



2nd September 2021

Meeting

Members of the St Nicholas with Bonvilston Community Council are summoned to attend a meeting of the council, to be held remotely, on **Monday 6th September, 2021 at 7:30 pm**. Members of the public are welcome, and encouraged to attend, and will have opportunity to address the council.

The meeting will be held remotely in accordance with the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020, and can be accessed via the internet or by telephone. The meeting will be recorded to ensure the accuracy of the Minutes.

Agenda

1. Chair's welcome and introductions
2. To receive apologies for absence
3. To receive declarations of interest
4. Co-option of Member
5. Police Matters
6. Vale of Glamorgan Council Matters
 - a. Garden material collections
 - b. To consider Traffic Regulation Order at Cottrell Gardens Proposed Prohibition of Waiting at Any Time
 - c. St Nicholas CIW School
7. To approve the Minutes of the
 - a. Meeting of June 7
 - b. Meeting of July 6
 - c. Meeting of July 19
 - d. EGM of August 9
 - e. EGM of August 31
8. Matters arising from the Minutes
9. To receive updates on completed & actioned projects
 - a. Community Engagement
 - b. Internal Audit
 - c. Employment of a Clerk to the Council
 - d. Solar Farms
 - e. Village gateway sign – St Nicholas
 - f. Accessible gate to footpath at Trehill

Agenda (Continued)

10. Correspondence
 - a. Weeds growing through footway (Bonvilston)
 - b. Noise and parking related to the Red Lion
 - c. Parc Prison - Independent Monitoring Board
 - d. St Nicholas Community Path
11. Matters not on the agenda – Discussion Forum
12. Finances
 - a. VAT Return
 - b. Payment for accounting services
13. To receive updates from other meetings attended
 - a. One Voice Wales Innovative Practice Conference
14. To receive updates on planning matters
 - a. Planning decisions
15. To consider Planning Applications & Matters
 - a. Bonvilston Village Green at Maes y Ffynon
 - b. Old Police Station, Cowbridge Road, St. Nicholas
Change of use B1 Offices to D1 Non-Residential (Healthcare)
 - c. 10, Dyffryn Close, St. Nicholas
Retrospective application for the removal of chimney stack
 - d. 12, Dyffryn Close, St. Nicholas
Retrospective application for the removal of chimney stack
 - e. Doghill Farm, Dyffryn
Variation and removals of conditions to erection of new dwelling
16. To Consider
 - a. Remembrance Sunday
 - b. Halloween and Christmas decorations
 - c. Retaining walls along the A48
 - d. Highway obstruction under Section 130(6) of the Highways Act (1980)
 - e. Tools for clearance of Public Rights Of Way
17. Election of Vice Chair
18. Announcements
19. Next meeting

Part ii

The public and press may be excluded from the meeting during consideration of the following item(s) in accordance with section 100A(4) of the Local Government Act, 1972.

20. Applications for financial assistance

Cllr Ian Perry
Chair



Correspondence

Due to the volume of Correspondence to be considered at this meeting, this is published in a separate document that can also be found on the meetings page of our website.

Matters not on the agenda – Discussion Forum

This is an opportunity for residents to raise matters of concern to them. This replaces the section of the agenda formerly referred to as Public Participation, due to the changes coming in from the Local Government and Elections Act (Wales), 2021. Members of the public will be offered the opportunity to speak, briefly, on all agenda items.

Finances

A claim for a VAT refund of £898.68 has been submitted

An invoice has been received from DCK Accounting Solutions for £850

Updates from other meetings attended

Planning Decisions

- a. 3, Broadway Green, St. Nicholas
Work to Tree(s) in a Conservation Area : Works to dangerous tree (Q210429.7). Pollard a semi mature Sycamore tree in rear garden – Approved
- b. Wild Rose Cottage, Dyffryn Lane, St. Nicholas
Work to Trees covered by TPO No.04 of 1952: Removal of one mature Beech tree (T1); Reduction of one mature Beech tree (T2) and removal of one mature Horse Chestnut tree (T3) – Approved
- c. 58, Cae Newydd, St Nicholas
Orangery to rear elevation – Approved
- d. Carreg Las, Redway Road, Bonvilston
Variation of Condition 2 (Approved Plans) of Planning Permission 2020/00381/FUL: Proposed new dwelling – Refused



Planning Applications

Bonvilston Village Green at Maes y Ffynon

Whilst the Vale Council lost a vote for approval at the Vale Council Planning Committee meeting, the matter was deferred due to a reason for refusal not being forthcoming.

New detail on the planning application is now available.

It's claimed that the "Wenvoe Ward" has a surplus of Public Open Space (POS). The calculations are below.

POS Requirement

Community Ward	Count of Dwellings	POS Standard (sq.m)	POS Requirement (Ha)
Bonvilston	293	55.68	1.63
Llancarfan	227	55.68	1.26
Llantrithyd	83	55.68	0.46
St Brides-super-ely	53	55.68	0.30
St George-super-ely	121	55.68	0.67
St Lythans	343	55.68	1.91
St Nicholas	291	55.68	1.62
Wenvoe	958	55.68	5.33
Grand Total	2369	55.68	13.19



POS Provision (Ha)

Existing Open Space Type	Community Wards							
	Bonvil ston	Llancar fan	Llantri thyd	St Brides -super-ely	St George -super-ely	St Lythans	St Nicholas	Wenvoe
Allotments	0.00	0.00	0.00	0.00	0.00	0.62	0.00	0.00
Amenity Greenspace	0.37	0.00	0.00	0.00	0.04	1.24	0.00	1.45
Cemeteries and Churchyards	0.11	0.55	0.22	0.19	4.74	0.24	0.29	0.36
Natural and Semi-Natural Green Spaces	0.00	0.00	0.00	0.00	11.42	0.00	0.00	3.82
Outdoor Sports Facilities	0.00	0.13	0.00	0.00	0.00	0.00	1.01	5.31
Golf Course	22.60	0.00	0.00	0.00	0.00	0.00	89.21	61.84
Provision for Children and Young People	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.10
Public Parks and Gardens	0.00	0.00	0.00	0.00	0.00	14.17	14.64	0.00
Sub Total	23.18	0.68	0.22	0.19	16.20	16.27	105.15	72.88
Open Space Delivered by Development								
Amenity Greenspace	0.00	0.00	0.00	0.00	0.00	0.46	0.02	0.51
Natural and Semi-Natural Green Spaces	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.58
Provision for Children and Young People	0.00	0.00	0.00	0.00	0.00	0.00	0.11	0.08
Sub Total	0.00	0.00	0.00	0.00	0.00	0.46	0.13	2.18
Open Space pending Construction								
Amenity Greenspace	0.57	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Outdoor Sports Facilities	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Provision for Children and Young People	0.07	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Sub Total	0.84	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Grand Total	24.02	0.68	0.22	0.19	16.20	16.73	105.28	75.06
Excluding Golf Courses Total	1.42	0.68	0.22	0.19	16.20	16.73	16.07	13.22



Bonvilston



- Legend:**
- Community Wards
 - Existing Open Space Provision
 - Amenity Greenspace
 - Cemeteries and Churchyards
 - Outdoor Sports Facilities
 - Provision for Children and Young People



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Llancarfan

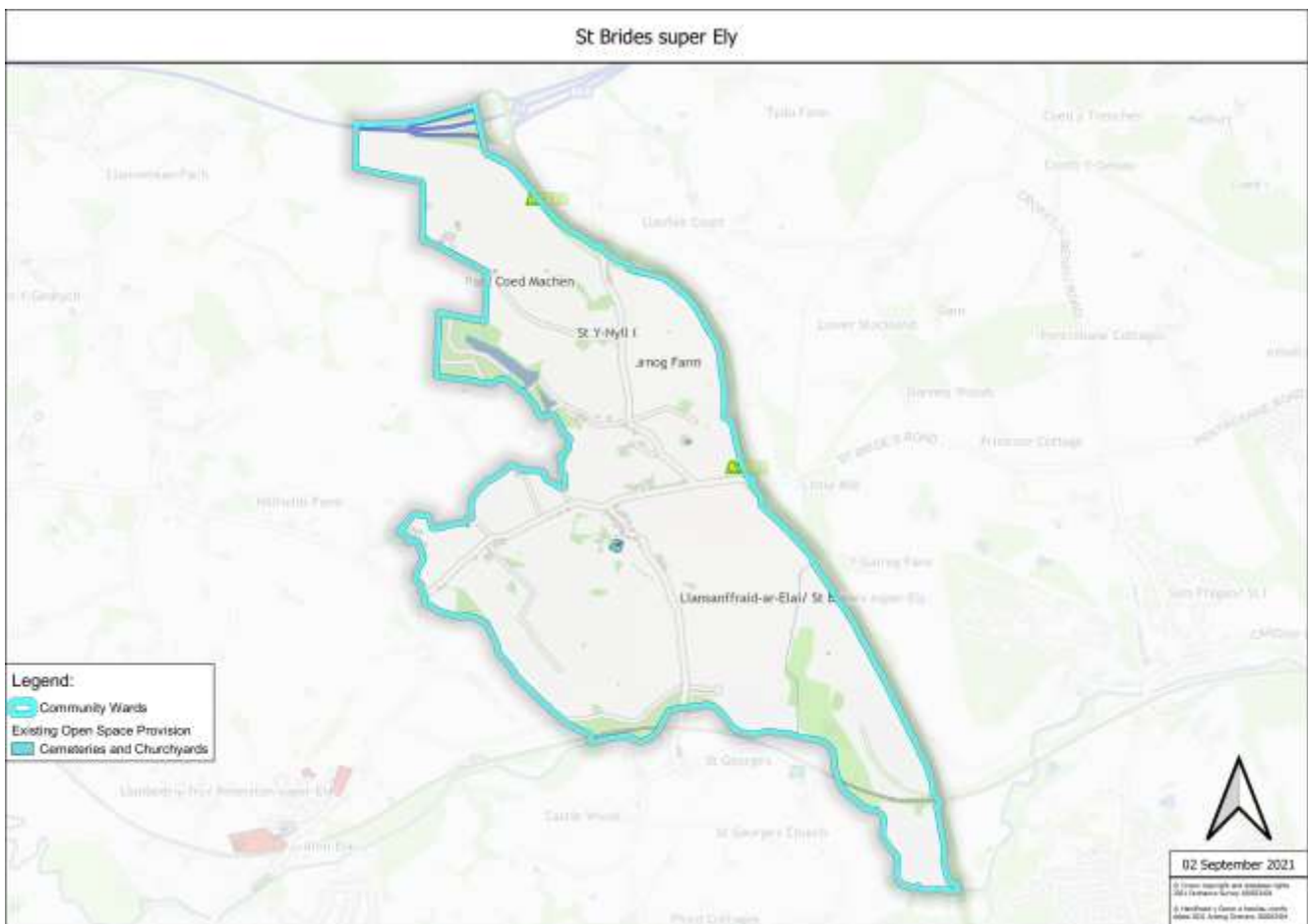


- Legend:**
- Community Wards
 - Existing Open Space Provision
 - Cemeteries and Churchyards
 - Outdoor Sports Facilities



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St Georges super Ely



- Legend:**
- Community Wards
 - Existing Open Space Provision**
 - Amenity Greenspace
 - Cemeteries and Churchyards
 - Natural and Semi-Natural Greenspaces

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St Lythans

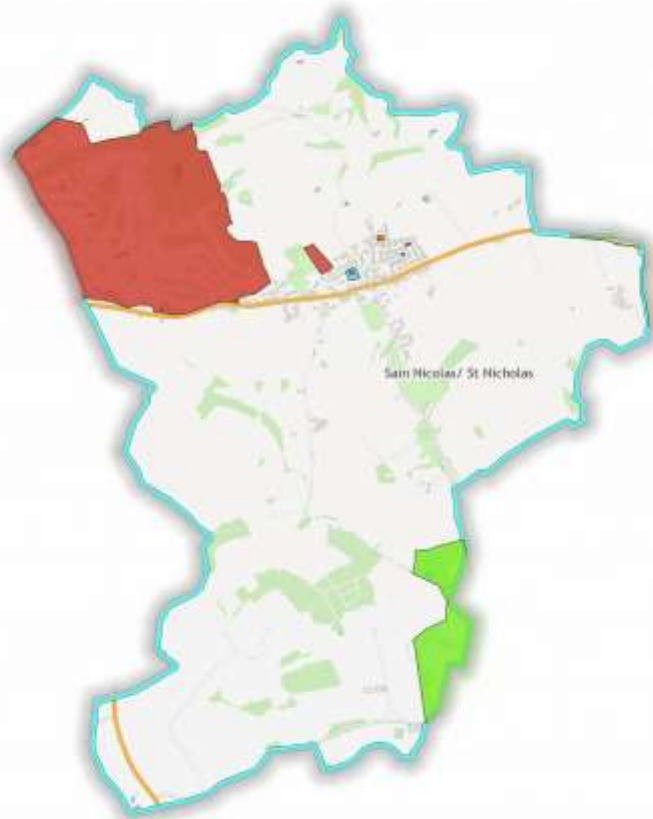


- Legend:**
- Community Wards
 - Existing Open Space Provision**
 - Allotments
 - Amenity Greenspace
 - Cemeteries and Churchyards
 - Natural and Semi-Natural Greenspaces
 - Outdoor Sports Facilities
 - Provision for Children and Young People
 - Public Parks and Gardens
 - Open Space Delivered via Development
 - Amenity Greenspace

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St Nicholas

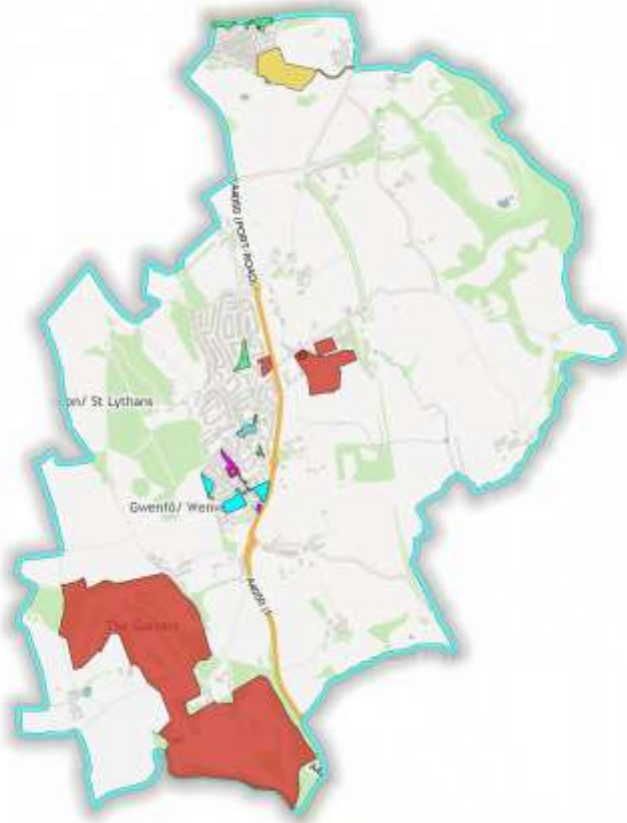


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Wenvoe



- Legend:**
- Community Wards
 - Existing Open Space Provision
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 - Provision for Children and Young People
 - Open Space Delivered via Development
 - Amenity Greenspace
 - Provision for Children and Young People
 - Natural and Semi-Natural Greenspaces



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Public Sector Equality Duty

There are concerns that the Vale Council has failed to carry out its statutory Public Sector Equality Duty (PSED) in relation to the design of the proposal and accessibility of Public Open Space (POS).

Whilst summing up a planning case – Peter Buckley (on behalf of Foxhill Residents' Association) v Bath & North East Somerset Council (and Curo Places Limited (interested party)) (2018) – the Honourable Mr Justice Lewis had no difficulty in concluding that the PSED applied to the grant of an outline planning permission. He also took the view that the discharge of reserved matters, such as layout and access, may also raise equality issues.

The Honourable Mr Justice Lewis said that in planning documents “it is good practice to make reference to the duty, and evidentially useful in demonstrating discharge of the duty.” There appears to be no mention of the Equality Duty in the application documents.

Concerns raised about accessibility for people protected by the Equality Act resulted in an additional dropped kerb being added to the drawings in July this year. However, the approach to most of the dwellings is over a shared surface that is particularly problematic for guide dogs and people with visual impairment.

Age is a protected characteristic. Residents of Bonvilston have been told that there is sufficient alternative public open space within the Wenvoe Ward, at the village of Wenvoe. How are people aged under 17 supposed to reach the alternative public open space, a mere three to five miles away? Are the graveyards, private sports fields and Dyffryn Gardens suitable alternatives for casual play? Are the charges at some of these amenities a barrier to some protected groups?

Is there an equality impact assessment for greatly reducing the size and amenity of the Village Green? How will older people, particularly those who have no access to a private vehicle, travel to other settlements to enjoy public open space? How accessible are the alternatives for people with dementia?

Reports for planning committees will often have a standard equalities section but the applicant needs to make sure that the material to support the equalities section is readily accessible and considered in the terms in which the PSED is framed.

Sarah Sackman, a barrister at Francis Taylor Building, said Mrs Justice Lang's ruling has "several implications" for planning authorities. "The PSED applies to all planning decisions, and particularly in those cases involving the loss of homes or public amenities." "A local planning authority needs to ask itself whether it has discharged the PSED and whether it can show evidence that it has done so. The duty requires a thorough analysis of equalities impacts."



Simon Ricketts, a partner at law firm Town Legal, said the ruling shows that developers and decision-makers should "give specific, careful consideration as to the potential implications of any project for those with protected characteristics - implications which may not be immediately obvious". He said such considerations should be "expressly taken into account in decision-making".

As to the proper approach to be taken by the court in considering compliance with the duty, this was considered by Lord Justice Elias in *R (Hurley) v Secretary of State for Business Innovation and Skills* [2012] EWHC 201 (Admin) at para 78:

The concept of "due regard" requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors.

By way of further judicial consideration, the case of *Bracking v Secretary of State* [2013] EWCA Civ 1345 [7] now sets out the relevant principles, including:

- that the duty must be fulfilled before and at the time when a particular policy is being considered;
- that it must be "exercised in substance, with rigour, and with an open mind" (it is not a question of "ticking boxes");
- that the duty is non-delegable; that it is a continuing one; and
- that it involves a duty of inquiry.

The *Bracking* principles were approved by Lord Neuberger in *Hotak v Southwark LBC* [2015] UKSC 30, who added:

"75. As was made clear in a passage quoted in *Bracking*, the duty "must be exercised in substance, with rigour, and with an open mind"



Conclusions of Local Government Lawyer

From this review we would suggest that the following key lessons can be derived. First, is the inherent danger when an authority becomes “fixated” on a specific initiative to the exclusion of the general PSED obligation or its tokenist consideration. In Buckley it was the problem of displacement of residents. In UTAG it was the fixation on COVID-19 protection measures in a way which implied that nothing else needed to be considered. The suggestion seems to be that, as the Pandemic is such an existential threat, nothing else could really matter in that analysis. However, given that it was Guidance that was being published by the Mayor last May could anything more have been sensibly done at that stage, or, should it be left to fuller assessment at the stage of specific schemes?

So, secondly, is the importance of ensuring that Equality Impact Assessments (EqIAs) are an integral part of scheme development, no matter how pressing implementation timescales may be. Moreover, EqIAs should be genuinely used to inform the design process based on evidence-based consideration of impacts. This requires that all design decisions taken (and the reasons and evidence behind them) are documented contemporaneously, making it clear how the needs of all modes and users have been considered and how relevant policies have been taken into account.

Thirdly, is how the determining authority approaches the scheme itself and its PSED implications. In both the Lakenheath and Shopshire cases the judges were able to make robust, common sense findings because the PSED had been practically and demonstrably embraced, in contrast with Williams and UTAG. It is not a duty which directs a particular outcome. Rather, it is a duty which needs to be seen to have been performed.

Finally, legal advisers should be swift to ensure that officer reports sufficiently address how the PSED has been discharged in the particular circumstances. It is not a “tick-box” exercise or discharged simply because express reference has been made to the duty. Rather, there must be material showing that the duty of inquiry has been fulfilled.

It is to be hoped that if these lessons are learned and applied then not only will the PSED have been discharged but also the quality of the decision-making process can be placed beyond justifiable scrutiny. Otherwise, the outcome can be somewhat surprising, even for London’s taxi drivers.



2021/00961/FUL – Old Police Station, Cowbridge Road, St. Nicholas

This application has been put out for re-consultation with additional information.

Change of use B1 Offices to D1 Non-Residential (Healthcare). The occupant would be [GILLIAN McCABE PHYSIOTHERAPY](#), providing services for women, including Pilates classes and one-to-one physiotherapy for pelvic health, maternity, etc.

Issue for consideration: Parking

Additional information – Supplementary Information Car Parking & Transport Assessment & Strategy – is below.



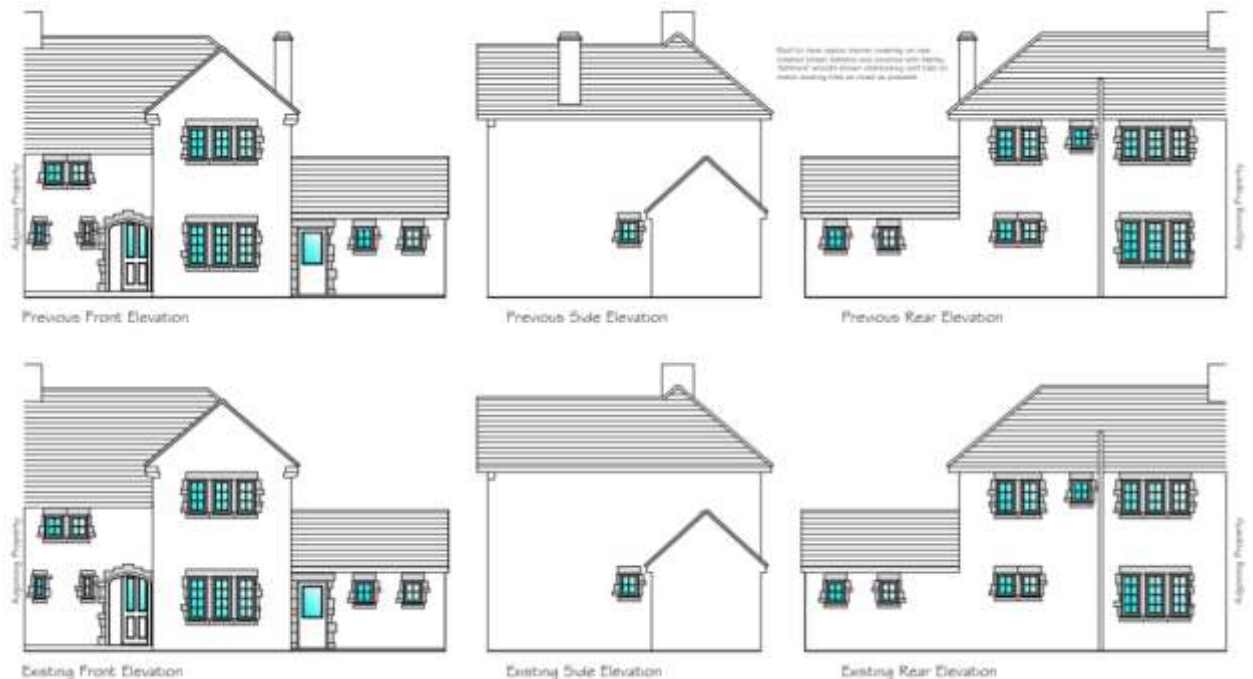
2021/01046/FUL – 10, Dyffryn Close, St. Nicholas

Retrospective application for the removal of chimney stack from **County Treasure** within the **Conservation Area**



2021/01046/FUL – 12, Dyffryn Close, St. Nicholas

Retrospective application for the removal of chimney stack from County Treasure within the Conservation Area.



Issues:

- Locally Listed County Treasures
- Conservation Area
- Lack of Heritage Impact Assessment accompanying the retrospective applications

Inclusion on the Locally Listed County Treasures List does not give the same protection to the building or monument as a listed building. But it does mean it is recognised as important and deserving of work to protect and preserve it. "They are of considerable interest to the people of the area and an important part of its history."

Duffryn Close appears in the Country Treasures document for St Nicholas and Bonvilston as follows:



A post-war cul-de-sac. Comprising 16 houses. Originally built by Cardiff Rural District Council, in order to provide additional rented accommodation. The houses are white painted with traditional small tiled roofs. The windows are small paned having casement openings on main window blocks. All window and door openings conform to the original design although some have been replaced with modern alternatives. Designed by architects Bruton and Mace, Number 14 was a "show house" and the only one to have been equipped with parquet flooring. Many of the properties are now in private ownership. Have been recognised as good examples of post-war secular architecture. Button Ride was constructed as an expansion of Duffryn Close.

The Vale Council has carried out enforcement work against members of the public, which includes the removal of a garden building due to its proximity to a listed building. The Planning Department needs to be consistent, and treat no applicant preferentially.



There are case studies of responses to chimney stack removal in Conservation Areas. These include:

Walsall:

A planning inspector in 2019 dismissed an appeal by an applicant for retrospective permission to demolish a chimney stack within a Conservation Area. In this case the main issue was the effect on the character and appearance of the surrounding area, with particular regard to the Church Hill Conservation Area.

“The removal of the chimney stack has resulted in a negative effect on the significance of a designated heritage asset, when considered against the CA as a whole. Even if there was a short-term public benefit in terms of removing the chimney stack as suggested by the appellant, I do not consider that there are any longer-term public benefits that would outweigh the harm that I have identified and to which I attach considerable weight.”

The [Planning Inspectors' report](#) is available online.

Stockport:

[Appeal](#) against the refusal of planning permission for the lowering of a chimney stack – refused, 28 November 2019

Argyll and Bute:

[Another example of chimney removal being refused](#) due to its protection by a Conservation Area and going to appeal

The planning application, reference number 12/00342/PP, for the demolition of the east chimney stack at Victoria Bank, Pier Road, Tarbert (“the appeal site”) was refused under delegated powers on the 2nd July 2012. The planning application has been appealed and is subject of referral to a Local Review Body

The appeal site is an unlisted, detached villa property that has previously been subdivided into an upper and lower flat, and which is located within the Tarbert Conservation Area. The refused application specifically sought planning permission in relation to the demolition of the eastern chimney stack on the property to below roof level.

The proposal is for the demolition of a gable chimney which is a common architectural feature within an identified grouping of buildings in the Tarbert Conservation Area. The removal of the chimney stack will not only effect the symmetry of the building but will render it incongruous within the context of adjoining properties and as such will have a detrimental effect upon the overall character and appearance of the Conservation Area. Furthermore, the unjustified and unnecessary removal of an architectural feature which



contributes to the character and appearance of the historic environment is contrary to the relevant provisions of the Scottish Planning Policy, Historic Scotland's guidance and the provisions of Argyll and Bute Council's Development Plan policies STRAT DC 9 and LP ENV 14 which all seek to resist development that will not preserve or enhance the character or appearance of a Conservation Area.

Taking account of the above, it is respectfully requested that the appeal be dismissed.

Historic Scotland:

"Chimneyheads and chimney stacks, whether they occur at the gable, at the ridge of the roof or at the wallhead, contribute greatly to the profile of the building and to the interest of the roofscape, and in most instances are an integral part of the architectural design. They should therefore always be retained, or restored to their original width and height if they have been removed or shortened, regardless of whether the flues are in use or not. This also applies to chimneyheads and chimneystacks on elevations not normally seen by the public, such as those facing enclosed courtyards, back greens and closes, unless these areas have lost their original character completely. If they are structurally unsound, original ashlar chimney heads and chimney stacks should be taken down and rebuilt in the same material and to the same dimensions."

"Historic chimneys can make an important contribution to the character of a roof and should be retained. Where repair is required, this should respect the original form and materials. If the structural stability of the chimney is unsound, like for like reconstruction should be encouraged."

In Wales planning is very similar. The relevant sections of planning policy follow:

From Technical advice note (TAN) 24: the historic environment

Conservation Principles

1. Historic assets will be managed to sustain their values.
2. Understanding the significance of historic assets is vital.
3. The historic environment is a shared resource.
4. Everyone will be able to participate in sustaining the historic environment.
5. Decisions about change must be reasonable, transparent and consistent.
6. Documenting and learning from decisions is essential.



Heritage Impact Assessment

The results of the heritage impact assessment should be summarised in a heritage impact statement which must form part of any listed building consent, conservation area consent and, when requested, scheduled monument consent applications.*

* Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2017

Planning Policy Wales 11

The Welsh Government's specific objectives (6.1.6) for the historic environment seek to:

- safeguard the character of historic buildings and manage change so that their special architectural and historic interest is preserved;
- preserve or enhance the character or appearance of conservation areas, whilst the same time helping them remain vibrant and prosperous;

Any decisions made through the planning system must fully consider the impact on the historic environment and on the significance and heritage values of individual historic assets and their contribution to the character of place. (6.1.9)

Conservation Areas

There should be a general presumption in favour of the preservation or enhancement of the character or appearance of conservation areas or their settings. (6.1.14)

The relevant Vale of Glamorgan Council policies are:

LDP POLICY MD8 -

HISTORIC ENVIRONMENT

Development proposals must protect the qualities of the built and historic environment of the Vale of Glamorgan, specifically:

1. Within conservation areas, development proposals must preserve or enhance the character or appearance of the area;
2. For listed and locally listed buildings (County Treasures), development proposals must preserve or enhance the building, its setting and any features of significance it possesses;



LDP POLICY SP10 -

BUILT AND NATURAL ENVIRONMENT

Development proposals must preserve and where appropriate enhance the rich and diverse built and natural environment and heritage of the Vale of Glamorgan including:

1. The architectural and / or historic qualities of buildings or conservation areas, including locally listed buildings (County Treasures);

The relevant documents can be found online:

- [Supplementary Planning Guidance: Conservation Areas in the Rural Vale 1996 – 2011](#) (this has not been updated for the LDP, and is referenced by the LDP, thus remains in use)
- [Supplementary Planning Guidance: County Treasures](#) (2009)
- [Planning Policy Wales 11](#)
- [Technical advice note \(TAN\) 24: the historic environment](#)

2021/00918/FUL – Doghill Farm, Dyffryn

Variation of Condition 2 (Approved Plans) and Removal of Conditions 4 (Drainage) 5 (Levels) 6 (Materials) 7 (Landscaping) 8 (Planting) & 11 (Access Surfacing) of Planning permission 2018/01077/FUL:- Erection of a rural enterprise workers dwelling at Doghill Farm, Dyffryn.



Retaining walls along the A48

The section of wall at Bonvilston was uncovered in 2020.





There is a second section at St Nicholas (above right)

The wall was surveyed this summer.

The walls were either constructed in the late 1700's, 1800's, or when the road was widened around 1936. Normally, it's the landowner at the top of the wall who gains most benefit from the structure, and thus has ownership. In this case, it's arguable that the Highway Authority (possibly the Turnpike Trust before this) that gains most benefit, and thus has ownership, but the landowner above, under Common Law, has a legal duty to ensure that tree roots, etc. do not cause damage to the wall below.

As the photos show, there is great benefit to the highway user of the wall as it enables free, unobstructed movement along the footway.

It wasn't clear whether this was a drystone retaining wall, or if it had been mortared. It's now believed that **the wall originally had a lime mortar**. Repointing the wall is essential for its long-term stability. The soil in the joints is unstable, and enables the growth of vegetation. Vegetation will eventually move the stone causing the wall to fail. The aesthetics of the wall when vegetation is cleared away is excellent, and noted by people passing by.

A solicitor that deals with the land registry would be required to determine the ownership of the wall. The Highway Authority unfortunately has no interest in ensuring that the wall that's essential to the highway is maintained, and remains stable.



Highway Obstruction Under Section 130(6) of the Highways Act (1980)

Asserting public highway rights – by [Alan Timms](#)

As the local highway authority, a county council's delivery of the service to the public is subject to two basic statutory duties contained within the Highways Act 1980, firstly to maintain those highways which are "adopted" that is maintainable at the public expense (section 41) and secondly, in respect of all highways, to assert and protect the rights of the public to the use of all highways for which they are the highway authority (that is all except trunk roads), to prevent, as far as possible, the stopping up or obstruction of those highways; and to prevent any unlawful encroachment on any roadside waste composed in a highway (section 130).

The duty to assert public rights to use any highway includes institution of proceedings as deemed necessary. Indeed, a parish council can represent to the highway authority that a highway has been unlawfully stopped up or obstructed and the highway authority are then placed under a further duty to act unless satisfied that the representation is incorrect.

The first leg of this duty requires an understanding of what the public's rights are. In summary they are:

- along a footpath and a footway (pavement) to a road – pedestrian usage only;
- along a bridleway – on foot, on horseback or leading a horse, and (since 1968) cycling;
- along a road, on foot, horseback, cycling, and with vehicles, both motorised, and non-motorised.

The case of DPP v Jones [1999] 2.W.L.R 625 had to determine what the rights of passage were and acts incidental to that right of passage. It was concluded that: "the public highway is a public place which the public may enjoy for reasonable purpose, providing the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary rights of the public to pass and repass".

From this is established the right of peaceful assembly on the highway. As was further stated: "the particular purpose for which a highway may be used within the scope of the public's rights of access includes a variety of activities which are consistent with what people reasonably and customarily do on a highway".

The above issue was the subject of one of the most recent high-profile cases, that relating to the protest camp set up in St Paul's Churchyard in London in October 2011. This involved a large number of tents, some 150 to 200 at the time the matter came to court in December 2011.



In the relevant case, *City of London v Samede and others* [2012] EWHC 34 (QB), the City of London Corporation sought possession of the highway and other open land in the churchyard which had been occupied as a peace camp. The areas of highway involved were largely pedestrian areas and no licence or consent to occupy the land had been granted. The court recognised that there is no statutory right nor at common law had there ever been a right to occupy, control to take possession of highway land from the highway authority.

As the court summed up when granting the Corporation's claims: "the extent and duration of the obstruction of the highway and the public nuisance inherent in their obstruction would itself warrant making an order for possession. So too would the effect of the camp on the human rights of worshippers at the cathedral, so would the effect on visits to the cathedral"

An earlier case with a similar outcome was that of *The Mayor of London v Hall and others* [2010] EWHC 1613 (QB) where repossession was granted in respect of Parliament Square Garden across which ran a public highway where a camp was set up protesting against among other things the Afghan and Iraqi wars and worldwide environmental issues.

At the beginning of this article I mentioned the two fundamental duties to which the highway authority is subject. The case of *Ali v The City of Bradford Metropolitan District Council* [2010] EWCA Civ 1282 concerned whether a highway authority could be liable, by way of an action for nuisance and a breach of the statutory duty to assert and protect public rights, where an accident had been suffered by a pedestrian using a public footpath slipping on an accumulation of mud and debris. It was decided that an individual had no right to sue in tort and that the duty in section 130 of the Highways Act 1980 (that concerned with asserting and protecting the rights of the public to the use and enjoyment of a highway), was not the appropriate cause of action but rather sections 149 and 150 of that Act, which is covered by the group heading "obstructions of highways and streets".

Sections 130A to 130D of the 1980 Act provide "a calibrated procedure" for enforcement of the duties under section 130 whereby a person who claims that a highway has been obstructed may serve notice on the highway authority requiring it to secure the removal of the obstruction and if the highway authority fails to do so the complainant may take the matters to a magistrates' court who may make an order requiring the highway authority to take such steps as may be specified for the removal of the obstruction.

The case of *Herrick v Kidner* [2010] EWHC 269 (Admin) concerned a notice served on Somerset County Council for the removal of large gates across a footpath. The Crown Court had made an order supporting the removal of the gates and middle gate pillar but not the entire structure but it was considered that in allowing the retention of



the outermost pillars and part of a fly wall an irrelevant consideration had been taken into account.

On appeal, the Administrative Court decided: “any structure erected within the legal extent of the footpath, and which prevents public passage or the enjoyment of amenity rights over the area of its footprint, significantly interferes with the exercise of public rights of way. The Crown Court should have made that order in relation to the totality of the structure obstructing the full extent of the footpath”.

The case of *Ernstbrunner v Manchester City Council* [2009] EWHC 3293 (Admin) also concerned the removal of a gate from a footpath. Like Herrick this case was also concerned with the Council’s response to a notice served upon them requiring removal of an obstruction. In this case a notice was duly served by the Council requiring removal of the gate but it was not removed. It turned out that the gate, on the interpretation of the evidence by the Crown Court, was not on the line of the footpath as recorded on the definitive map and statement. No order was made about against the highway authority on that basis.

Legislation gives the highway authority involvement in and generally control over all structures introduced into or activities undertaken within the highway. Discharge of the statutory duty which arises in asserting public rights does therefore presuppose that the appropriate controls are exercised and information about the extent of any highway in respect of which the duty falls to be discharged is on a record properly maintained and accurate.

From the [Open Space Society](#)

1.1 Highways, which include footpaths, bridleways, restricted byways and byways open to all traffic, are protected by legislation under the Highways Act 1980. Every Highway authority has a duty, set out under section 130 of the Highways Act 1980, to:

assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste that forms part of it, and to prevent, as far as possible, the stopping up or obstruction of the highways [in their area]

1.2 The offence is committed by whoever obstructs the highway, but only the highway authority has the power to take steps for the removal of the obstruction. However, legislation enables you to take steps to make the highway authority carry out its duty. The action that a highway authority can take differs depending on the type of obstruction.



1.3 An obstruction is something lying or placed across the path that physically prevents you from using the path such that, if the obstruction were removed, the path would once again be useable. Please note that this is different from 'out of repair', which means that the surface of the path would need be reinstated before it could be properly used. See section 56 information sheet. There is also a difference in how the law deals with vegetation which:

- has been deliberately planted (which counts as 'wilful' obstruction), such as a crop, or
- is overhanging a highway, such as natural growth from trees or hedges, or
- is naturally growing up through the surface of the highway.

1.4 There are a number of different types of obstruction specifically referred to in the legislation. In certain circumstances, something that you might consider to be an obstruction may have what is called 'lawful authority'. This means that the person causing the obstruction is clearly authorised by law to obstruct the highway. This could be by, or under, an Act of Parliament, or where the highway has been dedicated subject to such a limitation or condition. For example:

- a landowner who wishes to keep livestock in a field crossed by a footpath or bridleway can have a gate on the path authorised by the highway authority (i.e. an 'authorised gate') for keeping stock in the field.
- the structure has been present since the time the path came into existence.
- the highway authority may have erected barriers for safety reasons.

1.5 Since a change in the legislation in 2004, members of the public in England and Wales have been able to take steps to require highway authorities to carry out their duties in relation to certain types of obstruction. The procedure is given in section 130A to 130D of the Highways Act 1980. This is commonly referred to as the section 130A ('s130A') process.

1.6 If the authority fails to take action on your initial complaints about an obstruction, you can make an application to the magistrates' court. This process would be for civil, not criminal, proceedings. Please note that there are potential costs involved where cases are taken to the magistrates' court. More details are given in the section on costs below. These costs relate to both the making of an application, and the payment of costs by the losing party to the winning party awarded by the magistrates. The cost of making an application to the magistrates' court in January 2020 was £226. If the application was contested by the highway authority, a further fee of £567 would be payable by you, giving a total cost of £793. While it has not yet been tested, there is a good argument that one court fee could relate to several different obstructions.



The Open Space Society has [published Information Sheet no C25, Parish councils: dealing with highway obstructions under s.130\(6\) of the Highways Act 1980](#)

Under s.130(6) of the Highways Act 1980:

‘If the council of a parish or community or, in the case of a parish or community which does not have a separate parish or community council, the parish meeting or a community meeting, represent to a local highway authority—

(a) that a highway as to which the local highway authority have the duty imposed by subsection (3)2 above has been unlawfully stopped up or obstructed, or (b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority, it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proper proceedings accordingly and they may do so in their own name.’



Footways along the A48, June 2021





August 21 & 24, 2021





Footpath at Bonvilston



Footpaths at St Nicholas



Supplementary Information

Car Parking & Transport Assessment & Strategy

Subsequent to a pre-application requesting change of use to the Old Police Station, Cowbridge Road, St Nicholas, CF5 6SH from B1 Offices to D1 Non-Residential (Healthcare), I have been advised to provide a parking assessment and strategy. Due to the advice given in the response to the pre-application, the premises will be used as a specific physiotherapy clinic with the addition of personal training. This is to limit the number of practitioners on-site and reduce the demand on parking spaces. I propose that the premises be used for physiotherapy and personal training on a one-to-one basis apart from a few Pilates classes of a maximum of 6 clients per class per week.

This parking assessment and strategy document aims to provide the necessary information regarding the parking requirements, capacity on-site, need for overspill parking and proposed measures to avoid unsafe parking on the A48 through St Nicholas. The aim is to retain the majority of parking within the boundary walls and minimise the need for overspill parking.

“The car is important for accessibility in rural areas and is likely to remain so for the foreseeable future.”
<https://gov.wales/sites/default/files/publications/2018-09/tan18-transport.pdf>

Part 1: The amount of parking that will be required for clients and staff

The proposed use of the property as a physiotherapy and personal training facility will involve a workforce of 4 practitioners:

- § 1 full-time physiotherapist
- § 2 part-time physiotherapists
- § 1 part-time personal trainer

The property will be used by each of the practitioners with 2 physiotherapy treatment rooms, one on the ground floor and one on the first floor. The personal trainer will utilise the other, larger ground floor room. The third ground floor ‘room’ on the site plan is more of a thoroughfare and will be utilised as a lounge/waiting area. The large ‘training room’ on the first floor will be used for Pilates classes and one-to-one training services (for example physiotherapy rehabilitation sessions on a one-to-one basis). The smaller first floor room will be used as an office and confidential storage. As the basement rooms do not have windows and also have low ceiling heights, these will be used for storage.

Please see below the expected working hours of each practitioner and note that each practitioner would see one client at a time apart from during Pilates classes, which would likely be held on a Monday & Wednesday evening and a Saturday morning (see further details below)

	Name redacted	Name redacted	Name redacted	Name redacted
Mon	08:30-18:00	17:30-20:00	---	09:30-14:00
Tues	08:30-18:00	17:30-20:00	---	---
Weds	08:30-18:00	---	18:00-21:00	09:30-14:00
Thurs	---	---	08:00-18:00	---
Fri	---	---	08:00-18:00	09:30-14:00
Sat	10:00-14:00	08:00-14:00	---	---
Sun	---	---	---	---

Please find below the likely overlap between practitioners on site and also the times of proposed Pilates classes.

Overlap Between Practitioners on Site (Plus Class Parking Requirements)				
	1 Practitioner on site (plus 1 client and overlap)	2 Practitioners on site (plus 2 clients and overlap)	3 or 4 Practitioners on site (plus 3-4 clients and overlap)	Classes of a maximum of 6 clients led by one practitioner
Mon	08:30-09:30 14:00-17:30 18:00-20:00	09:30-14:00 17:30-18:00	N/A	19:00-20:00 (Led by name redacted)
Tues	08:30-17:30 18:00-20:00	17:30-18:00	N/A	N/A
Weds	08:30-09:30 14:00-18:00 18:00-21:00	09:30-14:00	N/A	19:00-20:00 (Led by name redacted)
Thurs	08:00-18:00		N/A	N/A
Fri	08:00-09:30 14:00-18:00	09:30-14:00	N/A	N/A
Sat	08:00-10:00	10:00-14:00	N/A	08:00-09:00 (Led by name redacted)
Sun	N/A	N/A	N/A	N/A

Please now see the proposed number of car parking spaces potentially required during the week according to the planned use of the property detailed above. Since the advice following pre-application, some time has been taken to plan the use of the property to minimise overlap of practitioners, especially at times of classes, therefore reducing the need for overspill parking (for example, organising classes at times when only one practitioner is on-site).

Requirements for Car Parking on Site for both Staff & Clients (including overlap of clients during changeover of appointments)							
1hr slots	Mon	Tues	Weds	Thurs	Fri	Sat	Sun
08:00	2-3	2-3	2-3	2-3	2-3	6-7	N/A
09:00	4-6	2-3	4-6	2-3	4-6	4-6	
10:00	4-6	2-3	4-6	2-3	4-6	4-6	
11:00	4-6	2-3	4-6	2-3	4-6	4-6	
12:00	4-6	2-3	4-6	2-3	4-6	4-6	
13:00	4-6	2-3	4-6	2-3	4-6	4-6	
14:00	4-6	2-3	4-6	2-3	4-6	4-6	
15:00	2-3	2-3	4-6	2-3	4-6	0	
16:00	2-3	2-3	2-3	2-3	2-3	0	
17:00	4-6	4-6	2-3	2-3	2-3	0	
18:00	2-3	4-6	2-3	2-3	2-3	0	
19:00	6-7	2-3	6-7	0	0	0	
20:00	6-7	2-3	6-7	0	0	0	
21:00	0	0	0	0	0	0	

The maximum number of parking spaces required, according to the above-mentioned proposed use of the property will be 7 spaces (see highlighted areas). There are 6 allocated spaces within the property boundaries. This means that one extra space may be required for 5 hours in the week. The 'extra' parking space will be required when a Pilates class will be running (this will only be required if the class runs at full capacity and if all involved use a car for transport). Please note that in these cases, the 7 spaces will include the practitioner who will arrive prior to all the clients and will also remain on site after the clients have departed. There is therefore potential for the class clients to park on-site and either the practitioner park off-site (see options for overspill parking below), or the clients 'block in' the practitioner for the duration of the class.

It should also be noted from communication between Helen Winsall and the current owner of the property that more than 6 cars are able to park within the property boundaries:

“When we operated our business from there, we had a permanent office staff of 7 and had numerous visitors, both clients and employees park on the premises every day. Once a month we ran training sessions for the employees when there would be between 12 and 14 cars parked in the forecourt. This was before the 30mph speed limit was imposed and there was not one incident in 10 years.”

(An excerpt from communication by the owner of the Old Police Station to Helen Winsall by email).

Despite the above information, this parking plan will continue to work on the basis of 6 spaces available on-site.

Part 2: A plan for overspill parking requirements

The need for overspill parking will be kept to a minimum through careful planning of class timings and reducing the overlap of practitioners on-site. When overspill parking (more than 6 cars) is required, there are a number of options available:

- § **Park and Ride option for staff:** Using a pre-paid parking space at Culverhouse Cross, paid for by the business, (www.YourParkingSpace.co.uk) and then a short bus journey from outside McDonalds Culverhouse Cross on the A48, up the Tumble and into St Nicholas village using the X2 bus (please see the bus timetable below). This should not be required unless a staff member needs to alter their working hours, causing an overlap with the Pilates classes.

Porthcawl - Cardiff													X2	
via Newton, Bridgend, Cowbridge														
Monday to Friday														
Service Number	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2
Porthcawl (John Street)	0710	0740	0810	0840	0910	0913	40	10	1710	1740	1840	.....	.....	.....
Woodland Avenue	.....	.....	.....	.....	.....	.....	43	13	.....	.....	.....	.....	.....	.....
Hedi-y-Goedwig	.....	0713	0743	0813	0843	.....	.....	.....	.....	1713	1743	1843	.....	.....
Newton (Globe)	.....	0717	0747	0817	0847	0917	47	17	1717	1747	1847	.....	.....	.....
Laleston (Mackworth Arms)	.....	0726	0756	0826	0856	0926	56	26	1726	1756	1856	.....	.....	.....
Bridgend Bus Station arr	.....	0739	0809	0839	0909	0936	06	36	mins.	1739	1809	1909	.....	.....
Bridgend Bus Station dep	0813	0713	0743	0813	0843	0913	0943	then	13	43	past	1743	1813	.....
Bridgend (Police HQ)	0621	0721	0751	0821	0851	0921	0951	at	21	51	each	1751	1821	.....
Cowbridge (Town Hall) Arr	0635	0735	0805	0835	0905	0935	1005	35	05	hour	1805	1835	.....	.....
Cowbridge (Town Hall) Dep	0640	0740	0810	0840	0910	0940	1010	40	10	until	1810	1840	.....	.....
Banwsilgon (Red Lion)	0650	0750	0820	0850	0920	0950	1020	50	20	.....	1820	1850	.....	.....
St. Nicholas	0653	0753	0823	0853	0923	0953	1023	53	23	.....	1823	1853	.....	.....
Tesco (Culverhouse Cross)	0657	0757	0827	0857	0927	0957	1027	57	27	.....	1827	1857	.....	.....
Mermaid Quay (Cardiff Bay)	0708L	0808L	0838L	0908L	0938L	1008L	1038L	08L	38L	.....	1838L	1908L	.....	.....
Cardiff (Penarth Road)	0717	0817	0847	0917	0947	1017	1047	17	47	.....	1847	1917	.....	.....

Service Number	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2	X2
Cardiff (Penarth Road)	.....	.....	.....	0725	0755	25	55	1555	1625	1655	1725	1755	1825	.....
Cardiff (Millennium Centre)	.....	.....	.....	0734L	0804L	34L	04L	1604L	1634L	1704L	1734L	1804L	1834L	.....
Tesco (Culverhouse Cross)	.....	.....	.....	0745	0815	45	15	1615	1645	1715	1745	1815	1845	.....
St. Nicholas	.....	.....	.....	0749	0819	49	19	1619	1649	1719	1749	1819	1849	.....
Donniston (Red Lion)	.....	.....	.....	0752	0822	52	22	1622	1652	1722	1752	1822	1852	.....
Cowbridge (Town Hall) Arr	.....	.....	.....	0802	0832	02	32	mins.	1632	1702	1732	1802	1832	1902
Cowbridge (Town Hall) Dep	.....	.....	.....	0807	0837	07	37	past	1637	1707	1737	1807	1837	1907
Bridgend (Police HQ)	.....	.....	.....	0821	0851	then	21	51	each	1651	1721	1751	1821	1851
Bridgend Bus Station arr	.....	.....	.....	0830	0900	at	30	00	hour	1700	1730	1800	1830	1900
Bridgend Bus Station dep	0705	0735	0805	0835	0905	35	05	until	1705	1735	1805	1835	1905	.....
Laleston (Mackworth Arms)	0714	0744	0814	0844	0914	44	14	1714	1744	1814	1844	1914	.....	.....
Newton (Globe)	0723	0753	0823	0853	0923	53	23	1723	1753	1823	1853	1923	.....	.....
Hedi-y-Goedwig	0725	0755	0825	0855	.....	.....	.....	.....	1725	1755	1825	1855	1925	.....
Woodland Avenue	.....	.....	.....	0826	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Porthcawl (Lias Road)	0728	0758	0828	0858	0928	58	28	1728	1758	1828	1858	1928	.....	.....
Porthcawl (John Street)	0730	0800	0830	0900	0930	60	30	1730	1800	1830	1900	1930	.....	.....

- § **Off-Site Staff Parking:** Staff parking on a nearby side street, such as School Lane near the local church / school at times of the classes (Pilates classes will be arranged outside of school hours and due to the business owner's religious beliefs the property will be closed on a Sunday, therefore avoiding busy church parking times).
- § **Public Transport & Other Measures:** Some clients may choose to use public transport; buses, taxis, walking (if local) or bicycles. Every client will be provided with relevant transport information on booking their appointment (our booking system allows creation of automatic emails to the clients at the point of booking). This information will include bus services to the village, contact details for taxi services and there will also be a notice of safe storage of bicycles on the premises should clients wish to cycle to their appointment.
- § **Automated Safety Messages:** The automated emails will also inform clients of the need to park on-site and within the boundary walls. Clients will be informed that they should endeavour to park within the property boundaries and avoid parking on the pavement outside the property.
- § **Ensuring On-Time Arrivals & Reducing Client Overlap:** During this recent time of COVID restrictions, we have successfully encouraged clients to arrive at the specified time for their appointments rather than arriving early and waiting in the reception area. Clients have not been able to enter our premises early

due to the need to maintain social distancing. We have also adopted a 10 or 15-minute gap between appointments which has been useful in giving time for enhanced cleaning between appointments. These strategies may be useful in reducing the potential for overlap between clients arriving and leaving and could be maintained into the future as a parking strategy.

§ **Non-Vehicle Transport:** It should also be noted that some clients may attend from the local area and may not require a car or public transport. For example, local women wishing to take part in the regular Pilates Classes may wish to walk through the village to their class.

§ **Other Alternatives:**

- As can be seen in the details of part 1, it is unlikely that overspill parking will be required often or for prolonged periods of time. The maximum time required would be 1.5 hours for each class (allowing for arrival and leaving times either side of the class), and the number of cars requiring parking is likely to be only one. If it is not possible to achieve complete on-site parking, the staff member(s) will be expected to park off-site for the necessary time.
- One of the staff (the full-time physiotherapist) currently lives near the premises in Culverhouse Cross / the Drope and so may utilise public transport / cycling or walking to and from the premises, therefore reducing the demand on parking on-site.

Part 3: Evidence of Number of Spaces Required per Practitioner

“The Council’s Parking Standards Supplementary Planning Guidance provides guidance on the parking for different land uses in different areas. For health centres, which appears to be the most similar use listed in the guidance to this proposal, this advises that up to one space is required per practitioner with 1 space per 2 ancillary staff in this area. Client parking should be provided at a rate of up to three parking spaces per practitioner. At least one disabled parking space is also required under this guidance. Please refer to the Council’s Parking Standards for further information.”

(An section from the pre-application response from Helen Winsall)

The closest category of use in D1 relating to the use proposed in this case is Healthcare. However, this specific business use runs in a different way from a doctors’ surgery. This part aims to provide necessary information relating to why this proposed use does not fit completely within the standard of parking for Healthcare clinics as deemed by the Planning Authority.

- § The proposed use of this property relates most closely to health centre within the D1 category, however, unlike doctors’ surgeries and other health clinics, this use would involve a ‘by appointment only’ process which has been utilised since the incorporation of the business in 2016. Clients book a specific appointment time and are seen at that time for a pre-determined duration.
- § There is no need for a ‘drop-in’ approach to our services. All assessments, treatments and sessions are by appointment only and all necessary information can be found online at our website or through email conversations. This is not a new service adopted during the time of the COVID pandemic, it is a method of running the clinic that has been utilised from the very beginning.
- § There is no need for other family members to join with the client and ‘meet them there’ for an appointment. In our experience, clients prefer to attend on their own. Many clients are dropped off by their partner or a family member who then takes the children out for a walk or for a coffee, this may well be the case in the new property where clients’ families may make the most of the nearby Culverhouse Cross Retail Park. This may reduce the need for parking spaces in some cases.
- § Appointments are on a one-to-one basis in the majority of cases, the only exception being the Pilates classes which are limited to 6 clients, this limit is set for quality purposes as well as the available space in the allocated room.

It is therefore suggested that this planning application be consulted in view of the difference in operating procedures compared to the standard healthcare facilities such as doctors’ surgeries and clinics.

I hope you find this information useful. I would be happy to answer any questions you may have.

Gillian McCabe

Specialist Pelvic Health Physiotherapist
Director of Gillian McCabe Physio Ltd