

# 3. Environment

## Section 3B

### Policy EV15 → Policy Omissions

#### 3.58 POLICY EV15 Development in the Coastal Zone

##### Objections

DO/51150/1340	British Wind Energy Association
DO/51209/1635	Countryside Council for Wales
DO/51209/1636	Countryside Council for Wales
DO/51227/1774	Harmer Partnership

##### Issues

3.58.1 These are:

- Whether or not the policy is sufficiently flexible, bearing in mind the fact that it does not distinguish between development in developed and undeveloped coastal areas;
- Whether the policy wording requires amendment in the interests of robustness or clarification.

##### Conclusions

3.58.2 On the first issue, according to the British Wind Energy Association, the policy is too restrictive. It argues that the policy should only apply to development proposed in the undeveloped coastal areas. The CCW proposes that, in addition to calling for development to be restricted to that which calls for a coastal location, new development should be limited to the parts of the coast which are already developed.

3.58.3 Guidance on 'managing the coast' is given in PPWales, which makes clear that UDPs should normally only propose coastal locations for development which needs to be on the coast. It states that the undeveloped coast will rarely be the most appropriate location. The developed coast may, however, provide opportunities for restructuring and regeneration. I consider it important to recognise that Policy EV15 is not proposing development, but is seeking to respond appropriately to development proposals. In seeking to protect the coastline, para 5.7.4 of PPWales indicates that the character and landscape of the undeveloped coast should be the focus of attention.

3.58.4 The coastline of the County Borough includes Porthcawl, where a major regeneration site allocated for mixed uses, is included in the coastal zone. The intended uses include retail and housing development, which might not be permitted if Policy EV15, as currently worded, was stringently applied. I conclude that the policy should confine itself to the undeveloped coastal zone so that acceptable development within the designated main settlement would not be unduly constrained.

3.58.5 Turning to the second issue, the CCW argues that the policy should include a statement to the effect that development requiring new defensive works, particularly on the

undeveloped coast, will not be permitted. This is already alluded to at the end of para 3.7.6, and I consider that criterion G adequately deals with this matter. I also accept the Council's explanation that it would be very difficult to give a precise definition of 'large scale' engineering works.

3.58.6 CCW also objects to criterion 2, as it repeats the confusion between landscape and nature conservation designations identified in Policy EV9. In section 3.11 of my report, I recommend that Policy EV9 be modified to eliminate this confusion and I agree that changes are also needed in Policy EV15. Para 4.2 of the Council's General Proof 1 (CD147) refers to the undesirability of cross-referencing within policies. In view of this, and changes proposed in the PIMS for paras 1.1.7 and 1.1.8 of the UDP, I consider that criterion 2 is unnecessary and should be deleted. If criterion 2 is omitted, in the interests of consistency, criterion 3B should be taken out. Any harmful effect on designated special landscape areas could be addressed by Policy EV10.

3.58.7 The first sentence of para 3.7.6 of the UDP will also need to be amended to remove the misleading reference to Policy EV9. In addition, the penultimate sentence in para 3.7.8 which describes an 'all-embracing' policy, should be changed.

3.58.8 The Harmer Partnership suggests that the wording of some criteria should be amended to allow the decision-maker greater flexibility in interpretation. However, in my view, the proposed changes would reduce clarity and be contrary to the Council's guidelines on policy wording, set out in its CD147. I conclude that the policy, subject to some amendment to draw the distinction between developed and undeveloped parts of the coastal zone, is reasonably flexible.

3.58.9 On the proposal that the UDP should define an 'Area of influence' offshore, I have taken account of the advice in TAN (Wales) 14 Coastal Planning. This indicates that it is for each local planning authority to define the appropriate coastal zone, and that the area below low water mark is generally outside the scope of the planning system. I consider that the UDP is consistent with that advice, and shall recommend no changes.

## Recommendation

3.58.10 I recommend that criterion 2 of the policy should be deleted.

3.58.11 I recommend that criterion 3B be deleted.

3.58.12 I recommend that the policy should be re-worded as follows:

'Development within the undeveloped coastal zone will be permitted only if :

- 1 A coastal location is necessary for the development; and
- 2 The proposal satisfies all the following criteria: A, C, D, E, F, G, H, I.'

3.58.13 I recommend that paras 3.7.6 and 3.7.8 be modified to reflect these changes to the policy.

**3.59** POLICY EV15  
Development in the Coastal Zone  
Land North of Cypress Gardens, Porthcawl

**Objection**

DO/51006/1115 C H Knight & Partners

**Issue**

3.59.1 This is whether or not the site should be included within the coastal zone.

**Conclusions**

3.59.2 The objectors argue that the objection site, which is located within the coastal zone, is surrounded on three sides by housing development and is inappropriately included within the coastal zone. I accept that it is important to protect the unspoilt beauty and character of the coastline, but I consider this site to be almost enclosed by residential development and different in character from the open land immediately to the east. The site is outside the Heritage Coast, Merthyr Mawr SSSI and the proposed Newton Burrows Local Nature Reserve. I have taken account of the Council's argument that the site 'is viewed as an important open access corridor', but judge this an insufficient reason to include land in the coastal zone. I conclude that the objection site is more in keeping with the surrounding suburban area of Porthcawl and should be deleted from the coastal zone.

**Recommendation**

3.59.3 I recommend that the boundary of the coastal zone should be amended to delete this site.

**3.60** POLICY EV15  
Development in the Coastal Zone  
Land East of Danygraig Avenue, Porthcawl

**Objection**

DO/51215/1727 Mr R P Lewis

**Issue**

3.60.1 This is whether or not the objection site should be taken out of the coastal zone.

**Conclusions**

3.60.2 As I indicated in section 3.35 of this report, I consider that this site is in the countryside, and has more in keeping with the land to the east than with suburban Porthcawl to the west. I agree with the Council that the unspoilt beauty and character of the undeveloped coastline should be protected, and regard this site as a small but integral part of the coastal zone. I conclude that it should not be taken out.

## Recommendation

3.60.3 I recommend that no modification be made.

### 3.61 POLICY EV16 Development in Areas of Flood Risk

#### **Objection**

DO/51227/1775 Harmer Partnership

## Issues

3.61.1 This is whether or not the policy is sufficiently flexible.

## Conclusions

3.61.2 The objector proposes some minor changes to wording in order to make the policy more flexible. However, I agree with the Council that these changes would be in conflict with the approach to policy writing which the Council has described in its General Proof 1, (CD147), and would reduce the clarity of the policy.

3.61.3 PPWales advises that special attention needs to be given to minimising and managing the risks associated with climate change. It advocates use of the precautionary principle when formulating UDP policies on development and flood risk. It also calls for a strategic approach to flood risk, and advises that a revised TAN (Wales) 15, Development and Flood Risk, will shortly be issued. The Council may wish to review this policy when that is published but, in the meantime, I see no reason to relax the provisions of Policy EV16.

## Recommendation

3.61.4 I recommend that no modification be made.

### 3.62 POLICY EV17 Development Affecting Water Quality & Resources

#### **Objection**

*Conditionally Withdrawn*  
DO/51107/1249 Dwr Cymru Welsh Water

## Issue

3.62.1 This is whether or not the policy should refer to the quantity as well as the quality of water sources.

## Conclusions

3.62.2 In response to the objector's submission that 'quantity' should also be addressed in this policy, the Council put forward an amendment in the PIMS. I consider that this would satisfactorily meet the objection, which was subsequently conditionally withdrawn.

## Recommendation

3.62.3 I recommend that Policy EV17 should be modified as shown in the PIMS.

### 3.63 POLICY EV18 Development Affecting National & International Sites for Nature Conservation

#### Objections

DO/51150/1341	British Wind Energy Association
DO/51209/1637	Countryside Council for Wales
DO/51208/1604	RSPB Cymru
PCO/51209/2217	Countryside Council for Wales
PCO/51209/2219	Countryside Council for Wales
PCO/51209/2235	Countryside Council for Wales
PCO/51209/2236	Countryside Council for Wales
PCO/50686/2137	Mr R P Miles

*Conditionally Withdrawn*

*DO/51229/1838 National Assembly for Wales*

## Issue

3.63.1 This is whether or not the policy gives sufficiently clear guidance as to how development proposals which might affect sites of international or national importance for nature conservation would be determined.

## Conclusions

3.63.2 A number of objectors point out that the development plan policy should reflect the relative significance of internationally and nationally important sites, whereas this policy places them on an equal footing. In the PIMS, the Council proposes to divide the policy so that Policy EV18A gives criteria for development likely to affect sites of international importance, and Policy EV18B gives different criteria for sites of national importance. I consider that this goes to the heart of the objection, and helps to clarify the policy.

3.63.3 The revised version of the policy continues to refer to 'imperative reasons for overriding public interest'. Mr Miles asks what these might be, and the Council replies with reference to case law and the Habitats Directive. I accept that it would be for the decision-maker to decide what amounted to reasons of overriding public interest in a particular situation.

3.63.4 The British Wind Energy Association objects to the reference in the policy to 'compensatory measures necessary to retain the overall coherence of Natura 2000'. The text in para 3.9.8 of the UDP explains that Natura 2000 is the cornerstone of the EU's nature conservation policy. I consider it unreasonable to expect an individual development in Bridgend to satisfy the test of 'retaining the overall coherence' of EU policy, and shall recommend rewording this sentence along the lines suggested by the objector.

3.63.5 The CCW has made counter-objections which include a proposed refinement of Policy EV18B, to separate the assessment of development proposals in SSSIs from those in NNRs, or sites identified under the NCR or GCR. However, I agree with the Council that the

proposed further changes would make the policy unwieldy without adding significant value. It would be normal development control procedure to take account of the national importance of statutorily designated sites and to consider whether planning conditions or obligations would overcome any potential harm. The CCW proposes another amendment to Policy EV18B, to acknowledge the fact that sites may be designated for their geological and geomorphological interest as well as for nature conservation. The Council supports this amendment, and points out that Policy EV18A and the title would also require change. I accept that it would be more comprehensive if these changes were made.

3.63.6 Most of the RSPB's objections to this policy are addressed satisfactorily, in my opinion, by amendments put forward in the PIMS. On the suggestion that mitigation should be used rather than compensatory measures in relation to planning conditions or obligations, I consider that the term used in the UDP is sufficiently broad to include a range of measures which might remove, remedy or reduce any harm.

3.63.7 The CCW refers to the confusion between nature conservation and landscape designations, which I have already commented on with reference to Policy EV9 (section 3.11). I consider that para 3.9.11 in the PIMS adds to the confusion, conflicts with the PIMS proposed para 1.1.8, and should be omitted. The CCW, in its counter-objections, is critical of the excessive amount of detail included in the supporting paragraphs, 3.9.6 to 3.9.11 in the PIMS. In my opinion, the revised text proposed by this objector is much sharper, more comprehensible, and should be used as a basis for a revised reasoned justification, in preference to the PIMS text.

3.63.8 Both the CCW and the Council in its proposed amendments in the PIMS to para 3.9.10 refer to 'relevant statutory and non-statutory wildlife designations' 'appropriately shown on the Proposals Map'. However, it is not accurate to say that all non-statutory designations are mapped in the UDP. Any revision of the reasoned justification should be accurate on this matter. I consider that the description of 'statutory' designations would be clearer if the supporting text included a table of them, similar to that which lists landscape conservation areas (Table ENV 1). This should name all the sites including the SSSIs and give the reader a very brief explanation as to why they are designated. In the interests of clarity, I consider that the reasoned justification should be amended accordingly.

3.63.9 The CCW in its counter-objections advises that the PIMS Page 15 makes a number of references to Candidate Special Areas of Conservation instead of candidate Special Areas of Conservation. I shall recommend that the latter, lower case for candidate, should be used in the UDP, and the Proposals Map should also be changed, replacing 'possible' with 'candidate'. I agree with the CCW that, in addition to the mapping changes shown in the PIMS for nature conservation sites, new cSACs or SSSIs should be added to the Proposals Map, but would expect the Council to carry out this updating task as and when it has relevant information.

## Recommendation

3.63.10 I recommend that the policy should be modified as shown in the PIMS.

3.63.11 I recommend that the policy be further modified so that the title reads : 'Development affecting international and national sites of importance for nature conservation and scientific interest', and

that Parts A and B read : 'for nature conservation, geological or geomorphological interests'.

3.63.12 In addition, I recommend that the sentence at the end of Policy EV18A should be amended so that it finishes: 'measures necessary for protecting the features of the site which have caused it to be designated part of the Natura 2000 network.'

3.63.13 I recommend that paras 3.9.6 to 3.9.11 as put forward in the PIMS should not be included.

3.63.14 I recommend that paras 3.9.6 onwards should be re-written along the lines of the text proposed by the CCW (PCO 51209/2219).

3.63.15 I recommend that the reasoned justification should be further modified with the inclusion of a table which lists and names all the designated areas, gives their status and a very brief reason as to why they are of special importance to nature conservation or have scientific interest.

3.63.16 I recommend that changes to the Proposals Map and its key in respect of SSSIs and cSACs, listed on Page 15 of the PIMS, should be made, subject to the modified reference throughout to 'candidate Special Area of Conservation'.

## 3.64 POLICY EV19 Development Affecting Local/Regional Sites for Nature Conservation

### Objections

DO/51209/1638	Countryside Council for Wales
DO/51211/1695	Forest Enterprise
DO/51229/1839	National Assembly for Wales

### Issues

3.64.1 These are:

- Whether or not the policy is sufficiently flexible, bearing in mind the advice on non-statutory designations in national planning policy;
- Whether or not the policy is sufficiently comprehensive in covering only designated sites.

### Conclusions

3.64.2 On the first issue, PPWales is clear that non-statutory designations such as those covered by Policy EV19 should not unduly restrict acceptable development. Objectors argue that the UDP policy is too restrictive, although I consider its general approach, which implies that a balancing exercise would be carried out, is on the right lines. Objectors suggest that 'unacceptable' might be included before 'adverse effect' to achieve a more flexible policy. However, I agree with the Council that this would make the policy less precise and would be in conflict with the approach to policy writing adopted for the UDP and described in General Proof 1, (CD147).

3.64.3 Forest Enterprise argues that the wording is uncompromising, and does not reflect the importance of the degree of harm to decision-making, or the possibility of providing

compensatory or mitigation measures. In view of the national policy, I consider that there should be some recognition of these factors. I shall recommend that the policy refers to 'damage' and 'harm' rather than the less precise 'adverse effect' and omits the rather vague reference to 'sustainable' proposals. I shall also recommend re-wording the policy to indicate that developers should consider the likely impact on nature conservation or scientific interest when they are planning and designing their schemes. I conclude that the policy should be reworded to make it more flexible and consistent with national planning policy.

3.64.4 On the second issue, the CCW suggests that 'candidate or' should be added before 'designated'. However, I share the Council's concerns that this could result in the inclusion of sites being promoted for SINC status for which there was a limited scientific basis. This could mislead potential developers and the public. PPWales does not indicate that candidate non-statutory sites should be protected, and I conclude that the policy is sufficiently comprehensive as it stands.

**Recommendation**

3.64.5 I recommend that the policy be modified to read :

3.64.6 'Development in a designated Local Nature Reserve (LNR), Site of Importance for Nature Conservation (SINC), or Regionally Important Geological/ Geomorphological Site (RIGS) should in its scale, siting and design be compatible with the nature conservation or scientific interest of the area. Development which would be damaging to the nature conservation or scientific interest of the area will not be permitted unless the benefits associated with the proposal would outweigh the harm, and/or the harm can be reduced or removed by mitigation measures.'

**3.65 POLICY EV20  
General Protection of Biodiversity**

**Objections**

- DO/51211/1696 Forest Enterprise
- PCO/51209/2220 Countryside Council for Wales

*Conditionally Withdrawn*

- DO/51209/1639 Countryside Council For Wales*
- DO/51203/1547 House Builders Federation*
- DO/51229/1840 National Assembly for Wales*

**Issue**

3.65.1 This is whether or not the policy fairly reflects the need for a balance between permitting development and protecting biodiversity.

**Conclusions**

3.65.2 The Forest Enterprise argues that the policy is generally too restrictive, and other objectors contend that the policy as written in the deposit UDP implies an unreasonable burden on the developer to retain every tree or woodland. The Council has re-worded criteria 1 and 2 in the PIMS and altered the text of para 3.9.18 which, in my opinion, would provide greater

realism and flexibility, in addition to protection for relevant features. A number of objections have been withdrawn on the basis that the PIMS revision is sustained.

3.65.3 The CCW wishes to see a further revision, to add the words ‘the integrity or continuity of’ after ‘where appropriate’ into criterion 1. However, I consider that this would add little to the meaning of the criterion, and would make it overly complicated. I conclude that the policy, as proposed for amendment in the PIMS, strikes the appropriate balance between permitting development and protecting biodiversity.

3.65.4 Though no objection is made to criterion 5 of this policy, in my view it is in conflict with the Council’s approach to policy wording and may not be effective in preventing undesirable development (see CD147, para 7.1). The Council may wish to replace the phrase ‘take full account of’ with ‘avoid or overcome harm to’, or similar, if it makes other amendments to this policy.

**Recommendation**

3.65.5 I recommend that the policy be modified as shown in the PIMS.

3.65.6 I recommend that the text of para 3.9.18 be modified as shown in the PIMS.

**3.66 POLICY EV21  
The Protection of Wildlife Corridors**

**Objections**

DO/51209/1640	Countryside Council for Wales
DO/51211/1697	Forest Enterprise
DO/51229/1841	National Assembly for Wales

**Issues**

3.66.1 These are:

- Whether or not the UDP deals adequately with managing landscape features of major importance for flora and fauna;
- Whether or not the policy is too inflexible, given the need for a balance between the needs of development and conservation interests and national policy advice on the use of planning obligations.

**Conclusions**

3.66.2 On the first issue, the CCW wrote that its objection was conditionally withdrawn though, as the Council observed, no modifications were made to it in the PIMS. The CCW argues that an additional policy is required to complement EV20 and 21, encouraging the management of features of the landscape which are of major importance for wildlife flora and fauna. Examples are rivers, their banks, field boundaries, ponds and small woods. However, I agree with the Council that the Environment chapter already contains sufficient policies to offer the protection and encourage the management of landscape features, as the objector seeks. In particular, I consider that Policy EV20 covers the features described by the objector and refers appropriately in criterion 2 to their future management.

3.66.3 On the second issue, Harmers argue that it may not always be appropriate to retain existing wildlife corridors or establish new ones, or for a developer to enter into a legal agreement to achieve them. The UDP does not indicate where existing wildlife corridors are essential, vulnerable or in need of improvement. Neither does it indicate where new wildlife corridors are required. The CCW proposes that this policy should be linked to the Local Biodiversity Action Plan, with reference to any targets within it.

3.66.4 Para 3.9.21 of the UDP lists the features which constitute potential wildlife corridors, and it seems to me that they overlap substantially with those features which would be protected anyway by Policy EV20. I consider that much of the reasoned justification in para 3.9.21 could usefully follow Policy EV20 to explain that the retention of woodland, trees, hedgerow etc would also help to sustain and improve a network of wildlife corridors.

3.66.5 On the matter of planning obligations, I agree with the NAW that the policy should not 'require' developers to enter into a planning obligation/agreement. However, as the policy overlaps significantly with Policy EV20, I conclude that it is superfluous and could be omitted without consequent harm to the protection of biodiversity.

**Recommendation**

3.66.6 I recommend that the policy should be deleted.

3.66.7 I recommend that the reasoned justification in para 3.9.21 concerning the value of wildlife corridors should be incorporated into the text following Policy EV20.

**3.67 POLICY EV22  
The Protection of Habitats or Species**

**Objections**

DO/51209/1641	Countryside Council for Wales
DO/51209/1642	Countryside Council for Wales
DO/51211/1698	Forest Enterprise
DO/51229/1842	National Assembly for Wales

**Issues**

3.67.1 These are:

- Whether or not the policy is consistent with other procedures to prevent harm to protected species; and
- Whether or not the policy is too restrictive.

**Conclusions**

3.67.2 On the first issue, the CCW argues that the policy as written could lead to harm to a protected species and render other preventative legislation ineffective. It adds that a reference to the requirements of licensing procedures should be made in the text. The Forest Enterprise questions whether the existence of controls under other legislation makes this policy unnecessary. The NAW refers to guidance in PG(W) PP, First Revision 1999, that permission for development should not be refused if other material factors are sufficient to override nature

conservation interests. However, PPWales 2002 has superseded this guidance, and its paras 5.5.11 and 12 refer to protected species. They begin by advising that the presence of a protected species is a material planning consideration. They go on to say that local planning authorities should advise applicants for planning permission that they must conform with statutory species protection provisions. Para 5.4.6 of PPWales indicates that a UDP should provide for biodiversity interests outside designated areas.

3.67.3 Planning legislation should not be used to secure objectives achievable under other controls, and this leads me to question the need for this policy which would apply in an area where there is other UK and European legislation. The Council is required to consult CCW before granting planning permission, and advise applicants that they should comply with any statutory provisions affecting a relevant site. Though CCW provide details of a planning policy for protected species in the Snowdonia National Park, I would expect the local circumstances there to differ from Bridgend County Borough. The Council has put forward a late proposed amendment to the policy, after considering the National Park's policy. However, I conclude that any conflict with procedures under other legislation would best be averted by deleting this policy. It would, however, be helpful if the UDP explained the role of CCW, the need to comply with licensing procedures and retained the information in paras 3.9.23 and 3.9.24.

3.67.4 On the second issue, I consider that in circumstances where a protected species or its habitat was at risk from a development proposal, the CCW consultation response would be a material planning consideration. Planning decisions would then be taken in accordance with the principles of S54A of the Act, and it would be for the decision-maker to decide what weight to attach to the potential harm to wildlife in each particular case. I conclude that this would result in an effective and flexible method of protection.

**Recommendation**

3.67.5 I recommend that the policy should be deleted.

3.67.6 I recommend that the reasoned justification in paras 3.9.23 and 3.9.24 should be amended to advise readers that applicants for planning permission must conform with the relevant statutory species protection provisions, and that consultation with the CCW will take place.

**3.68 POLICY EV24  
The Protection of Trees, Woodlands and Hedgerows**

**Objections**

- DO/51184/1414 Coed Cadw Woodland Trust
- DO/51211/1699 Forest Enterprise
- PCO/51229/2205 National Assembly for Wales

*Conditionally Withdrawn*

- DO/51209/1644 *Countryside Council for Wales*
- DO/51229/2101 *National Assembly for Wales*

**Issues**

3.68.1 These are:

- Whether or not the policy would provide adequate protection for ancient semi-natural woodlands;
- Whether or not the policy should recognise the importance of commercial forestry in the County Borough.

## Conclusions

3.68.2 On the first issue, Coed Cadw and the CCW draw attention to the fact that the policy in the deposit UDP makes no reference to ancient or semi-natural woodland. They argue that woodland which may have existed since before 1600 AD is irreplaceable. The Council proposes changes to the policy and text in the PIMS, and on the basis of these changes CCW has conditionally withdrawn its objection.

3.68.3 The NAW, however, objects to the revised policy in the PIMS because it proposes an outright ban on development leading to the loss of 'ancient semi-natural woodland'. This, argues the objector, offers no flexibility for balancing the merits of the development against the loss to nature conservation. Though the Council argues that the objection does not take account of up to date guidance on woodlands, I consider that there is no support for the 'outright ban' approach in PPWales paras 5.5.13 to 5.5.15.

3.68.4 The NAW goes on to point out that 'ancient semi-natural woodlands' are not shown on the Proposals Map and have not all been assessed for their value to nature conservation or relative position in the hierarchy for designated sites. In my opinion, there is substantial doubt as to the areas which would appropriately be covered by the new policy which PIMS proposes. I would expect the most vulnerable and valuable ancient woodlands to be included in the very substantial number of statutory and non-statutory designated areas in the County Borough which are already protected by Policies EV18 or EV19.

3.68.5 Reviewing the policy, as proposed for amendment in the PIMS, as a whole, I am concerned that, once again, there is considerable overlap with Policy EV20. I consider that the first 2 criteria in Policy EV20 would adequately protect trees, woodlands and hedgerows and provide for their replacement where appropriate. I conclude that Policies EV18, EV19 and EV 20 should provide the necessary protection for ancient semi-natural woodlands, and that Policy EV24 is superfluous.

3.68.6 The NAW has conditionally withdrawn its objection to the use of the term 'will not be favoured' on the basis that it should only be used where 'will not be permitted' would be inappropriate.

3.68.7 On the second issue, I accept that commercial forestry may contribute positively to the conservation of biodiversity. The Bridgend Local Biodiversity Action Plan Volume 1 (CD70), which has been adopted by the Council as SPG, outlines the role of Forest Enterprise in this area. As I propose to delete the policy, however, I conclude that there is no need to add a reference to commercial forestry.

## Recommendation

3.68.8 I recommend that the amendments put forward in the PIMS to this policy should not be made.

3.68.9 I recommend that the policy be deleted.

## 3.69 POLICY EV25 Afforestation Proposals

### Objections

*Conditionally Withdrawn*

DO/51209/1645      *Countryside Council for Wales*

DO/51229/2102      *National Assembly for Wales*

### Issue

3.69.1      This is whether or not the wording of the policy and reasoned justification are clear and up to date.

### Conclusions

3.69.2      The CCW advises that some updating of names is required in the supporting text. The Forestry Authority Wales and Forest Enterprise are now known as the Forestry Commission and the Woodland Strategy for Wales is unlikely to remain as consultative throughout the Plan period. The Council has proposed changes to the supporting text in the PIMS which would update these names, and the objection has been conditionally withdrawn.

3.69.3      The NAW has conditionally withdrawn its objection to the use of the term 'will be favoured', providing it is not used where the term 'will be permitted' would be more appropriate. I consider that the wording of this policy is consistent with the Council's use of terminology as outlined in its General Proof 1, and does not require amendment.

### Recommendation

3.69.4      I recommend that the policy should not be modified.

3.69.5      I recommend that the modifications to text in paras 3.9.28 to 3.9.39 as proposed in the PIMS should be made.

## 3.70 POLICY OMISSION Community Woodlands

### Objection

DO/51211/1700      Forest Enterprise

### Issue

3.70.1      This is whether or not a new policy is needed expressing support for the establishment of community woodlands.

### Conclusions

3.70.2      The objector argues that a number of agencies are pursuing the establishment of community woodlands to serve as recreation/amenity areas, embracing areas of existing and proposed woodland. The scheme aims to secure community involvement in the management of woodlands.

3.70.3 The Council advises that it was fully aware of the concept of community woodlands when preparing the UDP, and has had due regard to the strategies of other public bodies, including the Forestry Commission, in drawing up its policies. The Council's view is that the scheme is more likely to involve existing woodlands and extensions to them than new woodlands in Bridgend.

3.70.4 I consider that the proposed new policy would be a broad statement of intent, which should be avoided in development plans. The objector has not named any sites for new woodland and, bearing in mind the Council's evidence, I conclude that a new UDP policy is not needed at this stage.

## Recommendation

3.70.5 I recommend that no modification be made.

## 3.71 POLICY EV26 Countryside Management and Urban Enhancement

### Objections

DO/51209/1646 Countryside Council for Wales

*Conditionally Withdrawn*

DO/51229/2103 *National Assembly for Wales*

## Issue

3.71.1 This is whether or not the policy should be expanded to provide a policy for the urban fringe.

## Conclusions

3.71.2 As the Council advises, 'urban fringe' has no place in statutory planning or national planning policy guidance. The Council's settlement strategy which underpins the UDP identifies main and smaller settlements and committed development sites, and classifies the remainder of the County Borough as countryside. It seems to me that, in practical terms, this clear strategy has the potential to help improve the environment of areas on the edge of settlements which are unkempt or neglected. However, I conclude that there is no need to amend the policy as proposed by the objector.

3.71.3 The NAW objects to the use of the expression 'will be favoured'. However, for the reasons given in section 1.5 and elsewhere, I conclude that no change is required.

## Recommendation

3.71.4 I recommend that no modification be made.

**Objections**

DO/51211/1701	Forest Enterprise
DO/51227/1776	Harmer Partnership
PCO/51211/2143	Forest Enterprise

*Conditionally Withdrawn*

DO/51229/1843      *National Assembly for Wales*

**Issues**

3.72.1      These are:

- Whether or not the policy is necessary, in the light of other policies in the UDP and the desirability of avoiding duplication;
- Whether or not the policy is too restrictive and overlooks the need for a balanced approach between development and environmental protection.

**Conclusions**

3.72.2      On the first issue, the NAW argues that there is doubt as to the type of development proposals to which the policy should apply. It is described as difficult to implement and superfluous. The Council has responded by proposing amendments in the PIMS to add a new para 3.10.7. Though the NAW has conditionally withdrawn its objection, I consider that there remain difficulties with the policy. The new text would explain that it is aimed at the adverse effects of pollution (airbourne, waterbourne and noise) and visual amenity. However, I consider that other more specific policies cover each of these impacts. Policy EV34 addresses air pollution, Policy EV17 tackles water quality, Policies EV31 and 32 concern noise and Policies EV35 and EV49 protect visual amenity. I therefore conclude that this policy is unnecessary.

3.72.3      On the second issue, Forest Enterprise considers that the policy and proposed amendments in the PIMS to para 3.10.7 are too restrictive. The Council draws my attention to PPWales including the early sections which outline the approach for achieving sustainable development. I consider that environmental protection and enhancement, and improving the quality of life, are key issues for the UDP. However, the new para 3.10.7 refers to industrial development and, in practice I would expect there always to be a need to balance the possible adverse impact of a development against the need for development. This could be recognised in the reasoned justification, although I intend to delete both the policy and text as I consider it to be repetitive of other policies in the Plan.

**Recommendation**

3.72.4      I recommend that the policy be deleted.

3.72.5      I recommend that the proposed amendments to para 3.10.7 in the PIMS are not made.

### 3.73

### POLICY EV28

### Land Reclamation and Environmental Improvement

#### Objections

DO/51209/1647      Countryside Council for Wales

*Conditionally Withdrawn*

DO/51229/2104      *National Assembly for Wales*

#### Issue

3.73.1      This is whether or not the policy should include criteria against which relevant development proposals would be assessed.

#### Conclusions

3.73.2      The CCW argues that issues relating to the historic and biodiversity value of derelict land, as highlighted in the reasoned justification, could form the basis of a list of criteria. I consider that the UDP provides adequate advice on the assessment of historic and biodiversity features elsewhere in the Environment chapter. For any land reclamation scheme, there is likely to be a range of environmental and land use factors requiring assessment. I would expect many of these to be site specific. I agree with the Council that land reclamation is an important function in its own right, and conclude that this simply structured policy is entirely satisfactory.

3.73.3      On use of the word 'favoured', I note that the objection from the NAW is conditionally withdrawn. I consider the word to be appropriate in this policy, in view of the range of factors likely to need assessment in a particular case.

#### Recommendation

3.73.4      I recommend that no modification is made.

### 3.74

### POLICY EV29

### Reclamation of Derelict and Other Land

#### Objections

DO/51209/1648      Countryside Council for Wales

DO/51227/1777      Harmer Partnership

DO/50017/7      Rhys-Davies Services Ltd

#### Issues

3.74.1      These are:

- Whether or not the policy should require a development brief and appropriate planning obligations for each reclamation scheme;
- Whether or not the policy should include criteria against which relevant development proposals would be assessed.

## Conclusions

3.74.2 On the first issue, the Harmer Partnership and Rhys-Davies Services Ltd argue that there can be no general justification for the preparation of development briefs. There are ways, in their opinion, to achieve satisfactory reclamation schemes without spending time and resources on development briefs. I consider that many land reclamation schemes will be large or complex, will call for sophisticated forward planning and impact assessment and will require negotiations/collaboration with the local planning authority. However, I accept that some schemes may not require a development brief to realise a quality outcome, so that there is no general justification for them.

3.74.3 I also consider that the references to the use of planning obligations must be precise and in accordance with national policy. The Council refers to the judgments of the courts in this area. In the case of *R v Plymouth City Council ex p. Plymouth and South Devon Co-operative Society Ltd 1993*, the developers entered a planning obligation offering a bird hide, park and ride scheme and contribution to off-site infrastructure in support of a retail development. The Court of Appeal rejected a challenge that the benefits were not sufficiently related to the development proposals to be a material consideration. However, a seemingly different approach was taken in *Tesco Stores Ltd v SSE and West Oxon DC and Tarmac Provincial Properties Ltd 1995*, when the House of Lords accepted that the Secretary of State was entitled to give limited weight to an obligation to fund a relief road. Additional traffic, in his view, generated by the development would have had a marginal effect on existing volumes, and the otherwise unacceptable development should not be permitted because of unrelated benefits. These contrasting judgments indicate to me that a developer and the LPA may agree that a wide range of measures are reasonably related to an individual development proposal and enter into a planning obligation. However, when the Assembly Government or an Inspector at appeal is involved in decision-making, they will apply the tests laid down in WO C13/97 stringently (necessity, directly related and fairly and reasonably related in scale and kind etc).

3.74.4 I consider that the UDP policies should be worded in strict accordance with the approach outlined in PPWales and detailed in WO C13/97, if they are to be robust and capable of defence at planning appeals or call-ins. I also agree that the need for a planning obligation will be determined by the particular circumstances of the proposal. For this reason, the Council should not, in my opinion, 'require' a developer to enter into a planning obligation. Overall, I conclude that this policy is too prescriptive.

3.74.5 I have examined the policy with reference to the Council's General Proof 1, (CD147). On 'the functions of policies', this quotes guidance on good practice in writing effective policies. It advises that local planning authorities should not 'include administrative and procedural arrangements'. In my view, Policy EV29 is wholly concerned with the mechanisms which the Council wishes to use in implementing Policy EV28. I therefore agree with the objector who describes Policy EV29 as unnecessary. I shall recommend that reference is made to the desirability of using development briefs for all sizeable reclamation schemes in the preceding policy's reasoned justification. I shall also recommend that the Council should seek to negotiate rather than require entry into planning obligations.

3.74.6 On the second issue, I see no reason to attach criteria to this policy for the reasons given in section 3.73 above.

## Recommendation

3.74.7 I recommend that the policy be deleted.

3.74.8 I recommend that the reasoned justification to Policy EV28 be extended to indicate that, for sizeable or complex reclamation proposals, the Council would expect a development brief to be prepared. In appropriate cases, the Council would seek to enter into planning obligations/agreements with the relevant parties to secure a satisfactory scheme and aftercare.

## 3.75 POLICY EV30 Development of Contaminated Land

### Objection

DO/51203/1549

House Builders Federation

DO/50017/8

Rhys-Davies Services Ltd

### Issues

3.75.1 These are:

- Whether or not the policy should require information as to the period over which contamination occurred;
- Whether or not account should be taken of the actual and intended use of the site, with remediation works tailored accordingly.

### Conclusions

3.75.2 On the first issue, the HBF argues that it may be difficult to ascertain the period over which contamination occurred, and it would be unreasonable to refuse permission on this ground, if the nature and extent of contamination had been identified. PPWales advises that land contamination must be considered in the preparation of UDPs to ensure that new development is not undertaken without an understanding of the risks, including those associated with previous land use, and without proper remediation. Para 3.10.25 of the UDP explains that with older sources of contamination, the assessment of risk and its remediation may not be straightforward. I consider it reasonable for the Council to ask for information about the period of contamination in order to understand fully the degree of risk. Since the policy acknowledges that this may not be possible in every case, it would not be unduly burdensome for developers.

3.75.3 On the second issue, PPWales indicates that LPAs should take into account the nature, scale and extent of contamination which may pose risks to health. The Council argues that the precautionary principle, which is promoted in PPWales, should prevail over a 'suitable for use' principle. Notwithstanding the fact that responsibility for ensuring that the land is suitable for a proposed development rests with developers and landowners, I consider that the Council is entitled to be cautious in the interests of the public and set high standards for development on contaminated land. I conclude that the policy need not be amended to take account of the actual and intended use of the site, with remediation works tailored accordingly.

### Recommendation

3.75.4 I recommend that no modification be made.

### 3.76 POLICY EV33 External Lighting of New Development

#### **Objection**

DO/51227/1778 Harmer Partnership

#### Issue

3.76.1 This is whether or not criterion 7 of the policy is too inflexible.

#### Conclusions

3.76.2 The objectors seek to have the word 'unacceptable' placed before 'adverse impact'. However, section 10 of the Council's General Proof (CD147) puts forward arguments against the use of using qualifying words such as the one proposed by the objector. However, I consider that criterion 7 is very wide ranging and in conflict with the principle that, aside from statutorily designated areas or protected species, nature conservation interests should not unduly constrain development. I conclude that the criterion is too inflexible and should be amended to indicate that it should only apply to sites or species of acknowledged importance for nature conservation.

#### Recommendation

3.76.3 I recommend that criterion 7 modified to read: 'there will be no adverse impact on sites or species of acknowledged importance for nature conservation.'

### 3.77 POLICY EV34 Air Quality

#### **Objection**

DO/51227/1779 Harmer Partnership  
DO/51229/1844 National Assembly for Wales

#### Issue

3.77.1 This is whether or not the policy is appropriate in its coverage and flexibility, and takes sufficient account of pollution control regimes enforced by other agencies.

#### Conclusions

3.77.2 The NAW argues that the policy could be interpreted as applying to all development proposals, whereas plans should set out the criteria for determining potentially polluting developments, but not exclude all projects. The Harmer Partnership also considers that the policy is too restrictive. PPWales, section 13.11, confirms that UDPs are important vehicles for the promotion of environmental protection and this includes air quality. PPWales envisages a role for policies in UDPs as well as for the operation of pollution control and regulation regimes. It goes on to state that plans should include strategic policies on the location of potentially polluting developments, ensuring the separation of incompatible land uses. I consider that this should be the thrust of Policy EV34.

3.77.3 It seems to me that the principal sources of air pollution for consideration by this policy are routine and accidental emissions from industrial and commercial processes, including waste disposal and minerals' working, and emissions from road traffic. As far as traffic pollution is concerned, air quality is most likely to be a material consideration in the case of major developments which would generate a substantial increase on roads already carrying significant traffic flows. The policy should also recognise the scope for measures to mitigate the worst effects of air pollution. Examples would be landscaped buffer zones or traffic management measures, and these could be the subject of planning conditions or obligations. However, the Council will need to ensure that measures do not duplicate or contradict measures more appropriately controlled under other regimes.

3.77.4 In conclusion, though I agree with much of the objector's assessment of the problem, I consider that the policy should not simply be deleted. It could usefully be re-structured to assist development controllers and safeguard air quality.

### Recommendation

3.77.5 I recommend that the policy be modified as shown below:

'Proposals for development which are likely to emit polluting substances will not be permitted in locations where they would have an adverse effect on the occupiers and users of neighbouring land uses, unless effective mitigation measures can be put in place.

Proposals for residential development, or for other sensitive uses such as health or education, will not be permitted in close proximity to land uses emitting polluting substances, unless effective mitigation measures can be put in place.

Major development proposals which would be harmful to air quality by virtue of the additional new traffic movements they would generate, will not be permitted unless accompanied by effective mitigation measures.'

## 3.78 POLICY EV35 The Built Heritage

### Objection

*Conditionally Withdrawn*

*DO/51229/2105 National Assembly for Wales*

### Issue

3.78.1 This is whether or not the word 'favoured' is appropriate in this policy.

### Conclusions

3.78.2 I consider that the word as used in this policy, is consistent with the Council's approach to policy writing, given in General Proof 1 (CD147), and need not be changed.

### Recommendation

3.78.3 I recommend that no modification be made.

**Objection**

DO/51227/1780

Harmer Partnership

**Issue**

3.79.1 This is whether or not the policy is unduly restrictive, in that proper specialist recording may not be necessary every time a listed building is altered.

**Conclusions**

3.79.2 The Council has proposed changes to the policy in the PIMS and, though these would introduce a degree of flexibility, I consider that they would not fully overcome the objection. In my view, the policy as revised in the PIMS could be onerous in two ways. Firstly, WO C61/96 (CD50) advises that LPAs should *consider* in all cases of alteration or demolition *whether* it would be appropriate to make it *a condition of consent* that suitable recordings of features that would be destroyed are arranged by applicants. In my view, this implies a judgment which may or may not result in a recording exercise. I consider that there could be beneficial minor alterations to a building, not necessitating a full recording exercise, and that the Circular indicates a more flexible approach than that described in Policy EV37, PIMS version.

3.79.3 Secondly, the policy insists that a legal agreement should be entered into to secure the recording and implementation of the works. I consider that planning obligations should be achieved through negotiation and agreement in individual cases, and not based on a blanket formulation. The Circular refers to conditions, which should be preferred to planning obligations, if there is a choice. I therefore conclude that the policy is unduly restrictive, even with the amendments put forward in the PIMS. I shall recommend that the policy and the reasoned justification are altered. I favour a re-worded policy which adheres more closely to the statutory duty for listed buildings in WO C61/96, in the interests of robustness.

3.79.4 Though objection has not been made to Policy EV36, I consider that it should be consistent with Policy EV37. Therefore, if my recommendations are accepted, the proposed amendment to Policy EV36 in the PIMS should be reconsidered.

**Recommendation**

3.79.5 I recommend that Policy EV37 should not be modified as shown in the PIMS.

3.79.6 I recommend that Policy EV37 should be modified as follows:

'Development proposals affecting a listed building should have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. Developers must demonstrate why works which would affect the character of a listed building are desirable or necessary.'

Where any alterations to a listed building are acceptable, the developer may be asked to supply a record of all features which would be destroyed in the course of the works to be provided by a suitably qualified specialist. Planning conditions or obligations will be used, where appropriate, to secure a record before the works take place.'

3.79.7 I recommend that the modifications to paras 3.13.7 and 3.13.9 in the PIMS should be made.

3.79.8 I recommend that the final sentences of paras 3.13.7 and 3.13.9 should be further modified along these lines: 'Either conditions or planning obligations may be used to ensure that recording is completed before any works to demolish/affecting the listed building are begun.'

## 3.80 POLICY EV38 Development Affecting Buildings of Local Significance

### Objections

DO/51227/1781 Harmer Partnership

*Conditionally Withdrawn*

DO/51229/1845 *National Assembly for Wales*

### Issue

3.80.1 This is whether or not the policy is reasonable and clearly defined.

### Conclusions

3.80.2 The Harmer Partnership objects to the wording of the policy as unreasonably restrictive, requesting that 'has an unacceptable adverse impact' should be substituted for 'adversely affects'. However, I am satisfied that the phraseology is fair and clear, and that the proposed qualification would be in conflict with the Council's approach to policy writing (CD147 refers).

3.80.3 The NAW contends that para 3.13.12 is misleading as it implies that scheduled ancient monuments would be covered by this policy. I agree that nationally important sites should not be included in this policy, designed to protect locally important buildings. The Council proposes an amendment to the wording of the text in the PIMS and the objection has been conditionally withdrawn. I conclude that, with the PIMS amendment, the policy would be reasonable and clear.

### Recommendation

3.80.4 I recommend that Policy EV38 should not be changed, but the supporting text in para 3.13.12 should be modified as shown in the PIMS.

## 3.81 POLICY EV39 Use and Repair of Historic Buildings

### Objection

*Conditionally Withdrawn*

DO/51229/2106 *National Assembly for Wales*

## Issue

3.81.1 This is whether or not the term 'favoured' should be used.

## Conclusions

3.81.2 I consider that the word is appropriately used in Policy EV39 and is consistent with the approach to policy writing outlined in the Council's General Proof 1, CD147.

## Recommendation

3.81.3 I recommend that no modification be made.

## 3.82 POLICY EV40 Re-Use of Redundant Historic Buildings

### Objection

*Conditionally Withdrawn*

DO/51229/2107 National Assembly for Wales

## Issue

3.82.1 This is whether or not the term 'favoured' should be used.

## Conclusions

3.82.2 I consider that the word is appropriately used in Policy EV40 and is consistent with the approach to policy writing outlined in the Council's General Proof 1, CD147.

## Recommendation

3.82.3 I recommend that no modification be made.

## 3.83 POLICY EV42 Proposals Within Conservation Areas

### Objection

DO/51227/1782 Harmer Partnership

## Issue

3.83.1 This is whether or not criterion 2 of the policy is consistent with Policy EV41.

## Conclusions

3.83.2 The Council has proposed an amendment in the PIMS to the wording of the policy, in order to overcome the objection, though it has not been withdrawn. On conservation areas, S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the decision-maker to pay special attention to the desirability of preserving or enhancing the

character or appearance of conservation areas. This duty applies to 'any buildings or other land in a conservation area', and by inference not to land beyond the boundaries. Both Policy EV42 and Policy EV41 imply that similar tests would be applied to proposals inside and adjacent to conservation area boundaries. Thus, although the proposed amendment in the PIMS goes some way to meeting the objection by adding the word 'or' to Policy EV42, I consider that it would not overcome a more fundamental flaw and should be amended to comply with the statutory duty.

3.83.3 Planning policy guidance in England acknowledges that the desirability of preserving or enhancing the area should be a material consideration in handling planning applications which are *outside* the conservation area, but would affect its setting, or views in or out. PPWales does not address this point directly, but I consider that a similar approach could be useful in the County Borough. I shall recommend that the content of Policies EV41 and EV42 is re-arranged so that one policy deals solely with proposed development inside conservation areas and the other with development outside but affecting them.

**Recommendation**

3.83.4 I recommend that the amendment in the PIMS should not be made.

3.83.5 I recommend that Policies EV41 and EV42 should be modified as follows:

'DEVELOPMENT OUTSIDE BUT AFFECTING CONSERVATION AREAS – Development on land adjacent to a conservation area will only be permitted if it would preserve or enhance the setting of the conservation area, and views in and out of it.'

'DEVELOPMENT WITHIN CONSERVATION AREAS – Proposals for development within conservation areas should preserve or enhance their architectural or historic character or appearance. Development proposals which do not:- .....(1) – preserve or enhance views, vistas, characteristic street scenes and roofscapes; (2) show special regard to areas of spatial importance .... (5) respect local historical and cultural traditions; will not be permitted.'

**3.84 POLICY EV43  
Demolition of Unlisted Buildings in Conservation Areas**

**Objection**

DO/51006/1134 C H Knight & Partners  
DO/51229/1846 National Assembly for Wales

**Issue**

3.84.1 This is whether or not the criteria in this policy are fair and clear.

**Conclusions**

3.84.2 C H Knight & Partners argue that, in the case of Tythegston Conservation Area, there is a relevant management plan which would form the basis of assessment rather than a site development brief. Notwithstanding my conclusions on Policy EV14, which concerns the status of the Tythegston Conservation Area Management Plan, I consider that a development brief should not be needed in all cases to which this policy would apply. I have taken account of advice in WO C61/96 that policies for the preservation and enhancement of conservation

areas, including an appraisal of strategies for the future, should be published. I therefore support the amendment which the Council has put forward in the PIMS.

3.84.3 The NAW argues that it is unclear how the criteria in this policy would be used in assessing applications, and the policy should be worded positively. I consider that the policy broadly reflects the relevant advice in WO C61/96, having regard for the Shimizu court judgment, 1997. However, I agree with the objector that the policy could, and should, be expressed more purposefully to guide potential developers. With amendments, including those put forward in the PIMS, I conclude that the criteria in this policy would be fair and clear.

3.84.4 In addition, though no objection has been made, I consider that the policy should refer to planning conditions as well as obligations. The Council may wish to consider this matter if making other changes to the policy.

**Recommendation**

3.84.5 I recommend that the policy should be modified as shown in the PIMS.

3.84.6 I recommend that the policy should be further modified as follows:

'Development proposals involving the demolition of an unlisted building within a conservation area should meet all the following criteria :

- the existing building does not make a positive contribution to the character or appearance of the conservation area;
- there is demonstrated to be negligible scope for improvement, adaptation or conversion of the building; and
- detailed plans for the redevelopment of the site, which would preserve or enhance the character or appearance of the conservation area, are in place.

Subsequent redevelopment of the site shall be in accordance with a site development brief or other approved plan, and any planning obligations/agreements as agreed with the Council.'

**3.85 POLICY EV44  
Highways in Conservation Areas**

**Objection**  
DO/51227/1783 Harmer Partnership

**Issue**

3.85.1 This is whether or not the policy is reasonably flexible.

**Conclusions**

3.85.2 The Harmer Partnership objects to the wording of the policy as unreasonably restrictive, requesting that 'have an unacceptable adverse impact' should be substituted for 'adversely affect'. I agree with the Council, as it explains fully in its General Proof 1, CD147, that qualifying words such as 'unacceptably' tend to make policy statements unclear or

imprecise. However, I consider that this policy should be re-worded to reflect the statutory duty for conservation areas, given in S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

**Recommendation**

3.85.3 I recommend that the policy be modified, so that it reads:

'Highway works in conservation areas will be permitted where they would preserve or enhance the character or appearance .....

**3.86 POLICY EV45  
The Public Realm Within Conservation Areas**

**Objection**  
*Conditionally Withdrawn*  
DO/51229/2108 National Assembly for Wales

**Issue**

3.86.1 This is whether or not the term 'favoured' should be used.

**Conclusions**

3.86.2 I consider that the word is appropriately used in Policy EV45 and is consistent with the approach to policy writing outlined in the Council's General Proof 1, (CD147).

**Recommendation**

3.86.3 I recommend that no modification be made.

**3.87 POLICY EV46  
Historic Landscape, Parks and Gardens**

**Objection**  
DO/51209/1649 Countryside Council for Wales  
DO/51209/1650 Countryside Council for Wales  
DO/51227/1784 Harmer Partnership  
DO/51229/1847 National Assembly for Wales

**Issue**

3.87.1 This is whether or not the policy adequately reflects national planning policy for landscapes, parks and gardens of historic interest.

**Conclusions**

3.87.2 The NAW argues that a distinction should be drawn between historic parks and gardens on the one hand, and historic landscapes. It indicates that Cadw favours a broader

approach to protecting landscapes, and suggests that this aspect of the policy would be better dealt with in section 3.5 of the UDP, under 'The Countryside and Landscape'.

3.87.3 The reasoned justification of the UDP explains that the relevant non-statutory register has two parts, the first covering parks and gardens and the second covering landscapes. I have sympathy with the Council's argument that there is limited advice as to the differences which should be considered when policies for both parts of the historic environment are formulated. However, WO C61/96 implies that development proposals affecting registered parks, gardens and their settings should be scrutinised in detail, and that Cadw or the Garden Historic Society should be routinely consulted. For historic landscapes, the proposed development should be of sufficient scale to have more than a local impact before the location in a historic landscape becomes an issue. WO C61/96 was published after the Ogwr Borough Local Plan was adopted, which may explain why that plan does not distinguish between the two elements of the historic environment. I consider that the policy would be clearer and more useful if it distinguished between parks and gardens and their settings, and landscapes.

3.87.4 The CCW puts forward some alternative wording for the reasoned justification of this policy. This seeks to clarify that the Register of Landscapes, Parks and Gardens of Special Historic Interest has two parts, and the second part is itself sub-divided into Part 2.1: Landscapes of Outstanding Historic Interest and Part 2.2: Landscapes of Special Historic Interest. I consider that the proposed changes would explain the Register more accurately and clearly.

3.87.5 The Harmer Partnership objects to the wording of the policy as unreasonably restrictive, requesting that 'have an unacceptable adverse impact' should be substituted for 'adversely affect'. However, I am satisfied that the phraseology is fair and clear. This is a similar objection to others on which I have already made recommendations above, and similar arguments apply to reject the proposed rewording.

3.87.6 I conclude that the UDP takes account of both parts of the Register of Landscapes, Parks and Gardens of Special Historic Interest in Wales, but could explain the differences between outstanding and special historic landscapes better. I consider that these are separate matters from those covered in section 3.5 of the UDP. In the interests of clarity, the plan should distinguish between development proposals in historic parks and gardens and those in historic landscapes.

## Recommendation

3.87.7 I recommend that the policy be modified as follows: 'Development which would adversely affect an historic park or garden, or its setting, will not be permitted. Major development which would adversely affect a historic landscape will not be permitted.'

3.87.8 I recommend that the reasoned justification be modified along the following lines:

- para 3.15.7: 'Part 2.1 of the Register of Landscapes of Historic Interest in Wales includes two areas of the County Borough in a single Outstanding Historic Landscape, notably .....
- para 3.15.9: 'Part 2.2 of the Register of Landscapes of Historic Interest in Wales includes 'Margam Mountain' as a landscape of special historic interest. A substantial part of this landscape area extends eastward from the adjacent Neath Port Talbot CB into Bridgend CB.'

**Objections**

DO/51202/1530 Glamorgan-Gwent Archaeological Trust

*Conditionally Withdrawn*

DO/51229/1848 *National Assembly for Wales*

**Issue**

3.88.1 This is whether or not the policy is in line with the presumption that archaeological remains should be preserved.

**Conclusions**

3.88.2 Both objectors contend that the policy, as worded, implies that development proposals are pre-eminent rather than ancient monuments/archaeological remains. I agree with the Council that the rewording of Policy EV47 suggested by the Glamorgan-Gwent Archaeological Trust would be in conflict with the approach to policy writing outlined in General Proof 1, CD147. The Council puts forward a proposed amendment in the PIMS, whereby the policy would be more prohibitive of development, distinguishing between nationally important ancient monuments and other ancient monuments. I consider that this goes some way to meeting the objections, and note that the NAW has conditionally withdrawn its objection.

3.88.3 The Council has offered a further amendment to Policy EV47 and the succeeding policy, EV48, in its responses to the Archaeological Trust. This is very similar to the proposed new policy submitted by the objector on the form objecting to Policy EV48. I consider that this improves the policy significantly by referring to sites of archaeological significance. However, as revised, the policy refers to 'an approved archaeological evaluation' to be submitted at application stage. The Archaeological Trust's evidence indicates that this would not necessarily mean a full archaeological excavation. My understanding is that a relatively rapid desk-based assessment of existing information, backed up if necessary by a ground survey with small scale trial trenching might suffice. PPWales refers to an 'assessment and/or field evaluation' and I consider that this phrase could be used in order to ensure that the policy is reasonable.

3.88.4 I conclude that, with these further revisions, the policy would be in line with the presumption that archaeological remains should be preserved.

3.88.5 If my recommendation is accepted, the title of the policy should be changed to confirm that it is not just directed at ancient monuments.

**Recommendation**

3.88.6 I recommend that the amendments put forward in the PIMS should not be made.

3.88.7 I recommend that the policy should be modified as shown in the Council's response to Glamorgan-Gwent Archaeological Trust Ltd, objection no DO/51202/1530.

3.88.8 I recommend that the policy should be further modified to read:

' ..... of archaeological significance, an assessment and/or field evaluation should be submitted to the LPA .....'

**Objection**

DO/51202/1531	Glamorgan-Gwent Archaeological Trust
DO/51202/1532	Glamorgan-Gwent Archaeological Trust
DO/51202/1533	Glamorgan-Gwent Archaeological Trust
DO/51227/1785	Harmer Partnership

*Conditionally Withdrawn*

DO/51229/1849      *National Assembly for Wales*

**Issue**

3.89.1            This is whether or not the policy is consistent with national policy on preserving scheduled ancient monuments and sites of archaeological significance.

**Conclusions**

3.89.2            The Glamorgan-Gwent Archaeological Trust argues that two policies on archaeology are required. The first should relate to information needed before a planning application can be determined, and the second to mitigation measures which should be agreed and implemented before a development, if it is to be permitted, can take place. The Harmer Partnership contends that Policy EV48 presupposes that works will be needed to protect the archaeological resource, whereas this may not be the case and would depend upon the findings of the archaeological assessment/field evaluation.

3.89.3            The Council has proposed in response to the Archaeological Trust significant changes to Policies EV47 and EV48, and to withdraw the proposed modification to EV47 put forward in the PIMS. I consider that the revised Policy EV48 would follow more logically from the revised EV47, and that this two stage approach would be consistent with advice in WO C60/96 (CD49).

3.89.4            However, in my opinion, the revised Policy EV48 would not address those circumstances where the initial archaeological assessment showed that the archaeological resource was not significant, or where, as the Circular advises, sensitive design might preserve archaeological remains by leaving them undisturbed. I shall recommend a further modification to Policy EV48 to take these factors into account. I shall also recommend that the title of the policy is changed to reflect its relevance to sites of archaeological significance not just ancient monuments.

3.89.5            There are three problems, in my opinion, with criterion 3 of the proposed revision to Policy EV48. The first is that it proposes planning obligations but makes no reference to the use of planning conditions. PPWales para 6.5.4 does the opposite, and this accords with basic planning policy that obligations should not be used where a planning condition would suffice. A related problem is that there is no reference to keeping a watching brief and maintaining a record during construction, which is a useful mechanism for ensuring that significant archaeological remains are preserved. The third problem is that the criterion does not make clear that preservation *in situ* is to be preferred to excavation. I consider that this criterion should be modified to overcome these problems.

3.89.6            The Archaeological Trust also suggests changes to the reasoned justification for this policy. It advises that it is best procedure to obtain Scheduled Monument Consent before applying for planning permission. It points out a typing error where a watching brief is to be

maintained (not retained). The Council has put forward amendments in the PIMS to the supporting text, paras 3.16.10 and 3.16.11, which are carried forward into the further proposed changes in response to the Archaeological Trust. I consider that these would overcome their objections.

3.89.7 On the further proposed changes to paras 3.16.8 and 3.16.10-3.16.12, I consider that some changes would be needed to make the text consistent with my conclusions above. These would include re-wording 'professional and approved archaeological field evaluation' in 3.16.8 to reflect more fully the advice in PPWales para 6.5.2, and re-writing the final sentence of para 3.16.11. I consider that, in most circumstances where alterations to a planned development cannot adequately give protection to the archaeological remains, planning permission should be refused. If planning conditions cannot be imposed to achieve desirable mitigation, then planning obligations should be considered. However, in accordance with national planning policy, the Council may not **require** developers and landowners to enter into obligations. Finally, much of the proposed new para 3.16.10 repeats the content of Policy EV48 and, in my view, could be shortened.

3.89.8 Notwithstanding the modifications already proposed by the Council in the PIMS and in reply to the objectors, I conclude that the policy requires further changes to make it compliant with current national planning policy on archaeology.

## Recommendation

3.89.9 I recommend that the policy should be modified as shown in the Council's response to the Glamorgan-Gwent Archaeological Trust (DO/51202/1531).

3.89.10 I recommend that the policy should be further modified as follows:

**'Development and Sites of Archaeological Significance** – Development and/or any operation which fails to protect, enhance or preserve a site of archaeological significance will not be permitted. Where an archaeological assessment has been carried out and submitted to the Council in accordance with Policy EV47, which indicates that a site of archaeological significance would be at risk, development will not be permitted unless:

- There is no alternative available site for the development/operation; and
- *In respect of nationally important ancient monuments*, whether scheduled or not, and their settings, the development would be in the national interest;
- *For most archaeological sites*, mitigation measures can be put in place which would preserve, protect or enhance the archaeological remains and their setting 'in situ';
- *Where archaeological remains of lesser importance* are involved or their significance is outweighed by all other material considerations, measures to secure the excavation and/or rescue, and recording of the remains and publication of the results can be put in place.

In appropriate cases, developers may be asked to accommodate a watching brief by an archaeologist or archaeological organisation during construction.'

3.89.11 I recommend that paras 3.16.8, 3.16.10 and 3.16.11 should not be modified as shown in the PIMS.

3.89.12 I recommend that paras 3.16.8 and 3.16.10 – 3.16.12 should be modified as shown in the Council's response to the Glamorgan-Gwent Archaeological Trust (DO/51202/1531).

3.89.13 I recommend that paras 3.16.8 and 3.16.10 – 3.16.12 should be modified further in line with my conclusions above.

## 3.90 POLICY EV49 Unacceptable New Development Design

### Objection

DO/51227/1786	Harmer Partnership
PCO/51209/2222	Countryside Council for Wales
PCO/51209/2223	Countryside Council for Wales
PCO/51209/2224	Countryside Council for Wales
PCO/51209/2225	Countryside Council for Wales
PCO/51229/2206	National Assembly for Wales
<i>Conditionally Withdrawn</i>	
DO/51203/1550	House Builders Federation

### Issues

3.90.1 These are:

- Whether or not the policy accurately reflects aspirations for high quality design;
- Whether or not criterion 6, which refers to a percentage of capital costs going to public art, is appropriate for a UDP policy.

### Conclusions

3.90.2 On the first issue, the Harmer Partnership and HBF argue that there is a potential conflict between Policies EV49 and 50 in the deposit UDP, since some innovative and original designs would be alien to local building styles. The objectors point out that what is needed is high quality design, and the policies should be re-worded to explain the Council's aspirations for design. The Council has responded by proposing in the PIMS a new policy to replace both EV49 and EV50. This sets out the criteria which would be used to assess the design of development proposals within urban areas.

3.90.3 Policy EV49 of the PIMS is a long and detailed policy, but I consider that current national policy calls for a positive and thorough approach to urban design. Section 2.9 of PPWales places good design at the heart of promoting sustainable development. It states that good design should be the aim of all those involved in the development process and should be encouraged everywhere, from the construction or alteration of individual buildings to larger development proposals. Much of the development in the Plan period will be for the provision of new housing, and section 9.1 of PPWales seeks to provide well-designed new residential environments, with greater emphasis on quality and designing places for people. Large housing areas of monotonous character are to be avoided. The revised Policy EV49 aims to achieve a 'satisfactory' design standard though, in the light of national policy, I consider that it should aim

higher and seek only 'good' design. This would enable the barely satisfactory or mediocre scheme proposals to be rejected.

3.90.4 I consider that the criteria-based policy put forward in the PIMS is a significant improvement, and fairly reflects the guiding principle for the UDP given in its para 2.1.3. The HBF has withdrawn its objection on condition that the amendments in the PIMS are made. I conclude that the policy, as revised in the PIMS, fairly reflects aspirations for high quality design.

3.90.5 On the second issue, the NAW argues that criterion 6 is inappropriate as it suggests a form of tax on new development. It is also unclear when the tax would apply. In my opinion, criterion 5 has already identified public art as a desirable design element, and criterion 6 seeks to explore ways in which it would be provided.

3.90.6 I sympathise with the Council, which would be unable to achieve much in the way of new public art, without additional funds from developers. Planning obligations are an important tool (properly used they may enhance the quality of development), but should only be used where the relevant tests can be met. Government guidance is clear that contributions need to be justified on a case-by-case basis. I consider that the UDP policy should not elaborate on the mechanisms and financial arrangements for achieving more public art. Rather than refer to a percentage of capital costs in the policy, it should insist on good design when entering into negotiations with developers and seek their collaboration over beneficial schemes to achieve new public art. I conclude that criterion 6 should be omitted for the reasons advanced by the objector.

3.90.7 The CCW has submitted counter-objections to the revised policy, specifically to criterion 10, and revised text in paras 3.17.10 and 3.17.15. The Council requests that the counter-objections be scrutinised in the light of PPWales, which was published following preparation of the PIMS. I have carried out that exercise, and am satisfied that the policy fairly reflects national policy in the areas of concern to the objector. I conclude that the policy as revised in the PIMS, with minor alterations only, clearly and concisely informs developers and the public what is expected to produce good urban design.

## Recommendation

3.90.8 I recommend that Policies EV49 and EV50 in the deposit UDP should be deleted and that Policy EV49 as shown in the PIMS should be included in their place.

3.90.9 I recommend that Policy EV49 should be further modified as follows:

- Delete 'satisfactory' in the first line and substitute 'good';
- Delete criterion 6.

3.90.10 I recommend that the reasoned justification for Policies EV49 and EV50 as shown in the deposit UDP should be deleted, and replaced with the text shown in the PIMS as 3.17.5 to 3.17.19.

### 3.91 POLICY EV50 Innovation in New Development Design

#### **Objection**

DO/51227/1787 Harmer Partnership

*Conditionally Withdrawn*

DO/51229/2109 *National Assembly for Wales*

#### **Issue**

3.91.1 This is whether or not the policy is compatible with Policy EV49 of the deposit UDP.

#### **Conclusions**

3.91.2 The Council has proposed in the PIMS that Policies EV49 and EV50 should be combined to provide a single urban design policy. I agree with Harmer Partnership that deposit Policy EV50 is potentially incompatible with deposit Policy EV49, but consider that Policy EV50 becomes superfluous following the proposed changes to Policy EV49 put forward in the PIMS. I see no need for a revised policy on innovation in new development design as the objector proposes.

3.91.3 The objection made by NAW to the term 'favoured' is similar to objections made to other policies. The NAW has withdrawn its objection on the basis that 'permitted' would not be more pertinent. As the revised Policy EV49 in the PIMS uses the word 'permitted', the objection has been overcome.

#### **Recommendation**

3.91.4 I recommend that Policy EV50 be deleted.

### 3.92 POLICY EV51 Crime Prevention

#### **Objection**

*Conditionally Withdrawn*

DO/51229/2110 *National Assembly for Wales*

#### **Issue**

3.92.1 This is whether or not the word 'favoured' should be used.

#### **Conclusions**

3.92.2 The NAW has made similar objections to use of the word 'favoured' in a number of policies, but withdrawn the objection conditionally if the word 'permitted' cannot be substituted. I consider that the wording of Policy EV51 is consistent with the approach to policy writing outlined in the Council's General Proof 1 (CD147).

## Recommendation

3.92.3 I recommend that no modification be made.

### 3.93 POLICY EV52 Accessibility

#### **Objection**

*Conditionally Withdrawn*

*DO/51203/1551 House Builders Federation*

## Issue

3.93.1 This is whether or not the reasoned justification provides accurate information about new development and accessibility for those with impaired or limited mobility.

## Conclusions

3.93.2 The HBF advises that Part M of the Building Regulations now requires all new residential development to be built to 'visitability' standards for those with special accessibility needs. I agree that the text in para 3.18.7 of the UDP does not reflect Part M. In addition, internal layout is a matter for Building Regulations which the UDP should not seek to duplicate. However, the Council has put forward a revised paragraph in the PIMS, which has the support of the HBF. I conclude that the revised text in the PIMS provides accurate information about requirements for new development and accessibility for those with impaired or limited mobility.

## Recommendation

3.93.3 I recommend that no modification be made to Policy EV52, but para 3.18.7 be modified as shown in the PIMS.

### 3.94 POLICY EV53 Outdoor Advertisement Control

#### **Objection**

*Conditionally Withdrawn*

*DO/51229/2111 National Assembly for Wales*

## Issues

3.94.1 This is whether or not the term 'favoured' should be used.

## Conclusions

3.94.2 This is similar to objections made by NAW to other policies in the UDP. The objection is conditionally withdrawn as long as the word 'favoured' is used consistently with the approach to policy writing outlined in the Council's General Proof 1, CD147, and not in places where 'permitted' would be preferable.

3.94.3 In Policy EV53, there is a list of criteria pertaining to public safety and visual amenity, ending with a catchall in criterion 6. In my opinion, if a development proposal satisfied all these criteria, it should be permitted. In this policy, I consider that the word 'permitted' would be preferable to 'favoured'.

## Recommendation

3.94.4 I recommend that the policy be modified so that the final phrase reads 'will be permitted'.

## 3.95 POLICY OMISSION Pollution

### Objection

DO/51208/1601 RSPB Cymru

## Issue

3.95.1 This is whether or not a new policy on pollution is required.

## Conclusions

3.95.2 The RSPB acknowledges that it is not the role of the UDP to duplicate the control processes operated by statutory pollution control agencies. However, it outlines three broad approaches which the planning system can use to reduce pollution. These are locating development so as to reduce pollution generation at source, not permitting development which would indirectly cause pollution thresholds to be exceeded and ensuring that the location of new development does not lead to elevated levels of pollution locally.

3.95.3 The UDP has an underlying principle to improve the quality of life for residents in ways which are compatible with sustainable development. I consider that its preferred land use strategy and Part 1 policies, which refer specifically to pollution control and reducing the number and length of car-borne journeys, provide the appropriate strategic land use planning context for reducing pollution.

3.95.4 The RSPB proposes a policy which would be directed at four different sources of pollution. I consider that it would be similar to Policy EV27 of the UDP although, for reasons given earlier, I have recommended that it should be deleted. The Council argues that the RSPB's proposed new policy is unnecessary as the matters which it is intended to address are dealt with in more detailed policies. I consider that Policies EV17 and EV31 to EV34 cover many of the objectors' concerns. In addition, Policy EV49, as proposed to be revised in the PIMS, promotes good design including a pollution-free environment. I conclude that the Plan adequately covers the areas of concern to the RSPB and does not require a new policy on pollution.

## Recommendation

3.95.5 I recommend that no modification be made.

