a user covenant in a lease. The covenant gave effect to planning policy objectives, so the decision had a sufficient public element as to be amenable to judicial review for abuse of power ([63] to [65]). Elias J (as he then was) stated that powers are given to public bodies to be exercised in the public interest. A public authority's contractual power should not be treated any differently to other powers in relation to judicial review for abuse of power ([67] and [69]). But the judge added that a court may sometimes decide that a public law complaint cannot be advanced because it would undermine private law principles governing the private law relationship between the parties ([69] to [70]). The judge did not discuss that issue any further given that the public law grounds of challenge failed in any event.

444. *Fewings*, *Padfield*, *Chetnik*, *Porter* and *Molinaro* all involved powers specifically conferred on public authorities for a statutory purpose. *Fewings*, *Porter* and *Molinaro* related to the legality of land management decisions. So where land is held for a particular statutory purpose, a judicial review may challenge whether a land management decision was taken for a reason irrelevant to, or outwith, that purpose. That would be an improper motive.

445. The SFA properties, including the Cranwell and Bristol properties, have been acquired and held by the SoS under Part I of the Military Lands Act 1892 and the Defence (Transfer of Functions) Act 1964. In broad terms the land is held for the purposes of the MoD and for the armed forces. But the claimants have not argued that the SoS's pursuit of enfranchisement is *ultra vires* those statutory purposes or his land management powers, so as to provide an additional basis for alleging an improper motive.

446. Instead, the claimants challenge the exercise of a right to enfranchise conferred by the 1967 Act on tenants, whether private individuals or public authorities. Given that the Act confers a right on qualifying tenants in general, and not a discretionary power on public authorities, it comes as no surprise to find that the Act does not identify any statutory purpose to which the exercise of that right must be related. A person exercising a right to enfranchise need not do so for any particular purpose. He merely has to be able to satisfy the statutory conditions for the exercise of that right.

447. The claimants sought to argue that the principle laid down in *Gratton-Storey*, that a subtenant who is also the freeholder cannot serve an enfranchisement notice in order to acquire an intermediate tenancy, in fact represents a purpose of the 1967 Act. They then submit that, in public law terms, it is improper for a

subtenant which is a public authority to seek to circumvent that purpose by transferring its freehold to a SPV. This argument is untenable. *Gratton-Storey* simply identified conditions in which a right to enfranchise either does or does not exist. Neither the court nor the claimants in this case have identified any provision or principle in the 1967 which prohibits or disqualifies arrangements made in order to enable a tenant to acquire intermediate interests. The Court of Appeal referred to the possible use of a nominee arrangement. That is a legitimate mechanism by which a subtenant who owns the freehold reversion of a house can bring himself within the scope of the right to enfranchise conferred by the Act. It is not a device for circumventing any prohibition or disqualification in the Act. There is no such provision. In this context, it has not been suggested that there is any distinction to be drawn between the nominee arrangement suggested by the Court of Appeal and the SPV model used in the present case.

448. Nevertheless, a decision by a public authority regarding the management of its land, or the services it procures, may be struck down because it was based upon a purpose which was plainly extraneous and improper, irrespective of the precise ambit of its powers for managing its land or services. In *Wheeler v Leicester City Council* [1985] AC 1054 the authority held a recreation ground under the Open Spaces Act 1906, which it made available to the city's rugby football club. The Council decided to ban the club from using the ground for a year because it had failed to take sufficient steps to discourage its members from participating in the English RFU's tour of South Africa, which the Council considered to be inappropriate because of the apartheid regime. The House of Lords held that the ban was unlawful. The tour was not unlawful and the Council was not entitled to use its land management powers, or any other statutory powers, in order to punish or sanction the club when it had committed no wrong (p.1080F and p.1081C).

449. The same approach was taken in *R v Lewisham London Borough Council ex parte Shell UK Limited* [1988] 1 All ER 938. The Council's decision to adopt a policy of boycotting Shell's products and to persuade other authorities to follow suit was unlawful because it had been based on an extraneous and impermissible purpose, namely to put pressure on the company to withdraw from South Africa. The Council's decision involved punishing Shell for carrying on trade in South Africa when that was a lawful activity.

450. The defendant accepts that decisions by a public authority regarding the exercise of its contractual or property rights may be amenable to judicial review. The question is in what circumstances may a public law challenge be brought? What potentially may be raised as grounds of challenge?

451. In *Mercury Energy Limited v Electrical Corporation of New Zealand Limited* [1994] 1 WLR 521 a local electricity supply authority sought to challenge the legality of a decision by a state enterprise responsible for generating and distributing electricity throughout the country to terminate an agreement for the bulk supply of electricity. The Privy Council stated that it was unlikely that a decision by a state enterprise to enter into or determine a commercial contract to supply goods or services would ever be subject to judicial review "in the absence of fraud, corruption or bad faith" (p.529B).

452. The Privy Council revisited this subject in *The State of Mauritius* case. This was in fact concerned with two decisions. The first involved a regulator's refusal to accept that the claimant, a developer of a power station project, had satisfied a condition of the Environmental Impact Assessment licence. That decision had been taken under a regulatory regime and "the usual standards of public law" applied ([42] and [46] to [61]).

453. The second decision, made by a different Minister, involved a refusal to arrange for the Government to enter into an Implementation Agreement with the developer which would include a guarantee by the Government of the price payable by a purchaser for the supply of electricity from the power station. At [43] Lord Sales explained that this decision was amenable to judicial review, but the question of what public law standards would apply was a separate matter:

> "43. The Board also considers that the decision of the Ministry of Energy to refuse to sign the Implementation Agreement is in principle within the scope of the court's judicial review jurisdiction. It is true that a decision whether or not to enter into a contract involves deciding whether to accept obligations sounding in the private law of contract. However, a contract is made between legal persons, and where the person who is a proposed party to a contract is a public authority the way in which it may behave is subject to rules of public law; and whether the public authority has acted lawfully in accordance with those rules is a matter which may be subject to judicial review. The Board would add that the same point about the relevance of rules of public law can be made regarding a decision by a public authority whether and how to exercise rights sounding in private law conferred by a contract into which it has entered: see *Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd* [1994] 1 WLR 521 (PC), in particular at p 526A-D (decision to give notice to terminate a commercial contract for the bulk supply of electricity). Again, it is a separate question what public law standards apply and whether the Ministry of Energy did anything unlawful in terms of those standards in taking the decision it did: see below."

454. Lord Sales dealt with the standards of public law applicable at [63] to [68]. In [63] he emphasised the legal ability of the Minister to participate in the commercial market in the normal way, through the exercise of full bargaining power in order to secure the best commercial deal possible, so as to promote the public interest (see [135] above). Accordingly, the application of public law standards should not cut down or undermine that bargaining power.

455. In [64] to [65] Lord Sales continued:

> "64. In negotiating a commercial contract on behalf of the Government, the Minister, as a public authority, is not entirely free from constraints arising under public law. He is obliged to comply with *basic public law standards which ensure that he*

> *properly seeks to promote the public interest*. Accordingly, his decision-making as to how to conduct negotiations before a contract is entered into might be brought into question if, by way of purely hypothetical example, he *acted out of personal spite or because he had been bribed*. As a result, the potential counterparty is not exposed to what, if they were negotiating with another private party, might be the pure capriciousness of that private party in deciding whether to enter into the contract and on what terms.
>
> 65. However, when conducting negotiations, the Minister is entitled to have regard to a *wide range of considerations, including political considerations*, which would not typically play a role in negotiations between two private commercial parties. In the present case, for example, entering into the Implementation Agreement would involve a commitment potentially requiring substantial payments of public money. There is inevitably a possible political dimension to such questions which it would be legitimate to take into account. In the present case it appears that the incoming government after the general election in December 2014 may have been less convinced than the former government that the project was a good idea and that the commitment to be given in the Implementation Agreement was justified." (emphasis added)

456. In [66] Lord Sales reaffirmed the guidance given in the *Mercury Energy* case (see [451] above). He added:

> "The limited scope for a judicial review challenge as indicated in this passage reflects the width of the relevant discretion enjoyed by a state enterprise (or … [a Minister]) when exercising its powers to negotiate a commercial contract or how to use its rights under such a contract."

457. In *The State of Mauritius* case the court decided that the Minister's decision had not been affected by fraud, corruption or bad faith. He had been entitled to take the view that the developer did not appear to be a satisfactory contractual party and that it was undesirable to enter into the implementation agreement ([67]). The court left open the possibility that a claim based upon legitimate expectation could in principle be raised, but on the facts of that case no such expectation arose ([68]).

458. In *Dudley Muslim Association v Dudley Metropolitan Borough Council* [2016] 1 P&CR 10 the Council had granted a 99 year lease to enable a mosque to be built. However, if the development was not completed within 5 years the Association had to retransfer the land to the Council with vacant possession. Because it had taken the Association over 5 years to obtain planning permission on appeal and then to resist the Council's unsuccessful legal challenge to that grant of permission, the mosque was not built within the period allowed by the contract. Having regard to the delays caused by the Council, the Association

sought to rely upon a legitimate expectation that it would be allowed to complete the development within a reasonable time frame.

459. Lewison LJ said that in a technical sense the Council had been operating under statutory powers, but that was because, as a statutory body, it could do nothing unless authorised by statute. But the case was about the implementation of a commercial bargain rather than the unilateral exercise by the Council of a statutory power. Where a claim is fundamentally contractual in nature or, I would add, to do with the enforcement of private law rights such as a right to enfranchise, and there is no allegation against the public body of "fraud or improper motive or the like", the parties are generally limited to private law remedies ([22] to [23]). To allow public law remedies in the absence of bad faith or improper motive may place a party contracting with a public body in an unjustifiably more privileged position, and that body in an unjustifiably less favourable position, as compared with contracting parties where no public body is involved ([23]). In this respect, there is no difference in principle according to whether a private party is seeking to enforce a contract or property rights, or to resist enforcement ([28]).

460. *Dudley* is a particularly clear example of a case where the nature of the private law rights and the issues allowed little or no scope for the application of public law principles. Once the date for completion of the development had passed, the Association became subject to an unconditional obligation to transfer the land back to the Council, which was not dependent upon the exercise by the latter of a discretionary or statutory power. Given that the Association did not rely upon a variation of the contract or a promissory estoppel, the contract was enforceable according to its terms. No public law defence based on legitimate expectation or abuse of power was available. If a public authority took a decision to enforce the contract in bad faith, then the court might well quash the decision. But the authority would then be free to retake the decision, and if it reached the same decision in good faith, the contract would be enforceable ([29] to [30]).

461. Here, the issue as to whether the SoS has a right to enfranchise under the 1967 Act depends upon the interpretation and application of that legislation in the circumstances of this case. The existence of, or reliance upon, such a property right does not depend upon the exercise by the SoS of any discretionary power. Whether that right is exercised depends upon a choice made by the SoS, but, as a matter of legal principle, that is not materially different from the decision of the Council in the *Dudley* case to enforce the Association's contractual obligation. Whether a private law right or obligation exists is not to be confused with a decision about whether to rely upon or enforce that matter. *The State of Mauritius* and *Dudley* cases establish that there is only a limited scope for invoking public law grounds of challenge in relation to a decision to rely upon or exercise a freestanding contractual or property right.

462. Ms. Carss-Frisk pointed out that in *Dudley* Lewison LJ referred to the possibility of a public law challenge to a decision to enforce a private law right on the grounds of improper motive as well as bad faith. No authority was cited on what "improper motive" would add to the grounds recognised in *The State of Mauritius* case.

463. De Smith's Judicial Review (8th Edition) states at paras 5-094 to 5-095:

> "5-094. However, the designation of a purpose as "improper" is distinct because of its connotation of *moral* impropriety. In most cases where the term "improper" has been employed the decision-maker either knowingly pursues a purpose that is different from the one that is ostensibly being pursued, or the motive behind the decision is illicit (based for example on personal factors such as financial gain, revenge or prejudice). Because, therefore, of its adverse moral imputation, the notion of improper purposes is more akin to that of bad faith, which will now be considered separately.
>
> **Bad faith and improper motive**
>
> 5-095. Fundamental to the legitimacy of public decision-making is the principle that official decisions should not be infected with improper motives such as fraud or dishonesty, malice or personal self-interest. These motives, which have the effect of distorting or unfairly biasing the decision-maker's approach to the subject of the decision, automatically cause the decision to be taken for an improper purpose and thus take it outside the permissible parameters of the power."

De Smith states that "bad faith" refers to the carrying out of a function in a manner which is not honest and genuine.

464. The claimants have made it clear they do not allege bad faith, fraud or corruption, but rely instead upon "improper motives". It is therefore necessary to be clear about what might be treated as an improper motive in the present case without amounting to bad faith. As Sir James Eadie argued, that becomes even more important when the allegation of improper motive does not relate to the exercise of a discretionary power conferred for a statutory purpose, but to a statutory private law right, the exercise of which is not restricted to any particular statutory purpose. I do not consider that the court is entitled to make a free-wheeling judgment on matters of business ethics or morality in order to decide whether a decision-maker's motive was improper. The claimants have not suggested otherwise. In paras. 75 to 76A of the Amended Statement of Facts and Grounds they have sought to advance criticisms of specific passages in the contemporaneous documents which are said to reveal an improper motive by reference to financial gain, prejudice, hostility, animosity or vindictiveness, concern about political reputation or embarrassment, and punishing a person who has committed no wrong.

465. The court's decisions on these criticisms must be taken in the correct context. The SoS and his officials are clearly of the view that the sale and leaseback arrangements have been a bad deal for the MoD and the taxpayer for a number of years and will continue to be so. Hence, s.5 notices have been served in order to test the merits of enfranchisement as a way of extricating the Ministry from that situation. There is nothing *improper* about a public authority taking such action if it can lawfully do so. As *The State of Mauritius* confirms, the SoS is

entitled to participate in the commercial market in the usual way, that is by exercising the full bargaining power available to him in order to secure the best deal possible. That is a matter of public interest. The court should be careful to ensure that the application of public law standards does not cut down or undermine that bargaining power, or give another party to the contract a negotiating advantage not forming part of the bargain or its statutory context. In addition, the Minister is entitled to have regard to a wide range of considerations, including political considerations. The limited scope for judicial review reflects the width of the discretion enjoyed by the SoS when exercising his powers for negotiating contracts, or using his rights under existing contracts and, in this case, under the 1967 Act. The complaints raised by the claimants must be judged against the principles laid down in *The State of Mauritius* case (particularly at [63] to [66]), *Dudley* and other relevant principles identified above.

466. As for what was included or assumed in the original bargain between the parties, the claimants make the fair point that in 1996 the SoS did not have any right to enfranchise under the statutory framework then in place. In particular, he was unable to satisfy the residence requirement. However, by then the 1967 Act had been amended on a number of occasions, extending the scope of enfranchisement in relation to, for example, rateable value limits and the low rent test. There was plainly a risk that during the course of the 200-year underlease further amendments might be made potentially enabling SFA in the MQE to be enfranchised (see also [588]-[595] below). From the outset the 1967 Act contained provisions rendering agreements void which purported to exclude or modify a tenant's right to enfranchise (s.23). In 2002 the residence test was abolished save in limited circumstances. Thereafter, in 2011 the profit-sharing agreement ceased to apply and from 2016 criticisms of the VFM of the 1996 agreements were being expressed in Parliament. By then the nature of the bargain had been changed by amendments made by Parliament to the 1967 Act.

## Issues 13 and 14 (Ground 4) – Whether the defendant's decision to enfranchise was based upon any motive that was legally improper

*How the decisions to serve the enfranchisement notices came to be made*

467. In their report dated 13 July 2018 the Public Accounts Committee criticised both APL and the MoD for having failed to collaborate to maximise value from the MQE for mutual benefit (see [29] to [30] above). Against that background the parties sought to improve their relationship. In March 2019 the SoS and APL entered into the arbitration agreement for the site rent reviews and the D&H Agreement. The parties issued a joint press statement in which they expressed the hope that the reviews would be determined more quickly and at a lower cost than would otherwise be the case. The parties said that they had agreed a number of terms that would strengthen their relationship, including a mechanism to reduce the number of void properties, as part of a mutual goal of working closer together on the broader estate. The parties saw the agreements as a "productive first step" towards a "closer, more collaborative approach".

468. However, internal MoD briefing dated 5 May 2019 on the rent reviews stated that the 1996 deal represented poor VFM. The MoD was exploring a number of

mitigations to address the risks of the rent review, including increasing the rate of handbacks to APL above the recently agreed level of 500 units a year, a programme of new build homes on MoD land and enfranchisement to buy APL's interest on sites where there was a long-term need and the housing was of appropriate quality. MoD had not previously pursued enfranchisement because of complexity, cost and uncertainty. The Law Commission had made proposals to the Ministry of Housing, Communities and Local Government ("MHCLG") to make the process easier and cheaper for tenants. The MoD, with its interests as a major landowner, was to make representations to MHCLG.

469. On 18 October 2019 officials sent a briefing note to the SoS on the possibility of repurchasing SFA from Annington as one of a number of options. Because there was uncertainty *inter alia* as to the effect of the rent reviews on future levels of rent, it was difficult at that stage to show that buying back properties from APL would represent VFM. In addition, some of the estate was reaching the end of its economic life. Accordingly, the SoS was advised that it might be more economical for him to terminate many of the underleases with APL and to build new homes on MoD land.

470. Officials had a meeting with the SoS on 5 May 2020. The SoS recognised that the 1996 deal with APL was not a good one and was keen to explore how the MoD could get out of the arrangement, including the use of enfranchisement. Officials referred to the high number of void properties which was partly the result of a lack of funding for dilapidation payments. There were 7,769 void properties costing £40m in rent and £4m in maintenance each year. The MoD would hand back to APL 3,500 of these properties over 7 years under the D&H Agreement saving £17m a year in rent. If all of the remaining 4,269 void properties were to be handed back to APL there would be further savings of £21m rent and £2m maintenance each year, but the additional dilapidations cost would be £62m and the process would be complex. Once the voids were cleared and the outcome of the site rent reviews known, the MoD would be able to assess on a site by site basis whether it would be economic to continue to rent properties from APL or whether it would be better for the MoD to re-provide housing by buying or building its own housing.

471. In a briefing to the SoS and the MinDP dated 20 May 2020 officials stated that enfranchisement was a potential tool for the MoD either to negotiate better terms with APL or to buy out its interest. If the outcome of the rent review process should be adverse to the MoD, enfranchisement might be a critical component of the Ministry's mitigation strategy.

472. Following the arbitral tribunal's third award (18 June 2020), officials provided briefing to the SoS on 22 September 2020. Officials advised that a SPV be set up to which the SoS would transfer the freehold of the sites to be enfranchised. By this stage the MoD had become aware that Terra Firma was taking steps to prepare an initial public offering for the refinancing of APL, but APL had not disclosed to the market "the risk of MoD enfranchising the estate at a substantial discount to open market value". The note continued:

> "We would therefore recommend that MoD establish a SPV and notify AHL of the intention to enfranchise at the earliest possible

> opportunity. We could make such steps publicly known in order to disrupt AHL's IPO process. This will create commercial leverage that has hitherto been absent in MoD's relationship with AHL."

473. On 7 October 2020, the day after the fourth award of the arbitral tribunal, officials put a submission to the Permanent Secretary of the MoD as the Accounting Officer. This sought his approval, subject to the agreement of HM Treasury, to establishing a SPV so that the SoS could pursue an enfranchisement claim. The note recorded that in 1996 the SoS had sold 999 year leases of SFA to APL for £1.662 billion, since when the value had increased to nearly £8 billion, without the SoS being able to capture any part of that increase. In the course of the rent arbitration it had become clear that the SoS could enfranchise so as to buy out APL's interest, potentially at a substantial discount to open market value. In discussing the financial benefits of an enfranchisement claim at Cranwell the briefing stated:

> "Executing this transaction would create intense commercial leverage over Annington Homes; merely holding the threat of this could force Annington's valuers and auditors to write down its book value. Such a threat would be of considerable benefit to MoD as it is in the process of arbitrating the rent for the next 15 years; the NPV of the rent is up to £13bn so it is incredibly important for MoD to exercise any leverage it can"

474. The Accounting Officer Assessment said in relation to meeting standards on propriety that Parliament, the NAO and commentators had often criticised the transfer of value from the public purse to APL and enfranchisement would help to remedy that. The initial proposal was to enfranchise only one or two of the SFA units "in order to gain proof of concept." The Permanent Secretary approved the Accounting Officer Assessment and the proposal as meeting the required standards in "Managing Public Money" of "regularity, propriety, value for money and feasibility".

475. On 14 October 2020 similar briefing was provided to the MinDP to ask for his approval to set up the SPV. On 22 October 2020 the MinDP approved the proposal. But he asked whether it would be appropriate for MoD to hand back properties to APL under existing arrangements for no value (and with associated costs) if enfranchisement would represent VFM for the MoD. In a response the following day officials advised the MinDP that if the MoD were to suspend the handback programme it would be giving up an estimated £25m of relief against the cost of dilapidations and then:

> "Given the nascent stage of the enfranchisement process, there is insufficient information to enable a recommendation in this regard. The test case, as designed, is intended to flush out any impediments to enfranchisement and demonstrate VFM. Until we have the results of the test case, VFM cannot be conclusively demonstrated."

(see also Ms. Harrison's first witness statement at paras. 13.6 to 13.9).

476. On 16 October 2020 Mr. Razzell sent an internal email to colleagues in which he proposed 1 and 3 Sycamore Drive, Cranwell for enfranchisement because in its fourth award the arbitral tribunal had determined new rents for those properties. He added that the subject was obviously sensitive and should not be communicated to APL in advance of the SoS serving notices to enfranchise.

477. On 18 December 2020 the MinDP asked the Chief Secretary to the Treasury to approve the setting up of the SPV and to proceed with a test case. That approval was given on 1 February 2021.

> "I reserve judgment on the overall Value for Money of any potential of the entire …. APL estate. This will be judged based on legal risks, your plans for the estate and impact on Public Sector Net Debt (PSND). Therefore, this SPV must be used as a 'proof of concept' only. If you seek to enfranchise further properties, you will need to seek approval from HM Treasury."

478. An internal email of 28 January 2021 noted that the MinDP was "keen to minimise handbacks to only those that are absolutely necessary in the light of the potential to enfranchise at scale". He did not wish APL to benefit from sales that MoD might be able to carry out itself.

479. On 24 March 2021 officials provided a briefing note to the MinDP in which they explained that the VFM of enfranchisement claims would be improved if the D&H Agreement were to be modified before any claims were made by halving the rate at which dwellings would be handed back from 500 to 250 a year. Officials advised that the enfranchisement test cases should be paused until the conclusion of commercial discussions with APL on the D&H Agreement. That advice was accepted and on 30 March 2021 the application to HM Land Registry to register the transfer of the freehold of 1 and 3 Sycamore Drive was withdrawn.

480. In his first witness statement, Mr. David Thomas describes the strain under which the parties had been working on the rent review process. It had become "a source of considerable friction" and hugely expensive. By March 2021 the rents on only 12 out of 27 representative sites had been determined and the remaining process was expected to take until 2023 to complete. In April 2021 Mr. Hands wrote to Mr. Razzell to propose that the parties agree a much simpler solution for the site rent reviews and address other points of contention, with a view to starting "a fresh relationship which works better for both sides."

481. On 11 May 2021 officials briefed the MinDP on this development. Although they considered that the likelihood of reaching an agreement with APL was "slim", there was an opportunity to agree modifications to the D&H Agreement and to address other issues. The time pressures on the enfranchisement test cases were not acute and it was sensible to defer that action whilst negotiations proceeded. The delay would enable the MoD to have a fully thought through strategy for deploying enfranchisement and to achieve greater clarity on long-term strategic aims for the provision of SFA under the emerging draft Defence Accommodation Strategy.

482. In June 2021, in an internal briefing note to Mr. Charlie Pate (the MoD's Director General of Finance), Mr. Razzell recorded that the parties had agreed to take part in discussions 2 weeks after the publication of the fifth arbitral award (which was published on 5 July 2021). He advised that if the negotiations were unsuccessful there would be no reason not to proceed with the test cases. But if successful those cases should still proceed "based on duty to deliver value for money." The test cases would inform a technical decision on how to finance the SFA estate, whether through the existing lease structure with APL or outright ownership, having regard to the impact on the PSND. Mr. Razzell described the existing relationships as "highly transactional." APL did not provide any kind of service to the MoD, and there were almost no areas where the MoD relied upon APL's goodwill. Mr. Razzell described APL and Terra Firma as "exceptionally difficult to do business with."

483. On 4 June 2021 Mr. Dalton (the CEO of the DIO) informed Ms. Harrison about the meeting he had had the previous day with Mr. Ian Rylatt, the CEO of Annington Limited. Mr. Rylatt had said that Annington was "in a fund to 2022, at which point Terra Firma will sell, or will transfer to a new vehicle."

484. Between June and July 2021 Terra Firma and UKGI exchanged emails on their respective positions, seeking to establish a framework for a negotiated settlement (Mr. Thomas's first witness statement paras. 5.3 to 5.6).

485. On 19 July 2021 officials provided further briefing to the MinDP. Under the heading "Timing Imperative" they advised:

> "Annington is held by Terra Firma in a closed fund. The fund's end date is understood to be in the second half of 2022, the tenth anniversary of the acquisition of Annington by Terra Firma from Nomura. Therefore Terra Firma will either need to sell its interest in Annington, or place Annington in a new or continuity fund, before this point in time.
>
> Triggering Sycamore after any sale of Annington by Terra Firma would be undesirable:
>
> - A scenario in which MoD waited for Guy Hands to crystallise a very significant profit, walk away, and then MoD decided to exercise its rights against the new owner, (which may well be a socially responsible investor such as a pension fund, or indeed shares might be publicly traded further to an IPO exit) would be reputationally very damaging for MoD; and
>
> - There is a likelihood that purchasers will borrow to finance the purchase and that this debt load will be borne by Annington, thus reducing room for manoeuvre in any eventual settlement or negotiation.
>
> Similarly, even if Annington was not sold, given the relatively conservative financing structure in place (gearing <50%), the

> transfer of Annington into a new fund would represent an opportunity to increase debt to fund a dividend recapitalisation and enhance distributions to investors, which have been relatively modest since 2012.
>
> On the assumption that Sycamore is legally viable, any enfranchisement claim by MoD should immediately sterilise any potential sale or refinancing by Terra Firma.
>
> Therefore our advice is that MoD should ensure that it triggers Project Sycamore no later than the end of Q2 2022."

As for APL's possible reaction to enfranchisement, the Minister was advised that both parties "simply administer the lease," there were no concessions or goodwill from APL in the operation of the estate and there was very little downside risk as regards the relationship. Once again this relationship was described as "highly transactional" and "often confrontational". In a similar vein, an internal note for a discussion with the MinDP on 29 July 2021 said there was very little hope of an improved relationship with APL and, thus, nothing to be lost by launching the enfranchisement test cases.

486. That note also suggested that if the test cases produced successful results, MoD would consider enfranchising sites which it wishes to retain or must retain because of their condition or location (e.g. housing located within secure perimeters). In relation to other sites, it would continue to handback properties in the short term, but it would then begin to consider the implications of enfranchising and selling properties as opposed to handing them back, so that APL could sell at a profit. Such profits could be reinvested in the upgrading of retained SFA (see also Ms. Harrison's first witness statement at paras. 13.2 to 13.5). The Permanent Secretary's statement that enfranchisement of the *whole* of MQE appeared to be "a marginal call in value for money terms" (quoted by Mr. Thomas in his first witness statement at para. 6.30) is consistent with the MoD's preference for selective enfranchisement.

487. On 18 August 2021 Mr. Hands set out a proposed framework for a settlement and suggested that the parties agree to a structured mediation. On 6 September 2021 the MoD responded that it did not think that mediation would be appropriate given the low prospects of success and the costs involved (Mr. Thomas's first witness statement paras. 5.8 to 5.10).

488. On 27 September 2021 Annington Funding plc issued an Offering Circular for a future issue of bonds under its 2017 programme for £4bn of unsecured notes (of which £3bn had already been issued in 2017). Annington considered it appropriate to identify enfranchisement as a potential risk to the payment of sums due under the Notes:

> "***The group's business, results of operations and financial conditions could be adversely affected if some or all of the Group's properties are compulsorily purchased by the Government***

> Any property located in the United Kingdom may at any time be compulsorily acquired by certain public authorities possessing compulsory purchase powers if it can demonstrate that the acquisition is required. Alternatively, the Government may seek to expropriate the MQE or it may seek to restructure its interest in the leases in order to facilitate an attempt to enfranchise any or all of the Units which comprise the MQE, although there are certain obstacles to such an approach which would make it difficult. As a general rule, in the event of a compulsory purchase order being made in respect of all or any part of any property, the enfranchisement of units being effected, or expropriation of an asset in part or in whole, compensation would normally be payable on the basis that it be broadly equivalent to the open market value of all owners' and tenants' proprietary interests in the property subject to the order, enfranchisement or expropriation. However, any compulsory purchase, enfranchisement, or expropriation of all or any significant portion of the Group's properties, or the payment of compensation that does not reflect the value to the Group of affected land, could have an adverse effect on the Group's business, results of operations and financial condition." (original emphasis)

Briefing to the MinDP on 28 September 2021 shows that officials were already looking at the implications of this circular.

489. Mr. Thomas says that APL did not consider at the time that the MoD realistically could or would enfranchise (paras. 4.38 to 4.39 of first witness statement). This needs to be read in the context of paras. 47 to 55 of the ASF. The residence requirement in the 1967 Act had been abolished for most purposes by s.138 of the 2002 Act. In February 2005 the claimants received legal advice on the risk of the SoS pursuing an enfranchisement claim. In 2012, 2017 to 2019 and 2021 the claimants received legal advice on the possibility of the SoS seeking to enfranchise in the context of the site rent review (ASF para. 48). The claimants have relied upon their privilege in relation to that advice. In June and July 2018 the claimants liaised with their valuers (Allsops) and property advisers (Savills) on the impact of the SoS enfranchising all of the MQE (assuming he was able to do so) on the book value of the estate. At that stage their estimate of the cost of enfranchisement exceeded the valuation of the whole MQE. However, on 29 October 2020, following the arbitral tribunal's fourth award dated 6 October 2020 (which determined the site rent for batch 1 of the representative sites), APL was advised by its valuer that in view of the rent levels being indicated through the arbitration process, enfranchisement would be more attractive to the SoS, if that option were to be available "in the real world". He added that enfranchisement looked "like a potentially compelling route for the MoD".

490. In 8 October 2021 officials provided further briefing for MinDP seeking his approval to proceed with the test cases and to note a "Commercial Strategy" which was appended. In relation to the new accounting standard IFRS 16, which was to come into effect on 1 April 2022, officials advised that a capital credit

against expenditure limits would arise upon termination of APL's lease if the SoS's liability under the lease exceeded the cost of enfranchisement. The credit could be used in the purchase of APL's interest, public sector debt would be reduced and VFM would be improved.

491. The Commercial Strategy described the "overall picture" as follows:

> "The 1996 sale and leaseback deal is openly acknowledged to be a bad deal for the taxpayer. The NAO's 2018 report estimates that it represents a transfer of value from the public sector to the private sector of over £4bn. Furthermore, the nature of the private sector counterparty gives rise to additional presentational difficulties for MoD. APL is owned by Terra Firma. Terra Firma has restructured Annington's holding company as a 'Collective Investment Vehicle', an aggressive form of restructuring which has avoided nearly £800m of capital gains tax liability which would otherwise would be payable by APL to HMRC as and when it disposes of properties. This is a source of ongoing embarrassment for MoD."

The document described APL's confrontational stance (as seen by MoD officials) in relation to the site rent reviews and various aspects of handback. APL was said to have been inflexible on handbacks as regards liability for dilapidations (seen as a tortuous process resulting in MoD having to engage experts), unwillingness to accept certain houses with sitting tenants and strict adherence to contractual requirements for handbacks to be in contiguous plots. The Strategy described how attempts to gain leverage or to improve the relationship had failed and the issues which "ideally" an improved relationship with Annington would address.

492. The MoD's future Strategy was set out as follows:

> "Having due regard to:
>
> - The increasingly poor value for money of the sale and leaseback arrangements for MoD;
>
> - The aggressive tax avoidance employed by Terra Firma;
>
> - The lack of commercial levers MoD has to improve VFM;
>
> - The lack of latitude shown by APL in administering the arrangements, and
>
> - The ongoing inability of MoD to remedy or re-set the relationship, despite its best efforts,
>
> the overriding commercial strategy remains unchanged: to exit the arrangements with Annington as far as is possible. The chart below shows the methodology we are using to determine which

> properties currently owned by Annington we would like to retain."
>
> "Ideally a constructive, affordable and strategic relationship would support us in retaining [certain] properties … but as set out above we must consider the possibility that this will not be achievable and therefore consider options for exit. On the assumption that there persists an ongoing policy objective to provide homes for service families, there are two methods for exit:
>
> 1. Terminating the leases over a period of time, accompanied by re-provision. This was the strategic ambition which underpinned the 2019 Handback Agreement and the commitment to hand back no fewer than 500 units a year.
>
> 2. Buy back the units, either at open market rates (which is the only basis on which APL would sell them), or via enfranchisement. This latter option would be subject to successful execution of the Sycamore test case."

493. Similar briefing was provided to the SoS on 12 October 2021. The MinDP and SoS approved the pursuit of the test cases.

494. On 20 October 2021 Terra Firma sent a settlement offer to the MoD. It was important to the company to achieve greater certainty in relation to the rent reviews given the upcoming sale of APL (Mr. Thomas's first witness statement paras. 5.11 to 5.12). The offer proposed to agree an "adjustment factor" from market value for the remaining sites based upon the arbitrators' awards to date, the postponement of the next rent review from 15 years' time to 30 years' time, and a reduction in the annual rate at which units would have to be handed back.

495. On 17 November 2021 the MinDP held a meeting to discuss the settlement offer. Officials advised that they had been monitoring the City and there were no signs at that stage of any on-sale by APL. They also confirmed that any bidder in such a sale would be expected to carry out due diligence with the sole tenant, the SoS. The risk of an on-sale without a bidder doing due diligence with the MoD was said to be low. There followed some negotiations with Annington on the terms of the settlement and the MinDP approved the settlement on 24 November 2021.

496. On 2 December 2021 officials briefed the MinDP on the relationship between the timing of the settlement agreement and the service of the enfranchisement notices in the first test cases:

> "5. The Minister is aware that Terra Firma has been anxious to secure a rapid settlement of the arbitration. It might be assumed that this anxiety is driven by some form of pending sale or change in ownership structure, UKGI colleagues have had discreet conversations with a number of City contacts and there is no word of a transaction. However it is quite possible that

> some form of deal has been lined up which is contingent on settlement of the arbitration.
>
> 6. Ideally, MoD will not wish to be in a position whereby it settles with Annington, Terra Firma then sells its interest in Annington, and then MoD launches Sycamore. Any purchaser is likely to be more highly leveraged than Terra Firma thus reducing room for manoeuvre; Annington as currently structured has gearing of c50%, furthermore, it exposes MoD to questions as to why Terra Firma was able to crystallise such significant profits.
>
> 7. Subsequent to settlement, any sale process by Terra Firma could move rapidly.
>
> It is therefore recommended that MoD serves notices of its enfranchisement claim **immediately after** the legal advisers have confirmed that the settlement agreement has been satisfactorily executed, either the same day or no later than the next working day." (original emphasis)

497. The briefing suggested how the MinDP should deal with various questions in relation to the service of the enfranchisement notices. For example, APL had not previously been made aware of the SoS's intention to enfranchise "for commercial reasons." If the test case were to be successful a decision on whether to enfranchise any further properties would be made on a site by site basis taking into account the MoD's ongoing requirements for SFA and the economic case for enfranchisement which would differ as between sites. It was not possible to say at that stage how many sites would be enfranchised.

498. In an email on 4 January 2022 (following the settlement agreement on 15 December 2021 and the service of the first enfranchisement notice the following day) the MinDP referred to media coverage stating that APL was planning a sale and said that he was relieved to have notified them of the enfranchisement test cases because he did not see "how they could fail to release that information to any buyer."

499. In a review note for the DIO dated 13 January 2022 Ms. Harrison stated:

> "1. In December 2021, the arbitration with Annington Homes Limited (AHL) was brought to a conclusion following the agreement of a revised global discount rate to open market rents and other favourable terms to MoD. With a risk that this would be followed by a sale of AHL by Terra Firma, its parent company, notice was immediately served on AHL of MoD's intention to enfranchise a property rented from AHL in a test case to establish the ability of the Department to enfranchise a large number of the houses leased from AHL."

Paragraphs 5 and 6 of the note stated:

> "5. Following the agreement reached with AHL as set out in the Review Note at Reference D, [redacted] it was decided that the proposed test case to enfranchise two properties should be accelerated in case Terra Firma had put in place plans to sell AHL on the strength of the Settlement Agreement. AHL is held by Terra Firma in a closed fund. The fund's end date is understood to be the second half of 2022, the tenth anniversary of the acquisition of AHL by Terra Firma from Nomura. Terra Firma will either need to sell its interest in AHL, or place AHL in a new or continuity fund, before this point in time.
>
> 6. If MoD decided to exercise its rights against a new owner this could have been potentially reputationally damaging for the Department. A buyer (which could be a socially responsible investor such as a pension fund) acting in good faith could subsequently find that the value of AHL was impacted by potential enfranchisement."

500. The MinDP made a written ministerial statement on 27 January which said:

> "Given our obligations to secure value for money, we have reviewed MoD's current arrangements with Annington and now set out the steps that MoD is taking to deliver greater value for money for the taxpayer in relation to Service Family Accommodation.
>
> First, MoD engaged highly experienced advisers and counsel to deliver a settlement with Annington in the site rent review process. This settlement achieves value for money, and removes ongoing uncertainty for the Department; we believe it to be a good outcome and a fair settlement. The settlement resulted in a change in the overall adjustment to open market rents from 58% to 49.6%.
>
> Secondly, MoD continues to reduce the number of untenanted properties which it holds since these otherwise represent a liability for the taxpayer, by returning these to Annington under the terms of the lease.
>
> Thirdly, MoD can confirm that the Department will explore the exercise of its statutory leasehold enfranchisement rights to buy out Annington's interest in the homes and gain full ownership rights. Initially, the MoD has made a single claim for one house, with the intention to submit a further claim in respect of another house in the near future. It is hoped that this test case will establish certain key principles. The cost of enfranchising these houses will be in accordance with the statutory enfranchisement formula, fixed at the date of the notice of claim, and the price will be agreed between the parties or determined by an independent Tribunal. If the cost of recovering full ownership of the units from Annington is less than the present value of MoD's

> ongoing liabilities, such a transaction is likely to represent good value for money. The MoD would then benefit from any future appreciation in value of the units. Accordingly, the MoD has served notice on Annington under Section 5 of the Leasehold Reform Act 1967 of its desire to enfranchise a house currently leased from Annington. Annington, through its lawyers, has notified the MoD that it is considering the impact of the claim and has put the MoD on notice of a potential dispute.
>
> A successful enfranchisement programme would also provide the MoD with more flexibility in the management of its estate to the benefit of Defence, tenants, and potentially wider Government objectives."

*Analysis of the Secretary of State's purposes*

501. Paragraph 13 of the Agreed List of Issues identified a number of purposes which the claimants say motivated the defendant's decision to proceed with the test cases and, subject to the legal and economic outcome of those cases, potentially to pursue enfranchisement on a wider scale. The claimants say that those purposes can be identified from the internal documents disclosed by the defendant. Ms. Carss-Frisk points out that the claimants pleaded their case on this ground of challenge in some detail (see the Amended Statement of Facts and Grounds) and that the SoS has not filed any evidence in reply dealing with those matters. However, it is common ground that it is for the court to assess what inferences can properly be drawn from the documents before the court.

502. Ms. Carss-Frisk emphasised certain paragraphs or sentences in particular documents but it is, of course, essential to read all the relevant material as a whole and to identify the context in which particular passages appear.

503. In some instances Ministers and officials have made criticisms of the way in which APL and Terra Firma have conducted themselves. The claimants dispute those criticisms. It is unnecessary in this claim for judicial review for the court to decide the rights and wrongs of those issues. The claimants have clearly stated that they do not allege bad faith on the part of the defendant, the MinDP or their officials. I therefore proceed on the basis that the views expressed by Ministers and officials were ones which they genuinely and honestly held.

504. By 2019 the SoS had formed the view that the agreements with APL in 1996 were a bad deal, poor VFM and against the public interest. Plainly the criticisms of the deal made by the NAO and the Public Accounts Committee had influenced that thinking. The MoD had expected APL to achieve a nominal rate of return of about 9.7%, whereas the actual rate of return achieved had been 13.4%, which was judged to be significantly out of line with the distribution of risk between the parties. The SoS is responsible for maintenance and the cost of void properties. APL provides no services to the SoS. APL's role is essentially to collect rent from the SoS. Both parties had participated in the risk of changes in market value. But the SoS is liable for increases in rental values and has not shared in capital appreciation beyond the initial 15 year profit-sharing

agreement. The underleases would continue for a further 175 years. The MoD has already lost between £2.2 billion and £4.2 billion through the 1996 agreements compared to the position it would have been in if it had not sold off the MQE to APL.

505. The 1996 agreements have not led to a reduction in the proportion of the MQE which is vacant. The MoD receives only a nominal sum for handing back property to APL but is liable for dilapidations. Given budgetary constraints, that has operated as a disincentive to hand back empty properties, albeit that the SoS continues to be liable for the rent.

506. The 1996 agreements have represented increasingly poor VFM. That expression does not refer solely to the impact on taxpayers. Public funding is a finite resource which is subject to competing needs, within and without the MoD. Excessive SFA costs may result in less funding being available either for the MoD or for other Government functions.

507. Ministers and officials considered that they have no real leverage under the agreements to negotiate changes to their terms or waivers in particular cases. The commercial relationship was regarded as unsatisfactory.

508. In such circumstances, it is unsurprising that the SoS should wish to extricate his Ministry from the agreements with APL. If he could do so by lawful means, I do not see how the court could possibly say that that motive was improper. We are here dealing with a commercial relationship where the SoS is entitled to make legitimate use of such bargaining power as he has. If the SoS sought to terminate or modify the 1996 agreement through purely commercial negotiations, the principles in *The State of Mauritius* at [63] would be applicable. As a matter of principle, the position is no different in so far as the SoS is entitled to exercise a property right, namely a right to enfranchise under the 1967 Act. That is one legitimate tool that he is entitled to use in order to buy out APL's interest in SFA.

509. In this case enfranchisement is only one of the options that the SoS has been thinking of using. On several occasions officials have advised that it might be more economical in some cases for the SoS to carry on paying rent under the 1996 underlease than to enfranchise. Alternatively, in some instances the SoS might consider it preferable to hand back particular properties and/or to build new housing on MoD land. Decisions need to be taken on a site-by-site basis. In this context the SoS sees his ability to enfranchise as helping to create leverage in any negotiations with APL. I see no legal basis upon which the court could say that that was a legally improper purpose.

510. The considerations I have described above in [504] to [509] were all legitimate matters to which the SoS was entitled to have regard in the public interest. They are compatible with the principles laid down by the Privy Council in *The State of Mauritius* case (particularly at [63] to [66]) and in the *Dudley* case. In my judgment, these matters were the main drivers of his decision to serve the enfranchisement notices and, subject to the legal and economic results of that process, to contemplate the merits of enfranchising SFA properties more widely.

511. This is the context in which the specific criticisms now made by the claimants fall to be considered.

512. Firstly, I have previously rejected the claimants' complaint that it was improper for the SoS, as a public authority who already owned the freehold of the SFA units, to seek to "circumvent" the decision in *Gratton-Storey* by transferring the freehold to a SPV (see [446] to [447] above; see also [612] below in the discussion under ground 6 of "legitimate aim" for the purposes of A1P1). The claimants have failed to justify their assertion that the SoS's status as a public authority made it improper for him to act in that way, in contrast to the position of a private individual or company. In my judgment the SPV arrangements he made fell well within the parameters set out in *The State of Mauritius* case.

513. Secondly, the claimants submit that it was improper to serve enfranchisement notices in order to override the settlement agreement made on 15 December 2021 and prior agreements.

514. In my judgment there is no merit in this complaint for a number of reasons. Plainly, it is not improper to use a right to enfranchise to acquire APL's interest in the 999 year headlease as such. That is simply the consequence of the right being exercised. The headleases were subject to any such right on the part of the underlessee as might exist from time to time. The subsequent agreements also have to be seen in that context.

515. The claimants complain that while the parties were seeking to agree the terms of the settlement agreement so as to strengthen their relationship for the future, the SoS was planning to serve the first enfranchisement claim and to pursue other such claims. But the settlement agreement had to be subject to any right to enfranchise. Clause 6.3 declared that the terms of the headleases and underleases "and all rights existing out of the same" remained in full force and effect, except in so far as expressly varied by the agreement. Those rights included any statutory right to enfranchise. The settlement agreement did not contain any provision purporting to exclude enfranchisement. In any event, any such provision would have been void by virtue of s.23 of the 1967 Act. It is clear from the contemporaneous material that, irrespective of whether the settlement agreement was entered into, the SoS considered that enfranchisement would improve VFM in appropriate cases, as compared with the agreements with APL. The claimants were aware of the risk of enfranchisement being pursued. They obtained advice on the subject in 2005, 2012, between 2017 and 2019 and in 2021.

516. How far the SoS may pursue enfranchisement was and remains uncertain. He and his officials have identified a number of alternative options which would require a site-by-site assessment. For example, in some cases it might be preferable for the SoS to continue to rent SFA pursuant to an existing underlease from APL. In any event both parties were obliged to conclude the rent review process and they both recognised the advantages of resolving that issue more efficiently through the settlement agreement. The decisions taken by the SoS do not override that agreement, which will continue to be in force unless and until, and save to the extent that, rights to enfranchise are exercised.

517. Then the claimants say that the defendant acted improperly in relation to the settlement agreement by not disclosing his intention to enfranchise in the first test case until the day after the agreement was concluded. The claimants also criticise the MoD for making considerable efforts to maintain secrecy on the subject (para. 81N of the Amended Statement of Facts and Grounds). The implication is that the defendant did not reveal his hand earlier in case APL should refuse to enter into the settlement agreement on the terms which were being discussed, or at all.

518. This issue is dealt with in para. 5.26 of Mr. Thomas's first witness statement. He asserts that if APL had known about the intended enfranchisement it would not have entered into the agreement on its terms *or at all*. But the proof of the pudding is in the eating. Mr. Thomas says that "the hearings under the arbitration agreement would have continued and we would have fought hard to make it clear that the rental result produced by the panel needed to protect APL from an enfranchisement risk." The claimants have not sought to explain this statement any further, but it simply does not make sense. The settlement agreement was reached because both parties were under a mutual obligation to comply with the site rent review process, yet neither wished to continue with the hugely expensive arbitration. In addition, Terra Firma wanted to avoid the delay that that would involve. The conclusion of the rent review process was a pre-requisite for the sale of the Annington Group which Terra Firma had intended to complete before the end of 2022. Furthermore, the arbitrators were only concerned to assess rental value under a series of hypothetical lettings. It has not been suggested that they had any power under the terms of the arbitration to "protect" that assessment from a risk of enfranchisement. Not surprisingly, the defendant criticised this evidence. Mr. Thomas returned to the subject in his third witness statement, but did not make any material improvement in the claimants' case.

519. Accordingly, in so far as the decision to enfranchise has the effect of overriding or undermining any of the agreements referred to, I conclude that that was not a legally improper purpose.

520. Thirdly, the claimants say that it was an improper purpose for the SoS to seek to undercompensate the claimants for their property by pursuing enfranchisement, thereby causing them significant economic harm. There is no merit in this complaint. The defendant's consideration of the enfranchisement option proceeded on the basis that it would improve VFM for the MoD and the public purse if the compensation paid to APL should be less than the market value of its interest in the SFA sites. If that is the effect of enfranchisement, that will simply be because of the statutory code which Parliament has chosen to enact for assessing the price a tenant has to pay. Where a public authority seeks to enforce its right to enfranchise, it cannot be said to be improper for that body to rely upon an advantage conferred by that code.

521. I reject the claimants' fourth complaint that it was improper for the SoS to treat enfranchisement as a means of putting commercial pressure on APL. His judgment was that the MoD had no leverage in any negotiations with APL. It was not improper for him to see the risk for APL of enfranchisement through

the proper operation of the 1967 Act as a negotiating tool creating leverage for the MoD in its relationship with APL.

522. The fifth improper purpose alleged by the claimants is that the SoS sought to prevent the claimants from proceeding with the sale of APL or from realising profits from that sale. This is related to the timing of any service of a notice to enfranchise. The SoS and his officials were concerned about the possibility that that notice might be served after Annington's interest had been sold in the market. There were three aspects to this:

(i) That timing would allow Terra Firma to crystallise a very significant profit and walk away leaving the purchaser to face a significant loss in value from the price they would have paid. The MoD's reputation might be damaged for failing to let it be known in the market before the sale that it had plans to enfranchise SFA subject to "proof of concept";

(ii) It was considered likely that borrowing used to finance the purchase of APL would increase the company's debt level and so reduce its financial room to manoeuvre or be flexible in any negotiation and further agreement with the MoD;

(iii) The SoS was concerned that with the expiry of the profit-sharing agreement in 2011, the MoD had subsequently been unable to obtain any of the increase in capital value upon the disposal of SFA units.

523. On the first aspect, the service of enfranchisement notices was inevitably going to reduce the value of APL's interests in the MQE whenever they were served. Ms. Carss-Frisk went so far as to suggest that the effects of the timing of the notices on other parties was irrelevant. She submitted that it was not the business of the MoD to choose the timing of the notices so as to inform or warn the market. The market should have been left to assess the risk of enfranchisement for itself (Transcript Day 2 pp.125-126). Of course, if the notices were served before the sale, the market would have become informed, not least because of the requirements for due diligence. So the implication of the claimants' argument is that either the SoS should have delayed serving notices until after the sale had taken place, so that Annington could maximise and lock in its profits without loss, or the SoS should have in effect tossed a coin. The claimants have not put forward any legal principle which would have justified or required the SoS to take the former course. If the claimants are correct in saying that it was irrelevant for the SoS to take into account the effect on a purchaser of the notices being served after a sale, then it would have been no more relevant to delay serving the notices in order to protect the financial interests of the Annington group. But in my judgment, the SoS was not obliged to disregard market effects and, in effect, to toss a coin.

524. The context in which the SoS was making his decision to serve enfranchisement notices in the test cases was a view shared with the Public Accounts Committee that APL was making excessive returns which involved an unreasonable transfer of value from the public purse to APL. The returns were much greater than had been assumed in 1996 by the MoD and significantly out of line with the relatively limited risks taken on by APL. To delay the notices until after the

sale had taken place would have been inconsistent with that assessment, which was one of the reasons why enfranchisement was being considered. Whereas APL has had the benefit of the 1996 agreements for 26 years, the purchaser would sustain reductions in the value paid for APL almost immediately. The SoS's approach accorded with propriety and did not involve an improper purpose. Indeed, had he acted as the claimants' argument suggests, he would have been open to legitimate criticism.

525. I see no basis for criticising the SoS's approach on the second aspect (see [522] above). He was entitled to have regard to the risk that a purchaser would take on more debt with the consequence that there would be less scope for the SoS to achieve a successful re-negotiation. Reading the contemporaneous material fairly and as a whole, I consider that officials referred to effects on book value and on the IPO process in the context of seeking to create bargaining power for the SoS and remedying the longstanding problems resulting from the 1996 agreements. Those references are not to be treated as seeking to punish or sanction APL for acting lawfully in accordance with those agreements or for doing so successfully. The SoS's purpose was not improper.

526. I also see no basis for criticising the SoS's approach on the third aspect (see [522] above). The Public Accounts Committee criticised the agreements with APL. By 2018 the MoD was between £2.2 billion and £4.2 billion worse off than if it had retained the MQE. The MoD had failed to protect long-term VFM, and profit-sharing or clawbacks from increases in the value of the housing had ceased after 15 years. Those were some of the reasons why the agreements with APL were widely recognised as being a bad deal for the public purse. It was in that context that the SoS considered that the MoD ought to be able to dispose of SFA units itself so as to benefit from any capital gains. In the light of the case law to which I have referred, I do not see why it was legally improper for the defendant to have been motivated by these economic concerns which plainly are of national importance.

527. The sixth improper purpose alleged by the claimants was to escape from a commercial agreement which had long been, and still was, considered to be a source of political embarrassment and reputational damage. In my judgment, in the context of the present case, this aspect cannot be described as extraneous or improper. The embarrassment and reputational damage simply related to the reasons why the 1996 agreements were considered to represent a bad deal for the MoD and taxpayers. The NAO and the Public Accounts Committee had expected the SoS to take whatever action was possible and appropriate. As the SoS put it crisply "as Ministers we have a duty to fix historical messes" (email dated 27 December 2021). There is no parallel between the circumstances of this case and those in *Padfield*. In *Padfield* concern about political reputation was irrelevant because it was relied upon by the Minister to prevent the investigation of a complaint, which was incompatible with one of the central purposes of the legislation.

528. The seventh improper purpose alleged by the claimants is animosity towards Annington and/or a desire to punish them for their economic and business success. I have already identified the main passages upon which the claimants rely. In my judgment, read fairly and as a whole, they do not reveal animosity

or malice against the claimants or a desire to punish them in relation to lawful conduct.

529. I appreciate that the Commercial Strategy prepared by officials for briefing on 8 October 2021 refers to the capital gains tax that Annington would save (estimated at £800m) through an "aggressive form of restructuring" as a source of embarrassment for the MoD. There is no suggestion that Annington's arrangements were anything other than legitimate.

530. But the comments made on 8 October 2021 need to be seen in context. The SoS was considering enfranchisement as an option from 2019. The MinDP approved the setting up of the SPV in October 2020 and the Cranwell properties had been identified as initial test cases. The freehold of those properties was transferred to DIHL on 12 February 2021. The registration of that transfer and the service of s.5 notices was paused while the MoD sought to renegotiate the rate of handback under the D&H Agreement. In July 2021 officials advised Ministers that the MoD should seek to exit the relationship with APL because it was transactional, without services, and often confrontational. They also advised that test cases be pursued before Q2 2022. Ministers approved the enfranchisement of the Cranwell properties in October 2021. There is no indication that the tax issue played any part in the development of the SoS's policy to pursue enfranchisement as a possible option. There are simply two brief references in one document relatively late in the process and thereafter no further references to the subject. The tax saving mentioned was considerably less than the loss which the MoD had already sustained and could continue to sustain. The bad nature of the deal for the public purse was the key driver and the comment on tax should be seen in that context. Even if it be assumed that the tax treatment was irrelevant, it is impossible to say that it had a substantial or material effect on the decision to pursue enfranchisement as an option (see eg. *R v Broadcasting Complaints Commission ex parte Owen* [1985] QB 1153).

531. Ms. Carss-Frisk also relied upon the fact that the MoD made some brief submissions to the MHCLG on possible legislative reform of the 1967 Act following publication of a report by the Law Commission. There was nothing improper about the representations that were made. In any event, this complaint leads nowhere. The MHCLG decided not to take the matter any further. Even if the MHCLG had done so, the decision on whether to amend the 1967 Act and, if so, how, would ultimately have been for Parliament.

532. For these reasons ground 4 must be rejected.

## Issues 15 to 18 (Ground 5) – Breach of legitimate expectations

*Submissions*

533. The claimants seek to rely upon two legitimate expectations which, they say, have been breached by the service of the enfranchisement notices. First, the claimants rely upon the contractual framework created by the sale agreement in 1996, including the terms of the headleases and underleases, the arbitration agreement dated 7 March 2019, the D&H Agreement dated 7 March 2019, which set an agreed annual rate for the release of SFA units, and the settlement

agreement dated 15 December 2021, which determined the basis for calculating rent payable by the SoS to APL for the SFA units remaining in the MQE over the next 30 years. The claimants say that they had a legitimate expectation that the legal relationship between the parties established by those agreements would endure. Clause 2 of each of the headleases granted by the SoS in 1996 had stated that APL would hold the demised properties for a term of 999 years.

534. Second, the claimants rely upon the Guidance issued in January 2016 by the Crown Estates Commissioners on the operation of the undertaking they had given to Parliament to provide "similar benefits to", or to act "by analogy with" the 1967 Act, other than in certain "excepted areas". The Guidance states that it cannot oblige third parties to abide by its policy. So, for example, if the Crown Estate is not the immediate landlord of a tenant, that tenant may not be able to enfranchise. The claimants say that this guidance reflects their interpretation of s.88(2)(c) of the 1993 Act. But even if they are wrong about that, they say that the 2016 Guidance constitutes a clear, unambiguous and unqualified statement that there can be no enfranchisement in respect of Crown land without the consent of any intermediate landlord.

535. The claimants submit that (a) the decisions to serve the 8 enfranchisement notices and (b) the SoS's scheme to enfranchise a wider range of SFA units, breaches both of the alleged legitimate expectations, first the contractual framework which was expected to endure and second, the effect of the 2016 Guidance that the consent of intermediate landlords (and therefore APL) would be necessary for enfranchisement to take place.

*Discussion*

536. A legitimate expectation can arise from an express promise or representation that is clear, unambiguous and devoid of relevant qualifications or from a past practice which was so unambiguous, so well-established and so well-recognised as to carry within it a commitment that it should continue to apply (see e.g. *Re Finucane's application for judicial review (Northern Ireland)* [2019] 3 All ER 191; *R (Davies) v Revenue and Customs Commissioners* [2011] 1 WLR 2625 at [49]).

537. In this case the claimants are contending for a substantive, and not merely a procedural, legitimate expectation. In *R (Bhatt Murphy (a firm)) v The Independent Assessor* [2008] EWCA Civ 755 Laws LJ warned at [35] that the notion of a promise or practice of present and future substantive policy (or obligation) risks proving too much. The doctrine of substantive legitimate expectation plainly cannot apply to every case where a public authority operates a policy or practice over an appreciable period. Rather, it must constitute a specific undertaking, directed at a particular individual or group, by which the continuance of the policy or practice is assured, or conduct equivalent to a breach of contract or breach of a representation ([43]). Laws LJ also referred to "the pressing and focused nature of assurance required if a substantive legitimate expectation is to be upheld and enforced" ([46]).

538. In the present case there was no promise or representation by the SoS that, for example, the headleases would endure for 999 years or that any right to

enfranchise would not be exercised. Ms. Carss-Frisk also referred to the contemporaneous lease back arrangements by which APL would receive net rent from the SoS for 200 years and the handback provisions. The term of 999 years in the headleases, and other similar provisions, simply formed part of the private law rights defined and granted to APL. Such rights are enforceable in private law by private law remedies. Ms. Carss-Frisk did not cite to the court any authority to show that the grant by a public body of rights of this nature also creates a public law right, a substantive legitimate expectation, although her submission would generally have that consequence. There is a critical difference between a public authority granting a private law right and that authority making a promise to the grantee that it will not rely upon any existing or subsequent private law provision which would entitle it to override, modify, or acquire that right.

539. The grant of a lease is subject to any legislative regime which may be applicable from time to time and which may alter the terms of that lease (e.g. rent controls) or whether the lease continues to subsist or may be bought at a price. In 1996 the SoS did not have a right to enfranchise. When the 2002 Act came into force he did. Thereafter, the parties entered into agreements in 2019 and 2021 which were consistent with the continuation of their existing property law and contractual relationship within its agreed timescale. But that is not materially different from the legal effect of the grant of a term of 999 years in the first place. The creation of such private law rights and obligations did not involve the making of any statement or representation (or involve conduct amounting to a statement) that a right to enfranchise would not be exercised at any time, let alone a clear and unambiguous statement (or conduct) to that effect. The SoS was silent about his intention to test the concept of enfranchisement. APL did not raise the issue, for example, before entering into the settlement agreement, albeit that it had identified and been advised upon the risk of enfranchisement, which included the advice in 2020 that enfranchisement was becoming a more compelling option for the SoS. Instead, APL simply had the benefit of the contractual terms that had been agreed without any assurance that the right to enfranchise would not be exercised.

540. That is sufficient to dispose of the first alleged legitimate expectation. However, even if there had been an assurance or something sufficient to found a substantive expectation that a right to enfranchise would not be exercised, the question would then arise whether any such expectation was legitimate. An agreement to exclude or modify a right to enfranchise would be rendered void by s.23 of the 1967 Act. I find it difficult to see how an expectation to the same effect based, for example, on a representation or assurance, could be regarded as any more legitimate. Although s.23 operates as a matter of private law, it seems to me that there is an analogy to be drawn with the public law principle that an expectation is not legitimate if it would conflict with the relevant statutory scheme or its purposes (see e.g. *R v Secretary of State for Education and Employment ex parte Begbie* [2000] 1 WLR 1115). However, there was not full argument on this point and so I do not base my decision upon it.

541. I also reject the legitimate expectation said to be based upon the 2016 Guidance from the Crown Estate Commissioners. That guidance only purports to apply

where a tenant is relying upon the Commissioners' undertaking to abide by the 1967 Act. In that event s.88 of the 1993 Act is applicable. I have already decided that, whether under the first or third limbs of s.33(1), the SoS was entitled to rely upon a right to enfranchise under the 1967 Act without the consent of any intermediate landlord, just as would be the case where a subtenant does not hold from the Crown. The Guidance does not purport to say that as a matter of policy the consent of an intermediate landlord must be obtained before a subtenant can exercise a right to enfranchise conferred by virtue of s.33(1) of the 1967 Act. The effect of the legislation is plain. No such consent is required.

542. I do not see how a mere policy document intended to operate outside the ambit of the 1967 Act could alter the rights conferred on a sub-tenant by that statute.

543. The claimants' legitimate expectation arguments fail at the first hurdle. I intend no disrespect, but I do not think it necessary or appropriate to address submissions made on other issues. They do not arise.

544. For these reasons, ground 5 must be rejected.

**Issues 19 to 20 (Ground 6) – Whether there has been a breach of Article 1 of the First Protocol to the ECHR.**

545. A1P1 provides:

> "**Protection of property**
>
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

In *Sporrong and Lönnroth v Sweden* (1983) 5 EHRR 35 the ECHR stated that the second sentence of A1P1 ("the second rule") is concerned with whether there has been a taking or expropriation of a "possession" including a *de facto* expropriation, looking at the substance of the matter. The first sentence ("the first rule") is concerned with whether there has been an "interference" with a right to property, something less than a deprivation or expropriation of property. The second rule should be considered before the first ([57] to [63]).

*A summary of the parties' submissions*

546. The claimants submit that the acquisition of APL's interest in the Cranwell and Bristol properties is a deprivation within the scope of the second rule of A1P1. They also submit that the notices and the scheme of which they form a part

interfere with their rights to property in breach of the first rule in a number of respects. If the notices are upheld as valid then, subject to the determination of price under the 1967 Act and the defendant's view of the relative merits of other options and VFM considerations, there is presently a significant risk of a large number of SFA units being enfranchised. This represents an interference with (a) APL's contractual rights under the D&H Agreement in 2019, as amended by the settlement agreement in 2021, to acquire for a nominal sum the SoS's freehold interest in MQE units at a minimum annual rate (until all units are eventually released to APL), (b) APL's marketable goodwill and (c) AHGL's 100% shareholding in APL. It is said that uncertainty about the extent to which the SoS will seek to enfranchise SFA units and the timing of any further enfranchisement in the future has interfered with the ability of AHGL to deal with its shareholding in APL and caused loss. The claimants rely upon *inter alia Breyer Group Plc v Department of Energy and Climate Change* [2015] 1 WLR 4559 and *Solaria Energy UK Limited v Department for Business, Energy and Industrial Strategy* [2021] 1 WLR 2349.

547. In submitting that there has been an "interference" for the purposes of the first rule in A1P1, the claimants rely upon *Sporrong* at [58] to [60]. In that case the applicants complained about the blighting effect upon their ability to deal with their properties caused by expropriation permits and prohibitions on construction which had been in existence for a considerable number of years. The ECtHR decided that although the permits and prohibitions had left intact the applicants' legal right to use and dispose of their properties, in practice they significantly reduced the possibility of their exercise. The expropriation permits "affected the very substance of ownership in that they recognised before the event that any expropriation would be lawful and authorised the [authority] to expropriate whenever it found it expedient to do so."

548. Ms. Carss-Frisk pointed out that in *James* the applicants' complaint arose out of 80 enfranchisement notices served by different individuals. It was not concerned with actions taken by a public authority. Accordingly, the applicants' case had related to the compatibility of the 1967 Act with the ECHR. The claimants clearly stated that they do not contend that the 1967 Act as amended is incompatible with A1P1. But Ms. Carss-Frisk submitted that this did not preclude a challenge to an individual decision under the statute by a public authority, relying on *R (McLellan) v Bracknell Forest Borough Council* [2002] QB 1129 at [44] and *R (Mott) v Environment Agency* [2018] 1 WLR 1022 at [19], [23], [32] to [33] and [36] to [37].

549. Ms. Carss-Frisk submitted that if the claimants were to succeed on all or any of grounds 1 to 5, it would follow that the defendant has acted contrary to law and therefore in breach of A1P1 in relation to the enfranchisement notices affected by that conclusion. In such circumstances it would be unnecessary for the court to go further and consider justification, proportionality and whether a fair balance had been struck (*Iatrides v Greece* (2000) EHRR 97; *R (Infinis plc) v Gas and Electricity Markets Authority* [2013] J.P.L 1037).

550. Ms. Carss-Frisk confirmed two points. First, in relation to A1P1 the claimants do not allege any additional unlawfulness not already advanced under ground 1 to 5. Second, the only practical effect of the claimants succeeding under ground

6 would be the relief to which they may become entitled, namely damages under s.8 of the 1998 Act.

551. The claimants submit that the defendant has not demonstrated that the service of the 8 notices (or the SoS's wider scheme) pursued a sufficient legitimate aim in the public interest. They submitted that the purposes of the enfranchisement do not accord with what they describe as the "social justice" aims of the legislation identified in *James*. It is not legitimate for a public authority to use the 1967 Act to benefit itself for purposes very different from those identified in *James* and to do so, not in order to acquire the freehold but, by using a device, to acquire APL's intermediate leasehold interest. However, I interpose to record that the submissions provided little analysis of the aims identified in *James*, or the aims of subsequent changes to enfranchisement legislation, and how the enfranchisement proposed by the SoS compares to those aims in the context of the legal structure which the parties have created.

552. Ms. Carss-Frisk submitted that in the case of A1P1 proportionality is often expressed as a requirement that there be a "fair balance" between the demands of the general interest of the community and the requirements to protect an individual's fundamental rights. The balance will not be fair if that person has to bear "an individual and excessive burden" (*James* at [50]) and see also Lord Reed JSC in *Bank Mellat v HM Treasury (No.2)* [2014] AC 700 at [70]). In applying this test, it is necessary to consider the reality of the situation, taking into account all relevant circumstances, including the conduct of the parties, the means employed by the state and the implementation of those means (*NKM v Hungary* (2016) EHRR 33 at [62]). In summary, the claimants rely upon the following matters as showing that the balance is unfair in relation to them: no thought was given by the defendant to the balance under A1P1, clear promises were made by the defendant in the original and subsequent agreements, the defendant's aim is not to remedy social injustice or to acquire the freehold, the defendant acted for improper motives and APL's consent ought to have been sought to avoid them being treated differently from tenants on the Crown Estate. In addition, the claimants say that any inability to compensate them under the 1967 Act for being unable to obtain handback of further SFA units, or for loss of value in relation to marketable goodwill and shares in APL held by AHGL, reinforces their case that the balance is unfair.

553. Sir James Eadie emphasised that the claimants do not challenge the compatibility with A1P1 of the statutory scheme conferring rights to enfranchise and setting the basis for the price and compensation to be paid by a tenant. In relation to the 1967 Act Parliament has created a scheme which, it has been decided, satisfies the requirements of A1P1, such that there is no need for the circumstances of individual cases to be evaluated against that provision. So, for example, there is no need for a case-specific proportionality assessment.

554. He submits that where certain conditions are satisfied, the legislation confers rights to enfranchise on private persons, companies and public authorities alike, subject to the tenant's obligation to pay a price for the interests acquired determined in accordance with the scheme. Merely because the right to enfranchise has to be exercised by the tenant does not mean that where that right is exercised by a public authority there must be an assessment of compatibility

with A1P1 in the individual circumstances of each case (see e.g. *Belfast City Council v Miss Behavin' Limited* [2007] 1 WLR 1420 at [84] to [87]). The decision to serve an enfranchisement notice does not engage the exercise of a freestanding discretionary power or function, such as the licensing regime in the *Belfast City Council* case. Instead, the public authority is simply exercising a property law right conferred by statute, analogous to the exercise of a contractual right or the carrying out of contractual negotiations, and therefore subject to judicial review on only limited grounds, whilst having regard to the public interest in public authorities being able to participate in the commercial market in the usual way (*The State of Mauritius* case).

555. Sir James Eadie also submits that APL's assets or interest in a particular site have existed subject to the 1967 Act and the right to enfranchise conferred by that scheme (referring to *Wilson v First County Trust Limited (No. 2)* [2004] 1 AC 816 and *In re T&N Limited* [2006] 1 WLR 1728 at [165] to [169]).

556. However, the defendant also submitted that, even on a case-specific basis, there is no breach of A1P1. The decision to serve the 8 enfranchisement notices was for a legitimate aim in the public interest and accords with the approach in *James* at [46]. It is said that the same applies to any future consideration of enfranchisement on other properties. A wide margin of appreciation should be accorded to the implementation of social and economic policies. The protection of public finances is one such legitimate aim (see Re-Amended Detailed Grounds of Resistance at paras. 154 to 158). The decision to enfranchise has not been taken for improper purposes.

557. In relation to "the fair balance" test, Sir James Eadie submitted that a failure on the part of a decision-maker to assess proportionality in relation to a Convention right, whilst a relevant factor to which the court may have regard, is not a freestanding basis for finding a breach of a right such as A1P1 (see the *Belfast City Council* case at [12] to [13], [37], and [44] to [47]). He went on to submit that in substance the defendant did strike a proportionality balance weighing in favour of serving the enfranchisement notices, which took into account the effect of the notices on the claimants and on the book value of APL's interests, the conditions in the legislation entitling the SoS to enfranchise and the reasons for taking that action.

558. In relation to the factors in the balance referred to by the claimants, Sir James Eadie relied upon submissions made previously on other grounds of challenge. As for the aims of the 1967 Act discussed in *James*, he pointed out that Parliament has since chosen to widen the ambit of the right to enfranchise, for example, by removing in most cases firstly, the requirement that a tenancy be at a low rent and secondly, the residence test.

559. The defendant referred to the need for procedural rigour discussed in *R (Dolan) v Secretary of State for Health* [2021] 1 WLR 2326 at [117] and *R (Nazeem Fayad) v Secretary of State for the Home Department* [2018] EWCA Civ 54 at [54] to [56]. During the hearing the claimants stated that ground 6 adds nothing to the public law grounds 3 to 5, other than to provide a basis for claiming damages under s.8 of the 1998 Act. Although the Amended Statement of Facts and Grounds seeks various items of relief, including "any other such relief that

the Court considers appropriate", it does not include a claim for damages. *Dolan* states that such a claim should be properly pleaded and particularised and should set out, at least in brief, the principles applied by the ECtHR. That has not happened here. In addition, there are likely to be issues on the amount of "compensation" payable for the enfranchisement which will have to be resolved by the First-tier Tribunal and/or the Upper Tribunal. Any differences between compensation which a tribunal may award and a properly pleaded claim for damages in relation to an alleged breach of A1P1 cannot be identified and therefore cannot be weighed in the "fair balance" at this stage.

*Deprivation and interference*

560. I did not understand the defendant to challenge the claimants' case that enfranchisement pursuant to the 8 notices involves a "deprivation" engaging the second rule in A1P1. However, the defendant makes the point that the deprivation stems from the exercise of a statutory right or incident of the defendant's underleases and not the exercise of a statutory power.

561. I turn to the claimants' submissions that the risk of the SoS serving further enfranchisement notices on a wider scale involves an interference under the first rule in A1P1 with the right to peaceful enjoyment of the claimants' possessions as summarised in [546] above.

562. In *Sporrong* the ECtHR accepted that although the expropriation permits and the prohibitions on construction left intact the owners' right to use and dispose of their possessions, in practice they nevertheless significantly reduced the possibility of its exercise and affected the very substance of ownership. The applicants' right of property had become precarious and defeasible ([60]). But there was no formal or *de facto* deprivation of possessions so as to engage the second rule in A1P1. The matter fell to be dealt with under the first rule in A1P1. The rights in question had lost some of their substance but had not disappeared. They were still capable of being sold in the market ([62] to [63]). But, applying the fair balance test, the interference with possessions did violate the first rule because the landowners were not able to seek a reduction in the duration of the permits and prohibitions and they were not entitled to *any* compensation for their loss ([73]).

563. Plainly the present uncertainty as to whether any further enfranchisement notices will be served by the SoS does not involve any interference with possessions of the kind which occurred in *Sporrong.* In that case the permits authorised expropriation at any time of the authority's choosing within a time limit lasting up to 25 years. Here there has been no decision to serve any more notices. Similarly, if the SoS had simply told APL that he *intended to serve* 8 enfranchisement notices and then consider wider enfranchisement at some time in the future, that information would have led to the same kind of uncertainty and loss upon which the claimants now rely.

564. Such effects are similar to those which can occur when a public authority has adopted a policy or makes an announcement that it will, if necessary, seek powers of compulsory purchase to carry out a project at some future time. This may cause blight to many properties and businesses affected by uncertainty.

Where such properties can only be sold at a substantially reduced value, domestic blight legislation (e.g. Chapter II of Part VI of the Town and Country Planning Act 1990) may require the authority to purchase properties and to pay compensation to the owners in advance of any compulsory purchase order procedure. But generally such regimes only apply to less valuable properties defined by reference to a rateable value ceiling. There does not appear to be any case law to the effect that whenever such blight occurs, the effect of A1P1 is that the landowner has a freestanding right to compensation, irrespective of the value of his property. Certainly the claimants did not cite any such authority. The decision in *Sporrong* does not cover that situation.

565. The claimants rely upon *Breyer.* There the Government had published a proposal to bring forward the date when electricity tariffs for small-scale generating systems would be reduced. Subsequently the Court of Appeal decided that the proposal was unlawful and so it was never implemented. But in the meantime the proposal itself had caused many projects to be abandoned. The Court of Appeal held that the proposal had interfered with the A1P1 rights of the claimants in that case, because it had had an immediate and serious adverse impact upon their businesses such that they were no longer viable at all. Lord Dyson MR stated that whether a mere proposal has the effect of interfering with possessions under A1P1 depends upon the nature of that proposal. Many proposals do not because they do not lead to a "concrete decision" having a material effect on property rights. Lord Dyson recognised that from time to time public authorities consult on proposals where the mere fact of consulting can affect the value of individuals' land or businesses. He was prepared to treat that as an interference for the purposes of A1P1, but said that it would almost always be possible for the authority to justify that interference as being in the public interest, bearing in mind the wide margin of discretion allowed for the implementation of social and economic policies ([2015] 1 WLR at [71]-[73]). I note that Lord Dyson's conclusion was not dependent upon the owner of the land or business being entitled to compensation.

566. That last point is important because, as I have said, Ms. Carss-Frisk made it plain that the sole significance of ground 6 is that a breach of A1P1 would give rise to a claim for damages.

567. I am doubtful as to whether the possibility of the SoS making further enfranchisement claims of itself constitutes an interference with the claimants' possessions for the purposes of A1P1. No decision has been made to serve any more s.5 notices. The defendant has simply said that, depending upon the outcome of the present test cases, including the assessment of prices, further enfranchisement will be considered. But that is contingent upon assessing such matters as which sites the defendant wishes to retain, the relative merits of alternative options and VFM considerations. I doubt whether it can be said that the defendant has made a proposal of a kind which *Breyer* would treat as an interference with A1P1 rights. For example, there has not been a "concrete decision" as referred to in that authority. Instead, the claimants have relied upon the uncertainty as to what the defendant may do.

568. However, there has not been full argument on the point, particularly from the defendant. Putting my doubts to one side, in this judgment I will assume,

without deciding, that the risk of further enfranchisement notices being served by the SoS amounts to an interference with the claimants' possessions for the purposes of the first rule in A1P1.

*The decision in James and the purposes of the legislation on enfranchisement*

569. In order to address the claimants' submission that the purposes of the SoS's decisions do not fall within the aims of the 1967 Act, which were only to do with "social justice", it is necessary to identify the key issues and conclusions in *James*.

570. The application by the Westminster Estate arose out of 80 claims to enfranchise properties in Belgravia. In 15 cases the tenants sold their leases with the benefit of the right to enfranchise. In 25 cases the tenants sold their property within a year of acquiring the freehold. Those tenants had made substantial profits, in one case a profit of 636% ([29]).

571. The case considered the 1967 Act as amended up until 1984 ([20]). The legislation applied to properties with a rateable value up to £1000 in Greater London and up to £500 elsewhere. In 1974 more valuable properties were brought within the scheme by increasing those limits to £1500 and £750 respectively, but in those cases the basis of valuation was more favourable to the landlord ([20] to [23]).

572. The ECtHR was informed that there were two principal forms of long lease of residential property ([12]): (a) "a building lease" typically for 99 years under which the tenant pays a ground rent (i.e. a low rent fixed by reference to the value of the bare site) and undertakes to build a house on the site and to deliver it up in good repair at the end of the term; and (b) a "premium lease" where the tenant pays the landlord a premium for a house provided by the landlord and thereafter a rent. The premium would take into account the building cost, a profit element and the length and terms of the lease. Under the lease the tenant is responsible for repairs ([12]). In the case of the Belgravia leases the tenant paid the full market rent split between a periodic rent and the capitalised value of the balance of that market rent over the whole of the term ([27]).

573. At the end of the term, Part I of the 1954 Act allowed the lessee to remain in occupation of the house under the Rent Act paying a "fair rent." It was considered to be unfair that the lessee who had been responsible for building the house, the costs of the building and maintenance costs over a long period, did not become the owner of that property at the end of the term. In 1967 the solution was to enable him to buy out the freeholder's interest ([18]).

574. During its passage through Parliament the 1967 Bill was criticised for failing to require a determination by a court or tribunal as to whether it was reasonable for the tenant in each case to be allowed to enfranchise. That criticism had been rejected on the grounds that it would result in considerable uncertainty, delay and litigation and would discourage enfranchisement ([19]).

575. The Westminster Estate submitted that the 1967 Act violated A1P1 because *inter alia* it interfered with agreements which had been freely made with tenants,

frustrated the applicants' expectations based on those agreements, deprived the applicants of their property at a price always below, and often far below, market value, enabled tenants to sell houses for large profits, and provided no machinery to enable the applicants to challenge the justification for the deprivation ([34]).

576. The Court focused on the terms and conditions of the 1967 Act to determine whether that legislation was compatible with A1P1. The case did not relate to the manner in which the 1967 Act was administered by a state authority, whether judicial or administrative. The 80 transactions were simply illustrative of the impact in practice of the reforms introduced by the 1967 Act ([36]).

577. It was common ground that enfranchisement deprived the applicants of their possessions ([37] to [38]).

578. The ECtHR then considered whether under the second rule in A1P1 the 1967 Act satisfied the "public interest" test for deprivation of possessions in the second rule of A1P1. It decided that a deprivation of property effected for *no reason other than* to confer a private benefit on a private party could not be in the public interest ([40]). But the taking of property under a policy to enhance social justice or fairness in a system of law governing the contractual or property rights of private parties may qualify as being in the public interest, even if the public at large has no direct use, or enjoyment of, or benefit from, the property taken. A taking of property in pursuance of legitimate social, economic, or other policies, including the "equitable distribution of economic advantages", may be in the public interest ([41] to [45]). The Court then went on to consider whether the aim of the 1967 Act was legitimate, as a matter of principle and on the facts, and whether there was a reasonable relationship of proportionality between the means employed and that aim ([46] to [69]).

579. The ECtHR stated that the notion of "public interest" is necessarily extensive. A decision to enact laws expropriating property will commonly involve political, economic and social issues on which opinions within a democratic society may reasonably differ widely. The margin of appreciation available to the legislature in implementing social and economic policies is wide. Consequently, the court will respect the judgment of the legislature (or a decision-maker) on what is in the public interest unless that judgment be manifestly without reasonable foundation ([46] and see also *Lindheim vNorway* (2015) 61 EHRR 29 at [96]).

580. The aim of the 1967 Act was to reform the law so as to remedy the injustice to tenants by the operation of the long leasehold system of tenure, giving effect to what was perceived as a tenant's "moral entitlement" to ownership of the house. It was legitimate to take the view that the regulation of housing is a prime social need which should not be entirely left to market forces and to enact legislation aimed at securing greater social justice in that context ([47]). Basing itself on the earlier analysis of building leases and premium leases, the Court accepted that a long-leasehold tenant will have invested over the years a considerable amount of money in his home (through building costs and/or premium, repairs and improvements), whereas the landlord will normally have made no contribution towards its maintenance since granting the lease. The UK

Parliament had therefore pursued legitimate aims ([49]). Accordingly, the aims of the 1967 Act accepted by the ECtHR were not limited to social justice. They involved considerations of economic fairness or the fair distribution of economic advantage as between landlord and tenant.

581. The court then dealt with the means chosen to achieve those aims and the fair balance test, examining each of the criticisms made by the Westminster Estate ([50] to [69]).

582. The perceived injustice on which Parliament acted went to the very issue of ownership. Accordingly, a mechanism for the compulsory transfer of the freehold of the house and the land to the tenant in return for financial compensation for the landlord was not in itself disproportionate to meet the identified concern ([51]).

583. The ECtHR considered whether the availability and amount of compensation are relevant under the second rule of A1P1. The Court decided that the taking of property without any compensation could only be justified in exceptional circumstances. Compensation terms are relevant to the fair balance test, but A1P1 does not guarantee a right to "full compensation" in all circumstances. Legitimate objectives of public interest, in for example measures of economic reform or to achieve greater social justice, may call for less than reimbursement of full market value. In this regard also, the state has a wide margin of appreciation ([54]).

584. The basis for the assessment of compensation in the 1967 Act as originally enacted was that the tenant should pay the landlord site value but nothing for the buildings on the site, which clearly and deliberately favoured the tenant. The objective was to prevent a perceived "unjust enrichment" accruing to the landlord on the reversion of the property. Given that legitimate objective, the measure of compensation accorded with the fair balance test ([56]).

585. The applicants criticised the means chosen to achieve Parliament's aim because it lacked independent consideration of the reasonableness of each proposed enfranchisement. They pointed to evident differences between leaseholders of modest housing in South Wales and better-off tenants in Belgravia. In general, the latter could not be treated as needy or deserving of protection. The ECtHR said that that approach had been rejected by Parliament, which had chosen to lay down "broad and general categories" within which the right to enfranchise was to arise. This was to avoid the uncertainty, litigation, expense and delay which would result from individual examination of many cases. "Expropriation legislation of wide sweep, in particular if it implements a programme of social and economic reform, is hardly capable of doing entire justice in the diverse circumstances of the very large number of different individuals concerned." The system chosen by Parliament was not inappropriate ([68]).

586. With regard to evidence on the 80 transactions in Belgravia, the view taken by Parliament as to the tenant's moral entitlement to ownership of the house, applied equally to properties in that area. An inevitable consequence of the basis of compensation in the 1967 Act as originally enacted was that a tenant would be bound to make a gain. The making of "windfall profits" by tenants who

purchased end-of-term leases at the right time was unavoidable. Neither the risk of there being some undeserving tenants, nor the scale of the anomalies revealed by the evidence on the Belgravia transactions, made the legislation unacceptable under A1P1 ([69]).

587. Accordingly, the terms and conditions of the 1967 Act did not involve a breach of A1P1 ([72]).

*Developments since James*

588. Parliament has considerably widened the ambit of the right to enfranchise since 1967. Notwithstanding those changes, the claimants accept that the legislation in its current form remains compatible with A1P1. That acceptance includes the two changes which enabled the SoS as the tenant holding under the 1996 underleases and public authorities in general to gain rights to enfranchise.

589. The underleases granted to the SoS on 5 November 1996 do not satisfy the "low rent" test which formed part of the 1967 Act as originally enacted (s.1(1) and s.4). The rent payable pursuant to each underlease was not a ground rent (as described in *James*) but was based on a rack rent. However, the Housing Act 1996 received Royal Assent on 24 July 1996, before the sale agreement was executed between the parties on 24 September 1996. Section 106 inserted s.1AA into the 1967 Act so as to create a right to enfranchise where a failure to satisfy the low rent test was the only reason why the lease could not be enfranchised. The parties have not been able to discover any explanation of the rationale or aim underlying the effective abolition of the low rent test. But plainly, the reform of the long leasehold market was no longer limited to remedying the social and economic injustice of the building lease and premium lease models.

590. At all events, in September 1996 the parties would have transacted on the basis that although the low rent test was not a bar to enfranchisement by the SoS, at that stage the residence test was.

591. Section 138 of the 2002 Act removed the residence test in the 1967 Act. So the moral right to acquire the freehold of a house ceased to be restricted to a tenant's home. Lord Carnwath referred to the rationale for this change in *Hosebay* at [3] to [5]. In relation to the enfranchisement of flats under the 1993 Act, the view was taken that the residence test was too restrictive, for example, by excluding someone subletting a flat or occupying a flat as a second home. However, in order to restrict the scope for short-term speculative gains, a rule was introduced requiring the tenant to have held his lease for at least two years. Parliament took the same approach to the enfranchisement of houses by amending the 1967 Act (see s.1(1)(b)). It was also said that a tenant who leases a house through a company should be able to enfranchise.

592. The removal of the residence requirement has also had the effect of extending the right to enfranchise to companies and public authorities. However, this does not include buildings occupied for purely non-residential purposes. By s.1(1B) of the 1967 Act a tenant of a house to which Part II of the 1954 Act applies does not have a right to enfranchise unless he satisfies a residence test.

593. By definition a company or public authority will not be exercising a right to enfranchise in order to acquire the freehold of a home in which it resides. They may exercise such rights for commercial or financial reasons. Consequently, it may be a relevant aim of a public authority to enfranchise in order to exercise bargaining power, or to secure the best commercial arrangement possible in the public interest (see *The State of Mauritius* case at [63] – see para. [135] above).

594. Despite the widening of the ambit of the 1967 Act (and related schemes in the 1993 Act) the courts have maintained that *James* remains an obstacle for incompatibility arguments based on A1P1 (see e.g. Lord Walker in *Earl Cadogan v Sportelli* [2010] 1 AC 226 at [47] to [48]).

595. Parliament has not only widened the scope of the right to enfranchise, it has also widened the scope of the landlord's entitlement to compensation as compared with the measure originally provided by the 1967 Act. In the present case any enfranchisement would take place under s.1AA of the 1967 Act, which engages the right to compensation under s.9(1C). The measures of compensation are summarised in [92] above.

*Whether APL's interest was delimited by the 1967 Act from the outset*

596. I do not consider that the defendant's submission that APL's interest existed subject to the 1967 Act (see [555] above) is dispositive of the claimants' case based on A1P1. The case law cited in *T&N* makes it plain that the critical question is whether the legislation in question delimited or qualified the property right at the moment it was created. If the answer to that question is no, A1P1 does not cease to be engaged merely because the general law applicable at that time would bring that property right to an end in certain circumstances which have subsequently occurred. The position in the present case is clear. When the underleases were granted to him the SoS was not able to satisfy the residence test, but the position has altered because of a subsequent change in the law and the exercise of the right which then came into being.

*Whether individual cases need to be evaluated against A1P1*

597. It is well-established that it is open to Parliament to create a statutory scheme compliance with which is to be treated as compatible with a Convention right in all cases. In other words it is open to Parliament to adopt a general measure which is to be treated as having struck the proportionality balance in relation to a Convention right sufficiently for all cases, so that a case-specific justification for any interference with a Convention right is inappropriate, even in relation to criminal offences (see e.g. *Animal Defenders International v United Kingdom* (2013) 57 EHRR 21 and *Perincek v Switzerland* (2015) 63 EHRR 6). This may be the case although Parliament has not itself considered the issue of proportionality when a Bill was before it (see *R (SC) v Secretary of State for Work and Pensions* [2022] AC 223 at [163] to [185] and *Attorney General's Reference on a Point of Law (No.1 of 2022)* [2023] 2 WLR 651 at [59] to [62]). The Supreme Court has recently re-emphasised these principles in *In Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] 2 WLR 33 at [29], [34] to [38], [46] to [49] and [65].

598. In *James* the ECtHR rejected the applicants' argument that the 1967 Act was incompatible with A1P1 because it failed to provide for an independent assessment of the reasonableness of each enfranchisement, in order to avoid injustice for the landlord as well as the tenant. The Court accepted that it had been reasonable for Parliament to decide to reject that option because of the uncertainty, delay and expense it would entail. Given that the social and economic reforms applied to a large number of cases and diverse circumstances, the legislation should not be expected to do "entire justice" in all circumstances ([68]). The redistribution of interests achieved by the 1967 Act meant that some anomalies, for example tenants not meriting the benefits conferred by the Act or making windfall profits, were unavoidable ([69]). Enfranchisement does not take place automatically upon the satisfaction of certain conditions. It depends upon a qualifying tenant choosing to serve an enfranchisement notice under s.5. But although the material before the ECtHR pointed to anomalies resulting from the timing of such a notice, the Court did not consider it necessary for the 1967 Act to require the circumstances of individual cases to be considered to determine whether the right to enfranchise should be exercisable.

599. In *James*, the ECtHR concluded that the 1967 Act was compatible with A1P1 although the Act operated as a general measure which might result in individual hard cases (see also *In Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] 2 WLR at [35]). The Court accepted that the 1967 Act struck a fair balance between landlords and tenants as a general measure.

600. The decision in *James* was given in 1986. Since then Parliament has had the opportunity to revisit proportionality and the conclusions of the ECtHR on several occasions. Despite the widening of the ambit of the right to enfranchise, Parliament has not seen fit to introduce a requirement that the merits or demerits of enfranchisement be assessed in individual cases. The reasoning of the ECtHR applies to the 1967 Act in its current form with no less force. The claimants did not suggest otherwise.

601. As Sir James Eadie submitted, the 1967 Act sets out conditions upon satisfaction of which a right to enfranchise may be exercised, whether by a private citizen or a public authority. But the exercise of that right is not dependent upon the merits or the impacts of enfranchisement in that case. Likewise, the Act allows no general discretion as to the manner in which the right may be exercised or the price payable. The mere fact that the right has to be exercised by the tenant choosing to serve a s.5 notice does not mean that each such decision taken by a public authority has to be individually assessed for compatibility with A1P1.

602. There was no material change in the substance of the statutory scheme, or the nature of the right to enfranchise, when it became possible for that right to be exercised by public authorities as well as companies. The ability of a public authority to enfranchise does not depend upon the exercise of any additional discretionary power or function. The authority simply exercises a property right. That decision is subject only to the limited grounds of judicial review referred to in *The State of Mauritius* case, recognising the public interest in authorities being able to participate in the commercial market in the usual way, through the exercise of the full bargaining power available to them (see [554] above).

603. For these reasons I accept the defendant's submission that the 1967 Act is a general measure which satisfies the fair balance test required by A1P1, so that no case-specific assessment under that provision is necessary when a right to enfranchise is exercised by a public authority. However, in case I am wrong about that conclusion, I will make an assessment for this case.

*Whether the decisions were "provided for by law"*

604. I have rejected the private law arguments under grounds 1 and 2 that the notices were invalid and the public law challenges under grounds 3 to 5. Ms. Carss-Frisk confirmed that no additional error of law was being advanced under ground 6, other than the alleged breach of A1P1. Accordingly, the decisions were "provided for by law".

*The public interest and whether the decisions pursued a legitimate aim*

605. As the decision in *James* illustrates ([39] to [45] and [46] *et seq*), the public interest test can be applied by considering the legitimacy of the aims (of the decision-maker) and the means employed (see also *NKM v Hungary* at [55] to [59]).

606. The decision in *James* dealt with the 1967 Act as originally enacted and amended up until 1984. In the context of traditional forms of building leases and premium leases, the legitimate aims were concerned with remedying a social and economic injustice: in view of the tenant's "moral ownership" of a house in which he had invested so much, the freehold should belong to him rather than the landlord. Parliament sought to address what was described as the "unjust enrichment" of a landlord in relation to the ownership of the house.

607. Since *James* the right to enfranchise has been extended to include leases where the tenant pays rent greater than a "low rent" or ground rent, or does not reside in the house himself. In some cases, such as the present one, the compensation payable to the landlord under s.9(1C) is more favourable than the original measure when the 1967 Act was enacted. The court has not been provided with an authoritative restatement of Parliament's legislative aims, but they still appear to involve giving priority to the investment made by a lessee in his house and the judgment that he should be entitled to own that property.

608. The claimants assert that the purpose of the enfranchisement in this case does not accord with the legislative aims identified in *James.* I disagree. It is necessary to begin with the leasehold structure created by the sale and leaseback entered into by the parties in 1996. For each site APL was granted a 999 year lease. The company made a substantial capital payment. The freehold reversion is somewhat vestigial. The 200 year term granted by underlease to the SoS is of a comparable duration to that held by many enfranchising tenants. Where the SoS enfranchises one of the SFA units he is acquiring an interest held by APL falling not far short of a freehold. In economic terms the acquisition of APL's 999 year lease is analogous to the acquisition of a freehold reversion under the 1967 Act.

609. The underleases in the present case did not involve the type of payments made under a traditional "building lease" or a "premium lease". The SoS was responsible for the costs of building (or initially acquiring) the SFA units. Having sold 999 year leases to APL for £1.662 billion, the SoS is paying a rent for the units based upon market value (rather than a ground rent) over a period of 200 years, unless and until he exercises a break clause. As Mr. Razzell says (para. 5.8 of his witness statement):

> "The MoD would still be in the highly unusual position of paying a market rent on a very long lease of residential property. In nominal terms, if it holds the properties to term, the MoD will pay many times the value of these properties in rent."

In addition the SoS remains responsible for the cost of repairs throughout the term of each underlease. When handback takes place the SoS is liable to APL for dilapidations. From APL's perspective the lease arrangements represent an investment in a reliable income stream. APL provides no services to the SoS, but simply collects the rent payable by the SoS. There are therefore similarities between the circumstances of the present case and the justification accepted in *James* in terms of the "equitable distribution of economic advantages" in the public interest (see [569] to [571] above).

610. Alternatively, and in any event, I accept the defendant's submission that he does not need to demonstrate that his objectives fell within the precise aims of the 1967 Act as originally enacted and discussed in *James*. Since then the ambit of the right to enfranchise and the aims of the legislation have been widened considerably (see e.g. [579] to [585] above). A wide or "particularly broad" margin of appreciation is accorded to a state, and thus the court, when deciding on socio-economic issues engaging A1P1. The notion of "public interest" is "necessarily extensive" and includes the protection of the public purse (*James* at [46]; *NKM v Hungary* at [49], [51], [55] and [59]).

611. The SoS and his officials, acting in good faith, have proceeded on the basis that the lease arrangements have resulted in excessive or unreasonable rates of return for APL. The arrangements were and still remain a bad deal for the MoD, its SFA estate and the public purse. The defendant has concluded that it is in the public interest that he should pursue enfranchisement where it will provide VFM and is preferable to other options, in order to buy out APL and regain ownership and/or to increase leverage on APL in a situation where he currently has little or no bargaining power. In this case the protection of public finances and achieving VFM in public expenditure on the provision of SFA, bearing in mind other demands upon the public purse, were legitimate aims for the SoS when deciding to exercise his right to enfranchise.

612. I do not accept the claimants' contention that the SoS's aim was not legitimate because, referring to *Gratton-Storey*, he was not seeking to acquire the freehold but only the intermediate interest of APL. It is common ground that a sub-tenant who owns the freehold can overcome the effect of the ruling in *Gratton-Storey* by transferring his freehold interest to a nominee before serving an enfranchisement notice (see [37] above). Such action does not conflict with the 1967 Act or any legal principle. It is compatible with the Act. I do not see why

the analysis should be different because similar action (e.g. a transfer to a SPV) is taken by a public authority, or why, because of his status as a public authority, the SoS's aim should not be treated as legitimate. Similarly, in so far as it is necessary for the SoS to serve a notice under s.33(1)(b) of the 1967 Act to make the Act binding upon a mesne landlord, APL, that does not render the SoS's otherwise legitimate aims illegitimate. In any event, the acquisition of the 999 year leases falls not far short of an acquisition of the freehold (see [608] above).

613. I have already summarised the various documents in which the SoS and his officials have considered it to be in the public interest to serve the 8 enfranchisement notices. Depending on the outcome of this case, the assessment of compensation payable and VFM, the SoS may consider it to be in the public interest to pursue that enfranchisement to completion and to serve more notices, possibly a large number of them. That option is said to be in the public interest because it will extricate the SoS from what is widely considered to be a bad deal for the public finances and the provision of SFA, and will likely continue to be so. Whether such action is taken will depend upon the relative merits of the other options which will be open to the SoS. One such option is to use any leverage which results from establishing a right to enfranchise in order to improve his bargaining position in negotiations with APL. The public interest lies in the SoS taking remedial action with regard to a commercial relationship which involves the use of public funds to provide what is judged to be an unreasonably high rate of return to an investment vehicle providing no services to the MoD.

614. In my judgment the defendant has amply demonstrated that his decisions pursue legitimate aims in the public interest for the purposes of A1P1.

*The fair balance test*

615. The evidence before the court suggests that the SoS did not explicitly carry out an exercise striking the balance required by A1P1. But the absence of any such exercise does not in itself amount to an error of law or breach of A1P1 (the *Belfast City Council* case). In any event, the court must determine the matter for itself. It is a question of law, not pure fact, for the court (*In Re Abortion Services* [2023] 2 WLR at [30]).

616. However, the SoS did have regard to the effect on the claimants of serving the enfranchisement notices and the possibility of serving notices on a much larger scale. He had regard to the legal right to serve enfranchisement notices and the reasons for taking that action. He treated the service of the notices for those reasons as being very much in the public interest. The clear implication is that the SoS attached such importance or weight to those public interest considerations as justified the decision to serve the 8 enfranchisement notices. Plainly, any decision on whether to extend that exercise will depend on the outcome of the test cases, including the assessment of compensation and its implications for VFM on a wider scale. For obvious reasons the SoS has not yet committed himself to a wider programme of enfranchisement. The information he obtains on the overall outcome of the test cases will inform the future judgment he will reach on whether to pursue any such programme.

617. As to the alleged promises based upon the agreements between the parties, I have rejected the claimants' reliance upon legitimate expectation under ground 5. This line of argument does not attract significant weight in the A1P1 balance. When the 1996 agreements were entered into, enfranchisement was only excluded for so long as the residence test continued to be a requirement. That was generally abolished in 2002. The agreements in 2019 and 2021 modified the terms of the long-term relationship established in 1996, but they did not amount to promises that any right to enfranchise would not be exercised.

618. Under ground 4 I have rejected the claimants' case that the SoS has acted, or is acting, for improper motives.

619. I also see no merit in the claimants' argument that in failing to obtain the consent of APL to enfranchisement, the defendant has treated APL differently from a mesne landlord on land held from the Crown Estate Commissioners. I have rejected the claimants' contention under ground 1 that s.88 of the 1993 Act required the SoS to obtain the consent of his landlord APL to enfranchisement. The 2016 Guidance from the Commissioners only applies where a tenant or subtenant needs to rely upon their undertaking to abide by the 1967 Act; that is where the party concerned has no statutory right to enfranchise.

620. For the reasons given under ground 1, where s.33(1)(b) of the 1967 Act applies, as in the present case, the subtenant has a right to enfranchise which is binding upon intermediate landlords. The difference in treatment is the direct consequence of the legislation enacted by Parliament, whereas the 2016 Guidance is a Crown Estate undertaking which covers an extra-statutory situation. The claimants' submissions touched very lightly upon this subject and did not develop the allegation of discrimination. In any event, the claimants' argument overlooks an important feature of the 1967 Act, namely that where there is no Crown interest in land, a subtenant has a right to enfranchise without obtaining the consent of a mesne landlord (see [170] above). I attach no weight to the claimants' suggestion that the SoS's claim involves treating APL differently and unfairly in comparison with a mesne landlord of Crown Estate property.

621. Lastly, there is the issue of loss and compensation. The claimants did not develop their arguments on this subject in detail. They referred to potential losses in relation to marketable goodwill, the value of shares held in APL and the cessation of the handback of SFA units. They also refer to the uncertainty about the extent and timing of any further enfranchisement claims, together with the losses which this uncertainty is causing through the sale of the Annington companies being delayed.

622. In the present case, the court's decision that the SoS was entitled to exercise a right of enfranchisement in respect of the 8 test cases means that there will be a deprivation of APL's interest in those properties once the compensation has been assessed, unless the SoS withdraws his s.5(1) notices. He may exercise his right to withdraw a notice up to one month from the Tribunal's determination of the price payable (s.9(3) of the 1967 Act).

623. The claimants say that there are issues as to whether they will be compensated for all their losses flowing from the SoS's decisions to pursue or consider enfranchisement. Here it should be recalled that A1P1 does not guarantee a right to full compensation in all circumstances (*James* at [54]). Furthermore, the claimants do not criticise the compensation code in the 1967 Act as rendering the legislation incompatible with A1P1.

624. In any event, the basis for, and the amount of, statutory compensation is ultimately a matter to be determined by the First-tier Tribunal and/or the Upper Tribunal. No proceedings under s.21 of the 1967 Act have yet been commenced and no particulars of such losses have been given. Furthermore, the claimants have not particularised a claim for damages in this court under s.8 of the 1988 Act. Consequently, there has been no material for the defendant to respond to, setting out the extent to which he accepts or disputes that any item of loss claimed falls within the ambit of the compensation code and, in so far as it does, the extent to which quantum is agreed or disputed. The extent of any shortfall, if there be any, has not been indicated. Any dispute about the compensation payable as the result of each of the 8 notices would have to be resolved in due course by the appropriate tribunal. The court is in no position to say at this stage whether there would be any shortfall in compensation to meet losses identified by APL and, if so, how large or small that might be. I consider that no significant weight should be attached to this factor at this stage.

625. Even if the statutory compensation for enfranchisement were not to cover all the losses alleged by the claimants, that compensation might still provide the Annington companies with a reasonable rate of return on their investment in the SFA, commensurate with the level of risk for their rights and obligations under the agreements made with the SoS. The claimants have not put forward a case that any such return would be inadequate or that they would make a loss. Of course the adequacy of the return would depend upon (a) the conclusions reached by the tribunal on the Cranwell and Bristol properties, (b) the extent to which those conclusions are applicable more widely to other SFA units which might be enfranchised and (c) any further findings of the tribunal in other cases which might be necessary for this purpose. Although this subject might turn out to be a significant factor in the application of A1P1, it cannot be pursued further without that information and therefore is not a matter to which significant weight can be given at this stage, whether for or against the claimants' case.

626. On the issue of uncertainty, the SoS has not yet decided to go ahead with enfranchisement. He may decide to withdraw the existing s.5 notices and/or not to serve any more enfranchisement notices.

627. Mr. Leung has explained why the uncertainty created by the test notices and the possibility of enfranchisement on a wider scale has caused the sale of the Annington companies to be deferred. The value of APL's interest in the 999 year leases is driven by the entitlement to a steady income stream from the rent payable by the SoS and the opportunity to make capital gains on the handback of premises for a nominal price of £500 (with payments by the SoS for dilapidations). Mr. Leung says that the value of APL's shares is reduced because the company is less attractive to institutional investors or bidders with a low cost of capital looking to obtain a relatively low-risk income stream. Whether

or not such parties would bid, the increase in the risk relating to the income stream, and hence the discount rate used to arrive at the present capital value of APL's future profits, would attract only lower bids (first witness statement paras. 4.11 and 4.15). Mr. Leung has updated the position in his second witness statement. In APL's annual revaluation, the SoS's decisions are said to have resulted in the addition of a risk premium of 0.25% to the discount rate applied to cashflows from the MQE over the next 50 years. It is said that this has reduced the overall capital value of the MQE by 5%, suggesting a loss in the region of £415 million (Mr Leung's second witness statement para. 3.2). These references to the MQE make it plain that the alleged loss reflects the possible implications of enfranchisement on a wider scale, not just the Cranwell and Bristol properties. In addition, I note that the delay to the refinancing of £300m of unsecured bonds meant that the new Notes had to be issued at a higher rate of interest than would otherwise have been the case.

628. In summary, the claimants say that the effect of the test cases and the risk of enfranchisement has caused a reduction in the value of Annington. As we have just seen, the claimants do not suggest that the assets of the Annington companies cannot be sold or have become unmarketable. Instead, the claimants refer to a current loss of value. They have decided to defer the sale, presumably in order to see whether enfranchisement can be defeated, alternatively full market value obtained through the compensation code, in order to overcome the alleged loss of value.

629. Significant weight should be attached to the effects of uncertainty about whether further enfranchisement notices will be served But, for the reasons given above, I do not attach significant weight to the possibility of statutory compensation being inadequate to cover losses sustained because of the risk of further notices being served.

630. In the other side of the balance, there are the reasons previously set out as to why the SoS has considered that it is in the public interest to serve the 8 test notices and, in the light of the results of those notices, to consider the possibility of enfranchising SFA units more widely. Those reasons include the following:

(i) The SoS seeks to address the effects of the 1996 agreements, which represent a bad deal for the MoD, the MQE and the public purse. Those agreements have resulted in an excessive transfer of value from the MoD to APL and the company receiving an excessive rate of return relative to its contractual obligations, rights and risks;

(ii) It has been estimated that by 2018 the deal with Annington had caused a loss to the MoD of between £2.2 billion and £4.4 billion;

(iii) The SoS is liable to pay rents based on market values which may increase over the remainder of the 200 year terms;

(iv) The MQE is substantially larger than the MoD requires. The SoS has to pay rent on empty properties, but on handback the SoS has to transfer freehold title for nominal sums and pay for dilapidations. This has operated as a disincentive to the handing back of void properties;

(v) On handback, APL is able to sell on and realise the whole of any capital appreciation. The SoS considers that the MoD should not continue to be excluded from any appreciation in the value of SFA. Realising capital appreciation would help to reduce the PSND;

(vi) The test cases are necessary to enable the SoS whether he is entitled to enfranchise SFA units and, once prices have been determined, whether this option represents VFM for the MoD;

(vii) In so far as the compensation payable to APL on enfranchisement is significantly less than the value of SoS's liability to APL under the existing lease arrangements, there will be VFM and funding for the acquisition costs;

(viii) The SoS needs to decide which SFA sites he should retain and, in relation to those sites, decide which method of financing would provide better VFM: leasing from APL or outright ownership through enfranchisement, bearing in mind that APL provides no services to the MoD;

(ix) In relation to those properties which the SoS decides he should no longer retain, he will decide whether it is VFM and in the public interest to hand back units to APL, or to enfranchise so that the SoS can realise capital appreciation;

(x) The current arrangements with APL offer little or no flexibility to MoD. Under those arrangements SoS has no commercial levers to use in negotiations with APL. Enfranchisement would provide MoD with such levers and an ability to negotiate better terms with APL as a possible alternative to enfranchisement;

(xi) Given Annington's timescale for refinancing or sale, it was necessary to serve the test case notices. Refinancing would be likely to result in APL's debt increasing and therefore less headroom for MoD to renegotiate better terms from APL. The SoS was also entitled to take the view that the potential bidders in the market should be aware of his intentions to test the merits of enfranchisement.

631. On all the material before the court, the balance comes down firmly in favour of the SoS's decisions. Looking at the circumstances as a whole, neither the enfranchisement notices already served nor the risk of further claims being made imposes a disproportionate or excessive burden upon APL or the other claimants.

632. Ms. Carss-Frisk referred to case law applying a *restitutio in integrum* approach to the assessment of damages "to afford just satisfaction" (s.8 of the 1998 Act). I need not refer to those authorities because they are only relevant where a breach of A1P1 is found to have occurred and damages fall to be assessed, which is not the case here.

633. For those reasons I reject the claimants' contention that the SoS's decisions have violated A1P1 and I reject ground 6.

## Issues 21 to 22 – The challenge to a wider scheme

634. For the reasons set out above I do not accept that the SoS has already decided to proceed with a wider scheme of enfranchisement. His decision-making to date has gone no further than to give serious consideration to a wider scheme, depending upon the overall outcome of the test cases, the relative merits of other options and VFM. The test cases have been approved by Ministers solely as a "proof of concept" at this stage. The highly contingent nature of the SoS's approach to the service of more s.5 notices show that no further decision has been made which could be amenable to judicial review. But in any event, even if it be assumed that there is a reviewable decision in relation to a scheme, I have explained why none of the grounds of challenge succeed in relation to that aspect.

## Conclusions

635. In the proceedings in the Chancery Division the defendant is entitled to a private law declaration that each of the 8 notices relating to the Cranwell and Bristol properties is a valid notice exercising a right to enfranchise under s.1AA of the 1967 Act.

636. The claims for judicial review in CO/889/2022 and CO/2389/2022 are dismissed.

## Annex A: the Agreed List of Issues.

## A. THE CHANCERY PROCEEDINGS / GROUNDS 1 AND 2 JR1/JR2

Application of leasehold enfranchisement legislation to premises in which there is a Crown Interest

1. Whether section 88 of the Leasehold Reform, Housing and Urban Development Act 1993 prevents the Defendant from acquiring the freehold of: (a) the two properties in Cranwell and (b) the six properties at a site in Bristol (the “Properties”) under Part I of the Leasehold Reform Act 1967 (the “1967 Act”) without the agreement of the Claimant? Which also raises the following issues:

> (1) Is the effect of s.33 of the 1967 Act and s.88 of the Leasehold Reform Housing and Urban Development Act 1993 (the “1993 Act”) to make any right which the Defendant relies upon to enfranchise subject to the consent of Annington Property Limited (“APL”) ?
>
> (2) Does the principle of legality require that s.33 of the 1967 Act and s.88 of the 1993 Act be read so that any right which the Defendant relies upon to enfranchise is subject to the consent of APL not specifically responded to in the DGRs)?

**The effect of the decision in *Gratton-Storey v. Lewis & Anor* [1987] 2 EGLR 108**

2. It being agreed that, to the extent it is not distinguishable, this Court is bound by the decision of the Court of Appeal in *Gratton-Storey v. Lewis & Anor* [1987] 2 EGLR 108:

> (1) whether the Defendant is precluded from making a claim pursuant to Part I of the 1967 Act in relation to any house of which it remained, as at the date of service of a s.5 notice, the registered freehold proprietor but in relation to which Defence Infrastructure Holdings Limited (“DIHL”) was in equity the freeholder and entitled to be registered as legal proprietor by virtue of a transfer of the freehold which had been executed but which had not yet been completed by registration; and
>
> (2) whether the Defendant is precluded from making a claim pursuant to Part I of the 1967 Act in relation to any house of which, as at the date of service of a s.5 notice, DIHL was the registered freehold proprietor on the grounds that (i) by reason of the indivisibility of the Crown, the Defendant and DIHL are to be treated as the same entity for the purposes of the application of Gratton-Storey v. Lewis, and (ii) consequently at the relevant times the Crown was and remained the registered freehold proprietor of both 1 & 3 Sycamore Drive for those purposes.

## Application of Part II of the Landlord and Tenant Act 1954 (the "1954 Act") to the Underleases

3. Whether, as at the date of each Enfranchisement Notice, the land demised by the Underlease of RAF Cranwell dated 5 November 1996 (the "Cranwell Underlease") and/or the land demised by the Underlease of Belvedere Road, Bristol dated 5 November 1996 (the "Bristol Underlease"), or any part of it, was occupied for any purposes of a Government department within the meaning of s.56(3) of the 1954 Act. This issue raises the following sub-issues:

4. Whether, within s.56(3), land "occupied for the purposes of a Government department" means land "occupied by a Government department".

5. Whether, on the date of each relevant Enfranchisement Notice, some or all parts of the premises demised by the Bristol Underlease or the Cranwell Underlease were "occupied for the purposes of a Government department", namely for the Defendant's purposes in the defence of the Realm, because, regardless of who was actually in occupation, that occupation of those parts of the demised premises was occupation for the Defendant's purposes. In particular:

> (1) Whether the Units (including gardens) resided in by Service personnel and their families upon Service licences at the date of each relevant Enfranchisement Notice, forming the whole of the land demised by the Bristol Underlease and part of the land demised by the Cranwell Underlease, were occupied by the Defendant and / or for any purposes of a Government department within the meaning of s.56(3) of the 1954 Act.
>
> (2) Whether the garages which were used by Service personnel and their families upon garage licences at the date of each relevant Enfranchisement Notice, forming part of the land demised by the Cranwell Underlease, were occupied by the Defendant and / or for any purposes of a Government department within the meaning of s.56(3) of the 1954 Act.
>
> (3) Whether the Units which were sublet on the open market at the date of each relevant Enfranchisement Notice, forming part of the land demised by the Cranwell Underlease, were occupied by the Defendant and / or for any purposes of a Government department within the meaning of s.56(3) of the 1954 Act.
>
> (4) Whether the Units and/or garages which were void (i.e. empty) at the date of each relevant Enfranchisement Notice, forming part of the land demised by the Cranwell Underlease, were occupied by the Defendant and / or for any purposes of a Government department within the meaning of s.56(3) of the 1954 Act.
>
> (5) Whether the two Units used as contact or welfare houses, forming part of the land demised by the Cranwell Underlease, were, at the date of each relevant Enfranchisement Notice, used by the Defendant and / or for any purposes of a Government department, within the meaning of s.56(3) of the 1954 Act.

6. In relation to the land forming part of the land demised by the Cranwell Underlease and sublet to DIHL pursuant to the Common Parts Lease, at the date of each relevant Enfranchisement Notice:

(1) What (if any) parts of the land demised to DIHL were occupied by DIHL or the Defendant:

(2) Whether the Defendant is to be taken to be in occupation of any part of the Cranwell site which was in fact occupied by DIHL:

(i) because, by virtue of the indivisibility of the Crown, DIHL and the Defendant are to be treated as the same entity for the purposes of the 1954 Act;

(ii) because occupation of any such part and/or the carrying on of a business by DIHL is to be treated as equivalent to occupation and/or the carrying on of a business by the Defendant by virtue of s.23(1A) and s.23(1B) of the 1954 Act, or whether those provisions have no application either because (a) DIHL has its own business tenancy or (b) s.23(1A) does not apply to s.56(3).

(3) Whether any land occupied by DIHL (and not by the Defendant) is occupied "for any purposes of a Government department" because the purposes of DIHL's occupation are all or any of the Defendant's purposes.

(4) Whether, if DIHL has its own business tenancy (pursuant to s.23 or s.56) that prevents the Defendant from having a business tenancy under s.56.

(5) Whether, if DIHL's purposes are only those of DIHL's own business, any land occupied by DIHL (and not by the Defendant) is nevertheless occupied "*for any purposes of a Government department*".

7. Whether, if the answer to any issue within §§5-6 above would otherwise be "yes", the answer is different because some relevant occupation falls to be disregarded because of the de minimis principle.

**Excluded Tenancy (Designated Rural Area Exclusion) – Cranwell only**

8. It being agreed that:

(1) by s.1AA of the 1967 Act the right of a tenant to acquire the freehold of a house is excluded where at the relevant time:

(i) the house is within an area designated by the Defendant as a rural area pursuant to s.1AA(3)(a);

(ii) the freehold of the house is owned together with adjoining land which is not occupied for residential purposes, and has been so owned since 1 April 1997 (the "Adjoining Land Test"); and

(iii) the relevant tenancy of the house (in right of which the claim is made) was granted on or before 1 April 1997.

9. For the purposes of the Adjoining Land Test, the issues are:

(1) Which land is "adjoining" 1 and/or 3 Sycamore Drive;

(2) Whether at the relevant times any part of the land on the Cranwell Site (other than 1 or 3 Sycamore Drive) or any other adjoining land owned by the Defendant at the relevant times was "not occupied for residential purposes" and if so, which part(s);

(3) Whether at the relevant time in respect of 1 Sycamore Drive, the bare legal title to the freehold of 1 Sycamore Drive retained by the Defendant sufficed to constitute "ownership of the freehold… together with adjoining land";

(4) Whether, for the Adjoining Land Test to be satisfied, it is necessary for the freehold of the subject property to be owned together with adjoining land by a single freeholder, and for the relevant adjoining land to be owned in the same capacity for the whole period from 1 April 1997, or whether it is sufficient that, for the whole period, the freehold was owned by a person or successive people who also owned adjoining land together with it;

(5) Whether DIHL's tenancy of the common parts of the Cranwell Site, pursuant to the Common Parts Underlease, amounted to (i) ownership of adjoining land (ii) together with the freehold of 1 and/or 3 Sycamore Drive;

(6) Whether, by reason of the indivisibility of the Crown, DIHL and the Defendant should be treated as the same entity for the purposes of the Adjoining Land Test, and consequently whether for those purposes at the relevant times the Crown:

(i) was and remained the registered freehold proprietor of both 1 & 3 Sycamore Drive;

(ii) was and remained the registered freehold proprietor of the other land demised by the Cranwell Underlease, and of the remainder of the land comprising RAF Cranwell;

(iii) was and remained the tenant of the whole of the Cranwell Site pursuant to the Underlease; and

(iv) was by virtue of the Common Parts Underlease, also the tenant of the common parts of the land demised by the Cranwell Underlease.

(7) Accordingly, whether at the relevant times the Adjoining Land Test was satisfied in respect of 1 and/or 3 Sycamore Drive.

**Validity of Notices / Right to Enfranchise**

10. Does the Defendant have the right to enfranchise the Properties under the 1967 Act? In the premises, whether each of the following notices served by or on behalf of the Defendant pursuant to section 5 of the Leasehold Reform Act 1967 was valid and effective or void and of no effect:

(1) Notice dated 16 December 2021 and relating to 1 Sycamore Drive, Cranwell, Sleaford NG34 8HP;

(2) Notice dated 28 January 2022 and relating to 3 Sycamore Drive, Cranwell, Sleaford NG34 8HP;

(3) Notice dated 8 April 2022 and relating to 16 Belvedere Road, Bristol BS6 7QJ;

(4) Notice dated 8 April 2022 and relating to 17 Belvedere Road, Bristol BS6 7QJ;

(5) Notice dated 11 April 2022 and relating to 18 Belvedere Road, Bristol BS6 7QJ;

(6) Notice dated 11 April 2022 and relating to 19 Belvedere Road, Bristol BS6 7QJ;

(7) Notice dated 11 April 2022 and relating to 20 Belvedere Road, Bristol BS6; and

(8) Notice dated 13 April 2022 and relating to 21 Belvedere Road, Bristol BS6 7QJ.

**B. GROUND 3 JR1/JR2**

11. Whether the Defendant may only enfranchise a leasehold property pursuant to the 1967 Act where certain legal preconditions, said by the Claimants to arise in all cases of compulsory acquisition by the Crown, are satisfied. Specifically:

(1) Is the exercise of statutory leasehold rights by the Defendant, either generally or on the facts of this particular case, to be regarded as a form of compulsory purchase or acquisition? Alternatively, is it to be regarded as equivalent to such (see, e.g. Re Leeds CC, ex p Leeds Industrial Cooperative Society Ltd (1997) 73 P&CR 70)?

(2) If so, is the Defendant's exercise of those rights subject to a requirement to demonstrate that (i) there was a compelling case in the public interest for the exercise of the right, (ii) the right has been exercised for the legislative purpose and not a collateral purpose, and (iii) the right was exercised as a last resort?

(3) In circumstances where the Defendant does not contend that he met those conditions, has the Defendant acted lawfully in seeking to exercise his powers or rights in this case?

## C. GROUND 4 JR1/JR2

12. Whether, if the criteria for enfranchisement in the 1967 Act were satisfied in respect of the Properties, there was no further limit on the purposes for which the Defendant could seek to enfranchise.

13. Whether (as alleged by the Claimants) the Defendant had any of the purposes set out below and, if so, whether any such purpose was the true or dominant purpose for which the Defendant exercised the right to enfranchise, or was sufficiently material to the decisions, or was so intertwined with any lawful purpose as to be inseparable from it (it being common ground that the Claimants are not alleging bad faith). The alleged purposes are:

(1) To override the Settlement Agreement and prior agreements entered into between the Defendant and APL;

(2) To use the 1967 Act not to obtain the freehold, but to defeat APL's intermediate leasehold interest;

(3) To undercompensate the Claimants for the taking of their property, thereby causing them significant economic harm;

(4) To provide the Defendant with leverage over the Claimants;
(5) To prevent the Claimants from proceeding with the proposed sale and making profits from that sale;

(6) To escape a commercial arrangement which had long been, and still was, widely considered to be a source of political embarrassment and reputational damage; and

(7) Out of animosity towards the Claimants and/or a desire to punish the Claimants for their economic and business success.

14. If so, whether the relevant purpose was not a proper purpose for which the Defendant's right could lawfully be exercised, and whether the fact that the Defendant acted with that purpose is sufficient to render the decision improper.

## D. GROUND 5 JR1/JR2

15. Whether, by agreeing to the terms of the 1996 Agreement and subsequent agreements between the parties (as pleaded at JR2 SFG §86), the Defendant made a promise or representation that was clear, unambiguous and devoid of relevant qualification and/or by entering into and performing pursuant to the terms of the 1996 Agreement and subsequent agreements for over 25 years, the Defendant had an unambiguous, well-established and well-recognised past practice, sufficient to give

rise to a future commitment that the Claimants would continue to do business with the Defendant on the basis of the agreed contractual framework.

16. Whether the terms of the Crown Estate's 2016 Guidance that there can be no enfranchisement in respect of Crown land without the consent and permission of an intermediate landlord are a clear, unambiguous and unqualified statement that APL's consent would be required if the Defendant sought to enfranchise properties within the Married Quarters Estate.

17. If the answer to either of the issues at §§15, 16 above is "yes", whether the Claimants relied upon either or both of those representations and/or past practices, and to what extent reliance is relevant to the existence of a substantive legitimate expectation?

18. If there is a finding as to the existence of either or both legitimate expectations, whether in overriding any such expectation, the Defendant has frustrated the Claimants' substantive legitimate expectations so unfairly as to amount to an abuse of power and/or a disproportionate response that cannot be objectively justified, including by reference to an alleged "compelling reason in the public interest", namely the protection of the interests of taxpayers?

**E. GROUND 6 JR1/JR2**

19. If the Defendant has the right to enfranchise the Properties, has the Defendant acted in a manner which constitutes an unlawful interference with the Claimants' right to peaceful enjoyment of their possessions as protected by Article 1 of the First Protocol to the European Convention on Human Rights ("A1P1") ?

20. Specifically, as regards each of (i) APL's leasehold interest in the MQE, (ii) APL's contractual rights to Released Units, and (iii) APL's marketable goodwill and legitimate expectations and the value of the shares held by AHGL:

(1) Do the Claimants have relevant "possessions" for the purposes of A1P1?

(2) If so, has the Defendant committed an actionable interference with any of the Claimants' possessions?

(3) If so, is any such interference subject to the conditions provided for by law?

(4) If so, does any such interference pursue a legitimate aim in the public interest?

(5) If so, is any such interference disproportionate?

**F. THE ALLEGED "SCHEME"**

21. Did the Defendant adopt a wider scheme to override the terms of the contractual agreements between APL and the Defendant, of which the purported notices form a part?

22. If so, was the wider scheme unlawful on any or all of the six grounds, and points identified by the Parties, above (see the references to the SFG and DGR set out above)?

ANNINGTON

**Transcript of the**
**Bond Investor Conference Call**
**Held on 17 May 2023 at 3pm**

Good afternoon and thank you for taking the time for this call.

On 15th May, we made an announcement confirming that the High Court of Justice has handed down its judgment in respect of the combined judicial review and property proceedings that were filed by Annington Property Limited ("Annington") on 11 March 2022 against the Ministry of Defence ("MoD") and heard in the Administrative Court and Chancery Division of the High Court in February 2023.

In the first part of this call we want to take this opportunity to address the judgment and to update you on the further action that Annington will take following delivery of the judgment. We will then go on to answer questions that we have received in advance.

We are unfortunately not able to take any additional questions on this call, however, if there are any clarification questions we are happy to consider these by email.

We will include a transcript of the call on our website.

Before we run through the enfranchisement case, we want to provide a brief update on how Annington is performing operationally.

## Operational Update

In relation to our portfolio:

The MoD is our major customer and we continue to have a good day-to-day working relationship with them. In the twelve months to 31 March 2023, the MoD handed over 298 units, with termination notices having been received for a further 69 units on 4 sites, which are due to be released in the 2024 financial year.

Plans are underway to return these units to the national housing supply through rental or sales. At 31 March 2023, the Group held 39,542 residential property units, of which 37,100 are part of the Married Quarters Estate leased to the Ministry of Defence.


**Annington Funding plc**
Registered in England and Wales No. 10765119
Registered office: 1 James Street, London, W1U 1DR

To summarise the market in which we operate:

It has been a more challenging year for the UK economy and the residential real estate sector in particular. As a result of high inflation, the Bank of England has continued to increase the base rate and current forecasts suggest that it will reach a peak of 5% by the end of this year. The September 22 mini-budget also had an impact on the sector. Capital values for UK housing have continued to decline with Savills reporting the seventh month of consecutive declining house prices as of March 2023.

Conversely, reflecting market pressures, UK rental prices were reported by the ONS to be up 4.9% per annum in March 2023 and The Royal Institution of Chartered Surveyors reported that tenant demand reached a five-month high in the month. With the continued supply/demand imbalance, rental prices are expected to rise further in the short term.

The Married Quarter Estate rent review process:

We are seeing the strong underlying market rental growth being reflected in higher Beacon Unit Rent Reviews. The Beacon Unit Rent Review process for 25 December 2022 is ongoing - with 82 of 131 sites agreed, the current uplift achieved is approximately 28% compared to circa.11% for the 2021 Beacon review. A 28% uplift means the December 2022 passing rent would increase by circa. £14 million with a further £8 million increase due to the site review.

We expect future Beacon Unit reviews to also benefit from the higher rental growth currently being experienced.

Reviewing our sales during the year:

Annington operates at the more affordable end of the UK market and during the latter part of the financial year Annington has seen continuing demand in the sales market. Reservations and completions have been steady and pricing has followed national trends. The Group sold 398 residential units during the year with proceeds of £98m, including bulk sales of 113 units on two sites. Sales to private individuals have remained steady with the Group holding reservations for 82 units worth over £24 million at 31 March.

To finish this section, a quick note on our financial policies and reporting:

The cash balance at 31 March 23 year-end was £186 million. The Group does not plan to make a distribution from this balance, with cash instead being held to repay the remaining circa. £150m of 2024 bonds and to fund the working capital requirements of the Group. Work on our March 2023 year-end financial reporting is ongoing, with this expected to be completed in late June or July. The annual valuation work stream is not yet complete, and further updates will be provided in the annual report.

ANNINGTON

## Enfranchisement: Judicial Review Update

### Summary of the background to the judicial review challenge

On 16 December 2021, Annington received a notice from the MoD stating that it wanted to enfranchise one of Annington's properties, the property in question being at 1 Sycamore Drive in Cranwell. At that time it was unclear what the MoD's plans were beyond this, as no further details were provided. Annington received a second notification for a neighbouring property shortly thereafter.

Annington was well progressed in preparing its formal response to the MoD to these notices when the then Minister for Defence (Procurement) submitted a written statement to Parliament on 27 January 2022 stating that the MoD was exploring enfranchisement of the MQE via two test cases. As reported widely, Annington has received enfranchisement notices from the MoD on a total of 8 units which form part of the Married Quarters Estate.

Annington's position was that the MoD had no legal right to enfranchise any properties and that the MoD's decision making in issuing the enfranchisement notices was in breach of its public law duties. On 11 March 2022, Annington filed a judicial review application against the MoD. In May 2022, the High Court of Justice granted permission for Annington's judicial review challenge to proceed to a full hearing.

In February 2023, a joint hearing was held in the Administrative Court and Chancery Division to determine whether the MoD is entitled to enfranchise the 8 units which were subject to the notices, both as a matter of public law and property law.

### The judgment

On Monday 15 May 2023, the High Court handed down its judgment. The Court held that the MoD had acted lawfully, and found that the MoD enfranchisement notices on the 8 properties are valid and dismissed each of the judicial review and private law claims.

Did the judgment determine how much the MOD would pay for an enfranchised property?

The judgment did not consider how much the MoD would pay. The case related only to the question of whether the MoD had any right at all to enfranchise the properties in question.

If the MoD's enfranchisement claim is ultimately held to be successful, the compensation that the MoD would have to pay is determined by section 9 of the Leasehold Reform Act 1967. This provides that the amount payable should be the "amount which the property, if sold in the open market by a willing seller might be expected to realise" but on the assumptions that the property is not capable of enfranchisement, and is otherwise broadly subject to the same rights and obligations as the lease.


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If the parties cannot agree the price, it would be determined by an independent tribunal. Annington and the MoD would make submissions to the tribunal as to what the appropriate price should be.

The leases which the MoD are seeking to enfranchise are highly unusual, and there is no precedent as to how the tribunal would determine their value. The MoD has previously indicated that it expects the amount it would have to pay to enfranchise the estate to be broadly equal to market value.

If it was ultimately held that the MoD is entitled to enfranchise the relevant units, each enfranchisement by the MoD would constitute a separate legal action, and each individual unit that was to be enfranchised would need to be valued. We expect that this process would also take significant time to conclude.

**What further action will Annington take?**

We are surprised and disappointed by the outcome and are of the view that the Court was wrong to conclude that the steps taken by the MoD are lawful. We will appeal the Court's decision.

In our view, the Court's decision risks setting a dangerous precedent for businesses and international investors in the UK and if upheld would mean that the Government can disregard long-term contracts if it believes it is in its interests to do so. We do not consider that the purpose of the legislation was to allow the MoD to unpick deals where it has seller's remorse, and we consider this to be a matter of public importance.

**What is the expected time scale for the appeal?**

Annington will make a request for permission to appeal from Mr Justice Holgate this week. Should Mr Justice Holgate refuse permission, Annington will apply for permission to the Court of Appeal. We would expect the Court of Appeal to take a decision as to whether an appeal should be allowed to take place within 2-4 months. If permission is granted, the hearing of an appeal would be likely to take place around 12 months after the date on which permission is granted. The Judgment would be expected around 3 months after the hearing. There is also the potential of a further appeal following this to the Supreme Court. In totality these appeals are likely to take several years. Additionally, if the notices are upheld, any decisions on the price payable for units subject to enfranchisement would also be capable of appeal.

**What will now happen in relation the 8 test cases?**

As stated previously, we intend to appeal to the Court of Appeal. In the event that our appeal is granted, it is possible that these test cases would be stayed pending the resolution of the

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appeal. If not, we would expect these cases to proceed to the First Tier Tribunal for valuation, if the parties are not able to agree the amount of the purchase price. We expect that the valuation process will not be concluded until Annington's appeal of the recent High Court decision has been finally determined.

**Do you anticipate that there will be further enfranchisement notices?**

The MoD has indicated through the press that "No decision has been taken on further enfranchisement cases, but [the MoD] will consider the High Court's decision and the potential implications for securing better value for money for the taxpayer"

**Are there any talks taking place to seek a resolution?**

Annington has made compromise offers to the MoD on an open basis, which have not been accepted or rejected by the MoD. The MoD is not presently engaging with these offers.

**What are the implications on the valuation?**

Annington is currently finalising its results for the year ended 31 March 2023. These results will include an updated valuation of the MQE as at 31 March 2023. This valuation will be made by CBRE on a "red book" basis and will establish CBRE's view of the fair market value (i.e. the value achieved between a willing buyer and seller). This is very similar to the valuation standard applied in enfranchisement cases under the Act (albeit among other things that the right to enfranchise is disregarded in enfranchisement valuations), and is the same valuation standard that CBRE has applied in its previous valuations of Annington's portfolio.

Since 31 March 2022 CBRE have included within the valuation an adjustment relating to the uncertainty represented by the enfranchisement proceedings. It is not known at this stage whether CBRE will need to make a further adjustment to the valuation following the decision.

**If units are enfranchised how will the proceeds be applied?**

At the moment there are only 8 test cases. If the MoD is successful in those test cases and if it decides to enfranchise a large number of properties this will take a significant period of time to conclude.

We will determine what should happen with proceeds at that point in time and will communicate this to bond investors if and when we find ourselves in that position.

Our existing bonds contain additional protection for Investors through the dividend block, which prevents Annington from making distributions where the interest coverage ratio falls below 1.3x.

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**Are you committed to Baa2/BBB ratings? What measure could you take to protect the ratings?**

Annington's policy is to target a Baa2/BBB rating. This has been Annington's policy since 2017 and has not changed. Annington continues to actively engage with the agencies and the company will continue to monitor market conditions closely. The business is not planning to make a distribution from the cash held on balance sheet, with this cash being held to repay the 2024 bonds and fund working capital requirements of the group. Annington continues to generate cash through the sale of released properties and other non-core assets.

**What would be the impact on Annington bonds of successful enfranchisement by the MoD on your portfolio? Would it trigger an event of default?**

Currently the MoD has only notified Annington in regards to the 8 test cases and the MoD has indicated that no decision has been taken on further enfranchisement notices. As explained above, given that any proceeds received from the enfranchisement of any units would be at market value, Annington expects to be able to continue to comply with its financing arrangements.

**Do you think the bond markets are currently available to you?**

Annington undertook a successful liability management exercise last summer and the business has sufficient cash to repay the outstanding 2024 bonds. Annington has no other refinancing requirements in the next 24 months. However, Annington continues to monitor the market in order that it can access the market if it is optimal to do so.

**What does this mean to plans for a sale by Terra Firma?**

The conclusion of the Site Review was intended to provide the certainty required in order to progress towards a sale process. Annington understands that Terra Firma was in the early stages of preparing for this before the MoD launched the test cases. However, the actions by the MoD continue to put all exit plans on hold for now.

That now concludes this call and thank you for taking the time to participate. We have attempted to provide as full an update as we are able to at this time and will provide further updates once there are any further material developments.



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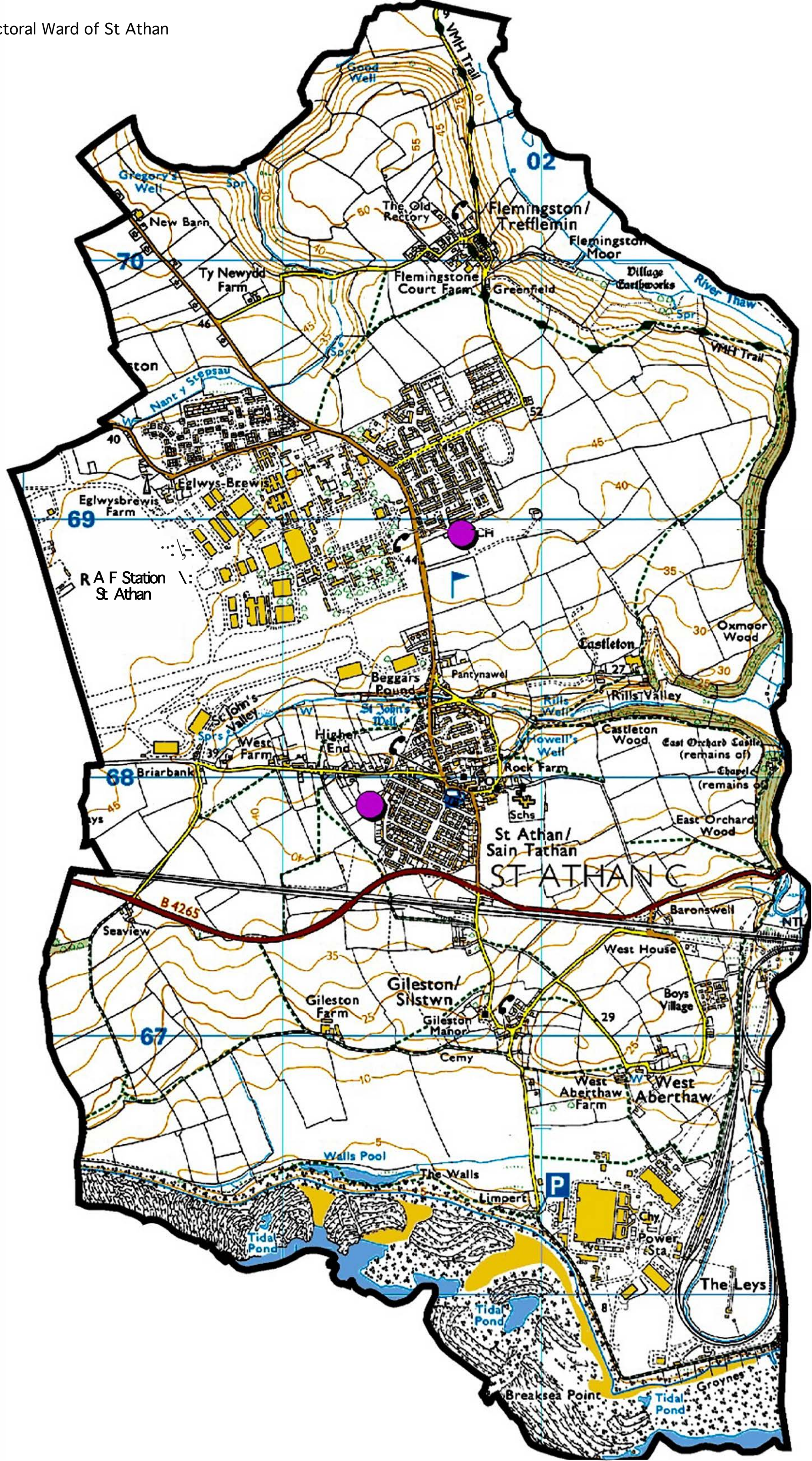
Amended Locality Plan Electoral Ward of St Athan



Andrew
Burgess
Planning

Planning and
Development
Consultant

Jocelyn Ham
Senior Lawyer
Vale of Glamorgan Council
Civic Offices
Holton Road,
Barry,
CF63 4RU

22nd May 2023

Dear Ms Ham

**Commons Act 2006**
**Application for Registration of Land as a Village Green**
**Land at Ringwood Crescent, St Athan, CF62 4LA**
**Application No 01/2023 VG:53**

I am writing in respect of the objection by Annington Homes to an application to register land at Ringwood Crescent, St Athan as a Village Green as defined in the Commons Act 2006.

**Element 1: "A significant number of the inhabitants of any locality, or of any neighbourhood within a locality"**

It is considered that the application land has been used by a significant number of inhabitants and that the 160 questionnaires confirming the use of the land is sufficient for the application to be valid.


T: 07767 483290 E: andrew@andrewburgessplanning.co.uk W: andrewburgessplanning.co.uk
**Andrew Burgess Planning Limited.** Registered Office: Sullivan Court, Wessex Way, Colden Common, Winchester, Hampshire, SO21 1WP.
Registered in England, Company No: 14417683. VAT Registration. No: To follow.

In respect of the comments on the locality" and "neighbourhood within a locality" the applicants wish to amend the application and request that the "locality" is defined as the Electoral Ward of St Athan as shown on the attached plan "Amended Locality Plan - Electoral Ward of St Athan."

Element 2: 'As of right"

Many people who submitted questionnaires have used the land "as of right" and as a result the application is valid.

No signage has been erected by Annington Homes.

Element 3: "Lawful sports and pastimes on th eland for a period of 20 years"

The applicants consider that the evidence in the 160 questionnaires does demonstrate that the use of the land has been of a character, degree and frequency as to amount to user of right over a period of 20 years up to the date of the application.

SUPPORTING EVIDENCE

The applicants consider that the Supporting Evidence clearly demonstrates that the use of the land meets the tests for the land to be registered as a village green.

The response form Annington Homes does not stand up to scrutiny and should be rejected because,

1) A locality can be identified and this has been identified as the Electoral Ward of St Athan and the use of the land has been by a significant number of inhabitants.

2). The use of the Application Land has been "as of right' by many of the questionnaire respondents.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3) At least 20 years use has been adequately evidenced.

For these reasons the RA must register the Application Land as a TVG and not accept the objection from Annington Homes.

## High Court Judgment 15th May 2023

It also questionable whether Annington Homes any longer have a legal interest in this land. On 15th May 2023 a High Court judgment was handed down that concluded that the Ministry of Defence (MoD) has the right to buy back the remaining 38,000 homes, which were bought in 1996 by Annington, a group of companies ultimately controlled by Terrafirma and Guy Hands, for £1.7bn.

https://www.terrafirma.com

https://www.theguardian.com/business/2023/may/15/uk-government-military-homes-guy-hands-annington-property

I have attached a copy of the judgment and the reasoning of The Hon. Mr. Justice Holgate. I have also attached the Annington Homes 'Transcript of the Bond Investor Conference Call held on 17 May 2023 at 3pm.

I would be grateful if you acknowledge receipt of this response.

If I can provide you with any further clarification or information please do not hesitate to contact me.

I look forward to hearing from you.

Yours sincerely

**Andrew Burgess BA Hons MRTPI FRSA**
**Managing Director**


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Registered in England, Company No: 14417683. VAT Registration. No: To follow.

cc Sonny Bamrah on behalf of Residents of Ringwood Crescent.

Attachments

1) Amended Locality Plan St Athan Electoral Ward.

2) Judgment - THE KING on the application of
(1) ANNINGTON PROPERTY LIMITED
(2) ANNINGTON LIMITED
(3) ANNINGTON HOLDINGS (GUERNSEY) LIMITED
Claimants
and
THE SECRETARY OF STATE FOR DEFENCE
Defendant
and
(1) UK GOVERNMENT INVESTMENTS LIMITED
(2) DEFENCE INFRASTRUCTURE HOLDINGS LIMITED
Interested Parties
and
Neutral Citation Number: EWHC 1155 (Ch)
Claim No: PT-2022-000206
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (CH D)
ANNINGTON PROPERTY LIMITED
Claimant (Defendant to Counterclaim)
- and -
THE SECRETARY OF STATE FOR DEFENCE
Defendant (Counterclaimant)

3) Transcript of the Bond Investor Conference Call Held on 17 May 2023 at 3pm


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**RESPONSE TO ANNINGTON HOMES - Village Green Application No.01/2023 VG:53 Email 8.**

**From:** Andrew Burgess
**Sent:** Friday, July 7, 2023 3:31 PM
**To:** Ham, Jocelyn
**Cc:** Lloyd Allen  Sonny Bamrah
**Subject:** RESPONSE TO ANNINGTON HOMES - Village Green Application No.01/2023 VG:53 - [ES-CLOUD_UK.FID10902152]

Dear Jocelyn

**Response to letter dated 16th June 2023 from Eversheds Sutherland (International) LLP**
**Land at Ringwood Crescent, St Athan ("Application Land")**
**Application for a new Village Green. Application No 01/2023 VG:53**

I am writing in response to your email of 21st June attaching the response on behalf of Annington Homes.

**1**. The Applicants maintain their position that they are entitled to define the "locality" to the area which the application relates to. Sufficient evidence has been presented to demonstrate use of the land by a significant number of inhabitants from this locality.

**2.** The applicants maintain their position that the use of the land is "as of right" for the reasons previously explained.

**3.** The questionnaires were submitted as part of the original application and the summary provided. Significant weight can be given to the questionnaires and supporting information. It is not clear why these were not provided to Annington Homes.

**Conclusion**
It is clear from the evidence submitted when read as a whole that the use of the land has been "as of right" and that and a robust and comprehensive application submission has been made by the applicants. The conditions in section 15 (2) of the 2006 Act have been satisfied and the matter should be considered at a Public Inquiry, which is the democratic right of the applicants.

Please can you acknowledge receipt of this email and I look forward to hearing from you once the matter progresses further.

Yours sincerely

Andrew Burgess

On 30 Jun 2023, at 09:35, Andrew Burgess < > wrote:

Dear Jocelyn

Further to our telephone conversation earlier this week. The local residents do wish to respond to the comments from the landowner.

I will send their comments to you on Monday.

Kind regards

Andrew

On 21 Jun 2023, at 14:53, Ham, Jocelyn < > wrote:

Dear Andrew

Please see attached, the reply to your response.

Regards

Jocelyn

Jocelyn Ham
Senior Lawyer / Uwch Gyfreithiwr
Legal Services / Gwasanaethau Cyfreithiol
Vale of Glamorgan Council / Cyngor Bro Morgannwg

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

**From:** Andrew Burgess <
**Sent:** 22 May 2023 16:12
**To:** Ham, Jocelyn <
**Cc:** Lloyd Allen < Sonny Bamrah
**Subject:** RESPONSE TO ANNINGTON HOMES - Village Green Application No.01/2023 VG:53 - [ES-CLOUD_UK.FID10902152]
**Importance:** High

Dear Jocelyn

Please see attached documents in response to the Annington Homes objection to the Village Green application at St Athan.

1) Response letter dated 22nd May 2023.

2) Amended Locality Plan - St Athan Electoral Ward.

3) Judgment - THE KING on the application of

(1) ANNINGTON PROPERTY LIMITED

(2) ANNINGTON LIMITED

(3) ANNINGTON HOLDINGS (GUERNSEY) LIMITED

Claimants

and

THE SECRETARY OF STATE FOR DEFENCE

Defendant

and

(1) UK GOVERNMENT INVESTMENTS LIMITED

(2) DEFENCE INFRASTRUCTURE HOLDINGS LIMITED

Interested Parties

and

Neutral Citation Number: EWHC 1155 (Ch)

Claim No: PT-2022-000206

IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST (CH D)

ANNINGTON PROPERTY LIMITED

Claimant (Defendant to Counterclaim)

- and -

THE SECRETARY OF STATE FOR DEFENCE

Defendant (Counterclaimant)

4) Transcript of the Bond Investor Conference Call Held on 17 May 2023 at 3pm

I look forward to hearing from you.

Kind regards

Andrew

On 24 Apr 2023, at 14:31, Ham, Jocelyn <> wrote:

Dear Andrew

Further to my earlier emails, please now find attached the Witness Statement signed by Stephen Jefferson (with supporting exhibits).

I should be grateful if you would acknowledge receipt of all three emails.

Kind regards

Jocelyn

Jocelyn Ham
Senior Lawyer / Uwch Gyfreithiwr
Legal Services / Gwasanaethau Cyfreithiol
Vale of Glamorgan Council / Cyngor Bro Morgannwg

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Follow us on Twitter / Dilynwch ni ar Twitter

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

<Signed Stephen Jefferson Witness Statement.pdf>

Andrew Burgess
Managing Director
Andrew Burgess Planning Limited

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<~WRD3983.jpg>Proud Sponsors of Winchester Rugby Club
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**Date:** 16 June 2023
**Our Ref:** JEFFERST\031406-022057
**Direct:** +44 29 2047 7219
**Email:** stephenjefferson@eversheds-sutherland.com

**SENT BY EMAIL TO: jham@valeofglamorgan.gov.uk**

Dear Ms Ham

**Land at Ringwood Crescent, St Athan ("Application Land")**
**Application for a new Village Green. Application No 01/2023 VG:53**
**Commons Act 2006 ("2006 Act")**

We write further to your email dated 25 May 2023 attaching the response made on behalf of Ringwood Green Residents (the "Applicant") to Annington's original objection submission submitted on 20 April 2023 ("Annington's Original Submission").

Thank you for inviting us to respond to the Applicant's letter dated 22 May 2023. We have summarised the key points raised in the Applicant's letter and have responded to each point as below.

**Element 1: "A significant number of the inhabitants of any locality, or of any neighbourhood within a locality"**

The Applicant has stated as follows in response to Annington's Original Submission:

*Element 1: "A significant number of the inhabitants of any locality, or of any neighbourhood within a locality"*

*It is considered that the application land has been used by a significant number of inhabitants and that the 160 questionnaires confirming the use of the land is sufficient for the application to be valid.*

*In respect of the comments on the locality" and "neighbourhood within a locality" the applicants wish to amend the application and request that the "locality" is defined as the Electoral Ward of St Athan as shown on the attached plan "Amended Locality Plan - Electoral Ward of St Athan."*

Even if the Applicant is allowed to respectively define the "locality" to which the Application relates, which is not accepted, it is submitted that insufficient evidence has been put forward to demonstrate use by a significant number of inhabitants within this locality in any event.

As noted in Annington's Original Objection, data provided by the Office for National Statistics from 2021 estimates the population of St Athan to be 4,775. The spreadsheet accompanying the Application appears to summarise 160 responses. From a review of the responses, it is clear that some have been completed by more than one person at the same address, and a number have been submitted from people giving their address as outside of the claimed locality. Additionally, in several instances, the persons listed in the responses do not appear to be the owners of the properties listed.



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However, even if all of the responses had been submitted by persons living in the ward of St Athan and these are taken at face value, this would still only comprise 3% of the population. This is therefore insufficient to constitute a "significant" number of the inhabitants of St Athan in any case, as such use cannot reasonably be said to amount to a general use by the local community.

**Element 2: "As of right"**

The Applicant has stated as follows in response to Annington's Original Submission:

*Many people who submitted questionnaires have used the land "as of right" and as a result the application is valid.*

*No signage has been erected by Annington Homes.*

This is key to Annington's submission. The use cannot be said to have been as of right because permission was granted by Annington as landowner and so, quite frankly, the questionnaire in which the various uses of the Application Land are cited by respondents is irrelevant as such uses were with the landowner's permission and not therefore "as of right".

We do not understand the Applicant's point here. Photographic evidence has been provided as part of Annington's Original Submission demonstrating that the signs which granted permission by the landowner for the activities are in situ and have been throughout the claimed period.  Annington is the landowner.

This is fatal to the Application and is the primary reason is must be dismissed.

**Element 3: "Lawful sports and pastimes on the land for a period of 20 years"**

The Applicant has stated as follows:

*The applicants consider that the evidence in the 160 questionnaires does demonstrate that the use of the land has been of a character, degree and frequency as to amount to user of right over a period of 20 years up to the date of the application.*

As noted in Annington's Original Submission, the burden lies on the Applicant to demonstrate that, on the balance of probability, the criteria within section 15(2) of the 2006 Act has been satisfied.

The questionnaires were not provided as part of the Application, nor were any statements of truth given by each of the respondents. What has been provided is an unverified Excel spreadsheet purporting to summarise questionnaire responses. Very little weight can therefore be given to it and this is insufficient to satisfy the requisite evidential hurdle.

Additionally, upon review, a number of the respondents do not appear to be owners of the addresses listed and some of the addresses fall outside of the claimed locality. It is also significant that only a handful of respondents appear to have owned the properties within the locality for 20 years or more.

**High Court Judgment 15th May 2023**

The Applicant has stated as follows:

*It also questionable whether Annington Homes any longer have a legal interest in this land.*

This is a complete misrepresentation of the High Court judgment which was a case relating to the enfranchisement of eight properties, which had formed part of a wider sale and leaseback arrangement in which the Ministry of Defence had granted headleases to Annington, retaining the freehold reversion, and taking 200-year underleases of a number of properties.

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The eight properties to which the Judgment related were in Sleaford, Cranwell and Bristol and unconnected to the Application Land. More critically still, the Ministry of Defence does not have an interest in the Application Land; it is not subject to the wider sale and leaseback arrangement considered in the Judgment.

The Judgment is therefore irrelevant to the Application Land and the Application. The Applicant's suggestion that the consequences of the Judgment are such that this brings into question whether Annington now own the Application Land is not only wholly inaccurate but is an irresponsible representation to make as part of the Application.

**Final Comment**

It is clear from the evidence submitted as part of Annington's Original Submission, permission was granted for the use of the Application Land as submitted in the Application. The use cannot therefore have been as of right.

Accordingly, it is submitted that it would be unnecessary, and a waste of the Council's resources and time, to proceed to a public inquiry to determine the Application when it is self-evident that the conditions in section 15(2) of the 2006 Act were not and cannot have been satisfied. The Application should be dismissed on the papers.

We should be grateful if you would kindly acknowledge receipt.

Yours sincerely

Eversheds Sutherland International LLP

**Eversheds Sutherland (International) LLP**