

APPENDIX C

- 1 PLANNING HISTORY SUMMARY TABLE**
- 2 INSPECTORS LETTER FROM APP6410/C/95/508749 & APP6410/C/95/508750**
- 3 DECISION NOTICE FOR LIGHTING OF MMA LOWER YARD P/20/0262/a**

Planning History of MMA Site from 1990 to date

Application. No.	Description	Decision	Date
P/20/0262	Condition discharge (4) Wildflower planting scheme	Approved Sept 2022	Submitted Sept 2022
P/22/0107	Rear extension to auction hall to accommodate toilet block relocation and store	Approved June 2022	Submitted May 2022
P/21/0364	Site C (Hafod): full application for replacement customer and staff parking area, hard and soft landscaping	Pending	Submitted 29 Oct 2021
P/200194	<i>WG application for Site E: Temporary change of use of Pant Road Playground to create a secure a parking area for car parking, vehicle storage and on load/offload vehicle transporters, due to the construction of the A465 Heads of the Valleys dualling works, to be used in association with Merthyr Motor Auctions</i>	<i>Approved 28th Dec 2020</i>	<i>Submitted 2nd Nov 2020</i>
P/20/0262	Resubmission of Removal of condition h attached to appeal decisions APP6410/C/95/508749 and 508750 which currently restricts the use of the floodlights (Removal of Condition)	Approved 3 rd September 2021 JR PAP served 14/9/21	Submitted 26/10/2020
P/21/0008	Removal of bank in main yard to facilitate additional area for storage / diesel tanks	Conditiona l Approval June 2021	Submitted June2021

Application. No.	Description	Decision	Date
140258	Removal of condition h attached to appeal decisions APP6410/C/95/508749 and 508750 which currently restricts the use of the floodlights (Removal of Condition)	Quashed following JR – currently being re-determine d – see above Approved judgement Approved with Conditions	06/05/16 18/11/15
130074	Retention of 2 No. lamp- posts housing CCTV cameras and Public Announcement System	Approved	01/05/13
120022	Demolition of existing part of building and erection of new two storey extension	Approved with Conditions	05/04/12
100089	Variation of Condition e (relating to hours of operation) of Planning Inspectorate's appeal decision APP/6410/5/05/05/508749	Withdrawn	23/07/10
100030	Removal of Condition E (hours of operation condition) of Planning	Withdrawn	23/03/10
APP/6410/C/95/05/508749	Inspectorate's appeal decision APP/6410/C/95/05/508749		21/2/1997

Application. No.	Description	Decision	Date
090142	Removal of Condition e (hours of operation condition) of Planning Inspectorate's appeal decision APP/6410/5/05/508749 dated the 21st February 1997	Refused	17/12/09
080093	Erection of single storey car and van valeting building	Approved	05/08/08
000088	Renewal of existing roof cladding and rain water goods.	Approved with Conditions	16/04/00
990400	Erection of steel framed garage light industrial and storage use.	Refused	18/01/00
980038	Erection of workshop (certificate of lawfulness application for continuation of planning permission 86/0926)	Refused	07/01/99
960434	Incorporation of area into yard, regrading of bank, formation of bund and provision of landscaping and palisade fencing to side boundaries.	Refused	20/12/96
950504	Erection of palisade fencing (2.5 metres high)	Approved	29/03/96
900288	Reclamation works	Withdrawn	16/07/90

APPEAL DECISION LETTER AND LAF1 PLAN

21/2/1997

APP6410/C/95/508749

APP6410/C/95/508750

P114/0258

Yr Arolygwyr Cynllunio

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24 FEB 1997

Your Ref./Eich Cyf:

3581/5/LAF/ACS

Council Ref./Cyf Cyngor:

DOW/ENF 1&2 JCD/DH

Our Ref./Ein Cyf:

T APP6410/C/95/508749

T APP6410/C/95/508750

Date/Dyddiad: 21 FEB 1997

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MERTHYR MOTOR AUCTIONS
LAND AND BUILDINGS EAST OF PANT ROAD, DOWLAIS, MERTHYR TYDFIL**

1. I have been appointed by the Secretary of State for Wales to determine your client's appeals against two enforcement notices issued by the former Merthyr Tydfil Borough Council (now the Merthyr Tydfil County Borough Council) concerning the above mentioned land and buildings. I held an inquiry into the appeal on 16 and 17 April 1996 and on the 30 and 31 July 1996. The evidence was taken on oath. At the inquiry applications for costs were made on behalf of Merthyr Motor Auctions against Merthyr Tydfil County Borough Council.

NOTICE A

2. (1) The notice was issued on 2 August 1995.

(2) The breach of planning control as alleged in the notice is that "Without planning permission, use of land and building for the storage, parking and valeting of vehicles associated with the adjacent car auction premises".

(3) The requirement of the notice is "...to remove from the land and building all vehicles and equipment associated with the unauthorized use referred to...".

(4) The period for compliance with this requirement is 28 days.

NOTICE B

3. (1) The notice was issued on 2 August 1995.

(2) The breach of planning control as alleged in the notice is that "Without planning permission, the carrying out of the following engineering works: the removal of retaining wall/s on the land; the excavation of and cutting into embankments and batters on the land; the importation, deposition and compaction of inert material on the land, the re-contouring and surfacing of the land."

(3) The requirements of the notice are

(i) Remove all material deposited on the land shown coloured green on the plan and restore the land to its condition before the breach took place by grading the entire area of the land coloured green from the existing level between points C and D;

(ii) Remove all material deposited on the land shown coloured yellow on the plan and restore the land to its condition before the breach took place by levelling the ground across its entire area to the existing level between points C and D;

(iii) Alter the batter profile on the land (shown coloured blue on the plan attached) to batters of not greater than 1 in 2 as measured from the existing boundary levels to a toe level corresponding with the level required by step (i) above and topsoil and re-seed the area with grass.

(4) The period for compliance with these requirements is 3 months.

GROUND OF APPEALS

4. Both your client's appeals are proceeding on similar grounds as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991, that is to say:

- (a) that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted;
- (c) that the matters stated in the notice, if they occurred, do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any

injury to amenity which has been caused by any such breach;

- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should be reasonably allowed.

THE SITES AND THEIR SURROUNDINGS

5. The two appeal sites are within the premises of the Appellant, Merthyr Motor Auctions. Those premises extend to about 1.59 ha, are about 310m from north to south and vary in width between 120m and 18m, and are located in Dowlais between Gwernllwyn Bach and Penywern. The A465(T) Heads of the Valleys road is elevated as it crosses the northern part of the premises. The Dowlais Industrial Estate lies to the north-west, north of the A465(T) and to the north-west of Pant Road which runs along part of the premises. On Pant Road, near the northern part of the premises there is a chapel of rest and a children's playing area. In the vicinity, Pant Road is mainly fronted by terraced houses. Between Pant Road and the premises, there is Llewelyn Street which is partly fronted by terraced houses. Near the junction of Llewelyn Street with Pant Road there is a public house and its car park. Between Llewelyn Street and the appeal premises there are "older" houses and 2 recently built houses known as Gwernllwyn Fach and Rhosbren Bach. To the east of the auction premises and elevated, there are the ends of two terraces, Brynwern Street and Wern Street (part of Penywern) and south of those streets, undeveloped land and a public path.

6. Pant Road runs from the settlement of Pant, which lies to the north, to Dowlais which lies to the south. That road facilitates a connection between the A465(T), A4102 and A4060. It is about 6 to 7m wide and has footways on both sides. In the vicinity of the appeals sites, it is on a slow sweep with a slight gradient. At its southern end, Pant Road changes to Victoria Street which is narrower and fronted by houses and shops.

7. The northern boundary of Merthyr Motor Auctions is a 2.75m high post and wire chain link fence along which conifers have been planted. The north-west boundary runs more or less next to Pant Road, except for a small section north of the A465(T) and is defined by a similar 2.75m fence. At a point between the A465(T) bridge and the junction of Pant Road with Llewelyn Street, there is a 1m high masonry wall at the back of the footway. Near that road junction, the western boundary to the appeal premises returns in an eastward direction and goes south to the rear of the houses on the east side of Llewelyn Street, save for an elevated and more or less rectangular shaped piece of land adjoining 43 Llewelyn Street (that land is not part of either appeal site and is the subject of litigation between the Appellant and a third party; the land was partially removed during the inquiry period). The western boundary continues south at the rear of Gwernllwyn Bach and Rhosbren Fach; this boundary is marked variously by a post and wire fence, saplings and an

allegedly unauthorized 2.4m high palisade fence (it is not part of either notice).

8. The southern boundary runs in a south-west to north-east direction. It is alongside a footpath which connects Victoria Street to Penywern. The eastern boundary is at the top of a bank and is delineated by post and wire fences.

9. There are two vehicular access points. One is the direct access to the auction area and buildings in the northern part of the premises, directly off Pant Road near the A465(T) bridge. The second access is in the south of the premises, off Victoria Street, contiguous with the footpath from Victoria Street to Penywern. Both access points consist of substantial steel gates set back from the back of the footway. There is another gate on the western boundary but this is not used (limited by an earlier enforcement appeal decision).

10. At the northern part of Merthyr Motor Auction premises there is group of substantial buildings used for vehicle auctions. The majority of the site is relatively flat except that, about half way down the premises, there is a ramp from one half of the site to another. Near this ramp there is a single storey structure use for vehicle and plant valeting. Save for the sloping land at the extremities of the premises, virtually the whole of the premises are covered with hard surfacing. It is physically possible for vehicles to be driven between the northern and southern parts of the site, by utilizing the ramp alongside the building which is used for valeting.

11. The land (and building) which is subjected to the enforcement notices is contained within the overall premises. It is not readily apparent where the northern boundaries of both sites actually occur on the ground. For accurate determination of the appeals sites, reference has to be made to the plans which accompanied the notices [5/1].

HISTORY AND BACKGROUND

12. The appeals sites were formerly part of railway land which lay within a "cut". The passenger rail service ceased in the 1960's and the mineral railway some time after then. Part of the appeal premises has been used as a coal depot.

Photographic evidence

13. A number of photographs were submitted. I set out a summary of the more salient photographic evidence: a) March 1975 - LPA [5/photo7], view of cutting used as coal yard, no vehicle storage; b) April 1984 - LPA [5/photo8], view of bottom yard, several trailers, one or two items of plant; c) August 1991 - LPA [5/photo9], view of whole yard one or no trailers in bottom yard; apparent barrier between top and bottom yard; valeting shed; d) March 1992 - LPA [5/photo10], view of bottom yard, one trailer; e) March 1995 - LPA [5/photo11&12], views of bottom yard, valeting building; "undisturbed" ground in south; e) March

1995 - June 1995, [5/photol3] - several views showing progressive physical alterations and parked vehicles; f) June 1982 - APP [4/17] part view of large aerial photograph & [4/17] unroofed valet bay; access from upper to lower yard; g) 1985 - APP [4/17], aerial photograph of upper yard, vehicles parked south of boundary shown in the June 1982 photograph; h) 1990 - APP [4/17], completed valet building, trailer and vehicle in lower yard, retaining wall in lower yard, several vehicles in area between valet building and the boundary mentioned above and i) 1987 - Interested person [9], whole site, shows unroofed valet building; seemingly no vehicles below "concrete section, gated" boundary [document submitted after inquiry].

Plans

14. The planning history of Merthyr Motor Auctions is set out by the LPA [5/4] and by the Appellant [4/2-5] and by the LPA in a copy of their statement [5/18 plan 2] in respect of the March 1987 Appeal. That statement also showed what they considered to be the complete site of Merthyr Motor Auctions as existing at that time (in 1987). The full extent of the land currently occupied by Merthyr Motor Auctions is shown by the Appellant [4/1].

Appellant's position

15. A photograph taken in 1984 shows the valet building under construction. The valet building was constructed before 1985 and was the reconstruction of a less permanent building which had been used in connection with the cleaning and preparation of vehicles, plant and equipment.

16. Mrs Weaver said that from about 1980 to 1981 items were brought into the site from both accesses and that once the valet building was completed both accesses were used by vehicles which could be brought to the valet building from both yards. About 6 to 8 persons were employed on valeting from 1984. Vehicles and plant were washed outside the building and valeted inside the building. Photographs taken in 1982 and 1984 show a gated barrier at the south end of the narrow part of the cutting and a barrier of sleepers just to the south of that gate. Mrs Weaver said that the sleepers which lay across the yard were moved to one side for access.

17. Photographs from 1984 and 1985 show vehicles in the bottom yard. Mrs Weaver said that plant had been stored in the bottom yard but more frequently after 1981. She also said that after 1984 vehicles would be parked in the area at the front of the valet building to the south and that trailers and plant were moved to the south because they were less easily stolen than vehicles, that infrequent auctions for plant and trailers were held in the lower yard and that at times there were 50 trailers. She produced invoices to support her statement.

18. In affidavits: Mr S D Hall says that plant and motor vehicles were stored in the bottom yard since 1984. Mr C V

Jenkins says that vehicles had been taken to Merthyr Motor Auctions in March 1985; a marked plan indicates where vehicles had been parked in the lower yard. Mr A Price said that the cutting was taken over a bit at a time and that, by 1980, the whole of the cutting was being used in connection with MMA and that the bottom yard was used to store plant and vehicles ready for auction; by 1982 the bottom end of the cutting was often full of vehicles and plant and that they were auctioned from there. Mr A J Price says that, by about 1985, the whole of the lower end of the cutting and the gates at the bottom of it were used by vehicles and plant; very often a large number were stored (their locations were as marked on a plan) and after being sold they left through the bottom gates onto Park Road; there were also auctions in the lower yard. Mrs Y V Shipman said that MMA occupied the top yard and then the middle sections and then further down the bottom end of the cuttings (as marked on a plan) in about 1980. Mr G C Wright says that as far back as 1984 MMA were storing plant and motor vehicles for auction down the bottom end of the cuttings.

19. In Statements: Mr B Horgan, Mr Hunt and Mr Lever state that they purchased plant/machinery lots which were auctioned in and around the valet bay area and on the rough land further down since 1979. Mr M Lewis states that machinery and trailers have been auctioned from the southern end of the site and that since about 1983 the auctions have been held approximately twice a month. Mr C Brown states that in 1982 the auction took place in the lower yard and that plant would have been stored in the bottom half of the site. Mr Weaver says that he used the notice land as a coal and haulage depot. About 1979 he started to wind down his business and rented some of the ground in the cutting to Merthyr Tydfil Car Auctions. He says that Merthyr Motor Auctions have enjoyed unrestricted use of whole of the land for over 16 years. In evidence, Mrs Weaver confirmed that up until 1984, Mr Weaver operated a coal business but that it was running down and that Mr Davies (Auction Business) used most of the site and that towards the end, the coal business dealt with small quantities for family and friends.

20. Evidence given by Mr Connors is that the lower yard was used for parking vehicles and storing plant and machinery since 1985; plant and machinery has been auctioned from the lower yard since that time and that is supported from the schedules of items sold (eg 430 lots in 1985), typical items for auction from the lower yard would include trailers, compressors, generators and mowers.

21. In general, the evidence is that the parking and storage of vehicles was generally limited to those items that could also be described as plant and were an "overspill" from the auction premises in the upper yard. Those items were auctioned from the lower yard and the whole of the yard was used for that purpose, although the area nearest the valet building was more often used. The use was intermittent and variable in intensity and there were occasions when the time between the vehicle arriving and its disposal could be short. The intensity of use of the lower yard also depended on the amount of space available in the top yard.

22. The demarcation between upper and lower yards was in the form of 3 gates across the cutting; at the north end, a concrete section wall with a gate on the eastern side as shown in the 1982 photograph; a "sleepers" barrier just to the north of the valet bay as shown in the 1984 photograph; a gate alongside the north wall of the valet bay. These gates were opened to allow vehicles and plant to move through.

23. The company ledger shows that the business, the auctioning of vehicles, plant and business has always been "one business". Mr Connors said that the area nearest the valet building has been more used than the remainder of the southern yard, except for occasions when large numbers of trailers were waiting for auction. That would be reasonable because of security, proximity to the main part of the business and the poor condition of the lower yard which is confirmed in the statements of Mr C Brown and others and by various photographs. Overall, it appears that vehicles and plant were located to the north of the valet building, plant trailers and items for valeting near and to the south of the valet building and plant and trailers south of, but not close to, the valet building.

24. The planning application of 1985/86 No. 52860926 described the land as being used for vehicle parking. The permission, for the erection of a steel fronted structure, required the re-siting of moveable structures, including a compressor, to be alongside the new structure. Mrs Weaver said that mains water and electricity supplies had been laid to the site and it was reported that Mr Weaver has said that a sub-base and hardstanding for the building had been carried out. This more than satisfied the requirements for a "specified operation" under S43 of the TCPA 1971. This is more than sufficient for development to have commenced and the planning permission remains extant - {United Refineries (1978) JPL 110, Thayer (1992) JPL 264, Hillingdon (1990) JPL 575 and Malvern Hills (1982) JPL 439.} Mrs Weaver said that the building relating to that application was to be used for the maintenance purposes (relating to their operator's licence) of MMA who had about 6 vehicles, including a low-loader. The word "vehicles" refers also to dustcarts and lorries but it is also possible for them to be referred to as plant.

25. The southern access has been in use by all manner of vehicles, including heavy lorries, for a number of years; as far back as the coal depot at least.

26. In 1991 the site was flooded with sewerage. Mrs Weaver said that employees were unable to work as they were affected by a rash. Although the cause of the flooding was put right within weeks, the smell and contamination lasted a lot longer and prevented the land being used.

Council's position (supported by residents)

27. The sudden avalanche of complaints from local persons indicates that the development had not been ongoing in the same manner for 10 years. These vociferous complaints indicate that

there must have been a sharp change in activities. Mr Roberts said that when the area was used as a coal yard it was green and was divided into 2 parts by a boundary wall about 2.4m (8 ft) high with the motor auctions taking place in the north and the coal yard in the south; he did not recall car sales in the lower yard. Mrs Evans said that for the 4 years after 1983 there was a valet building and coal yard on the land. Mr Jones (of Llewelyn Street) said when he moved to Llewelyn Street in 1993 there was no valeting taking place. Mr A Davies said that there was a wall across the premises in 1991 but there was no gate. Mrs Thomas, Rhosbryn Bach, said that in 1989 the lower yard appeared vacant, apart from the odd car or abandoned vehicle; in 1993 she complained to the police about the number of containers parked, the loss of privacy caused by raising the ground and the increased activity in the lower yard. Mrs D Jones, Gwernllwyn Fach, described the effect that the parking of machines had on the rear of her house. Local residents have no recollection of substantial vehicle storage before 1995.

28. The evidence of local residents points to there being a marked difference between the quite passive use to which the site was previously put and the frenetic activity of vehicles being revved up in queues waiting to be auctioned. Although the auctions tend to finish by about 20:00 to 20:30hrs clearing up can continue for another 2½hrs.

29. The invoices produced by Mrs Weaver do not show clearly the location of the vehicles sold. Moreover, the schedule produced by Mr Connors, to show the sales from the lower yard, had been compiled on the basis that those types of lots were those that would have been sold from there. At the 1987 inquiry it was stated on behalf of Mr Weaver that the annual throughput was 9000 whereas the current evidence is that the throughput was 3000. In 1987, it would have been in the company's interest to boost the activity.

30. The evidence on the boundary between the upper and lower yard is in conflict. Nevertheless, the upper and lower yards were originally in different ownerships and in that event an undivided wall would be an obvious way of providing security, particularly to a coal yard which would have been vulnerable to theft. There is no evidence on how, why, or by whom the gate was erected. Even if the photograph of 1982 is correct and there was a gate in the wall, the gate may have been provided for a number of reasons. It does not establish that, because there was a gate between the yards, the lower yard was used in connection with the auction; occasional access could have been for all sorts of reasons.

31. The building permitted in 1986 (No.52860926) cannot be brought within S43 of the TCPA 1971 because there is a fundamental difference between "the laying of any underground main or pipe to the foundation" and some preparatory work, such as putting electricity cables but stopping short of the building. The asserted foundations were never the subject of building regulations applications or inspections and none of the residents

were aware of what is alleged to have taken place. Moreover, the original planning permission cannot remain extant when the ground levels in that location have been drastically altered. Mrs Weavers claimed that a sewer had been laid but the plan shows that that cannot have been the case. She also said that the reason why the building had not been erected was that the land was flooded; that did not occur until 1991, well after the permission.

NOTICE A

The notice

32. As the buildings and land in the northern part of site are used for the auctioning of vehicles, plant and equipment and not solely cars, the words "associated with the adjacent car auction premises" in the alleged breach are incorrect. The words should be "associated with the adjacent vehicle, plant and equipment auction premises". All the parties at the inquiry understand that the northern yard is so used and that it is open to me to correct the allegation in the notice. Accordingly, it seems to me that a change to a corrected description can be done without prejudice to any of the parties and I intend correcting the notice in order to clarify the terms of the deemed application under S177(5) of the amended Act.

The planning unit

33. Having regard to all the plans and evidence it seems to me that the whole of Merthyr Motor Auctions might be divided into 4 parts a) that part which comprises the main auction area including the land granted permission in 1987 down as far as the top boundary, which coincides with the west side of Wern Street, to the so called "concrete section" boundary, called the top yard [4/1]; b) that part of the site between the "concrete" boundary and the southern end of the valet building, and c) the remainder of the bottom yard.

34. From the evidence, it is apparent that the original planning unit was the northern part of the yard down to the "concrete section" boundary and that land below that point has been "taken-in" into the planning unit. At the time of the notice, the whole of areas a), b) and c) were used in connection with Merthyr Motor Auctions. Turning to the area defined by the notice, it seems to me that it is right for the notice land to extend right up to the area which has permission for the car auction, (even though the LPA indicated in their 1987 appeal statement that the MMA site extended further south.)

Ground (c)

35. It was argued that the notice land has a long history of commercial use. After the cessation of the railway it was used for activities associated with a coal yard and haulage. Although those uses involved the storage of materials and the parking of vehicles, the storage of vehicles was a by-product of the coal or

haulage use which took place within the ambit of that activity. It is my view that those uses are wholly different in character from the present use, albeit that vehicles went to the premises and parked there on occasions.

36. You contended that the lawful use of the site was for storage of coal and vehicles and refer to the permission of February 1972. That permission was for the erection of temporary building for storage of coal and vehicles; unfortunately, there is no plan to go with that permission. I am mindful of your statement that the alleged "lawful use" site would be contained within the notice site and I note that the 1972 permission does not contain a limitation by way of numbers or location but that there is a condition regarding the stocking, repairing or breaking up of cars or derelict vehicles. Notwithstanding those matters, I consider that, overall, the previous uses were ancillary to the coal operation and were materially different in character and impact to the alleged uses.

37. The coal business diminished gradually and ceased by 1984. As that happened, it appears that Merthyr Motor Auctions made occasional use of the old coal yard. The uses included parking vehicles, trailers and items of plant and equipment. Oral, written and photographic evidence supports the view that the parking and storage and valeting of vehicles was spasmodic and generally of low intensity and materially different in character and intensity and impact from the nature and character of the storage and parking activities enforced against. (I discuss this point at greater length under ground (d).)

38. In any event, there is no planning permission covering the land allegedly used for valeting or for the storage and parking of vehicles in association with the adjacent car auction. In my judgement, the alleged use amounts to development which requires planning permission. Therefore, a breach of planning control has taken place.

Ground (d)

39. You contend that the alleged use commenced and has continued for more than 10 years and is immune from enforcement action. The Local Planning Authority contest that assertion. You also say that this is not a case which relates to the intensification of use but whether or not there was such an use as a fact.

40. My considerations are limited to the allegation itself and do not include plant and equipment. They do not encompass evidence relating to auctions taking place from the lower yard (save as they might reflect upon the allegation).

41. Looking first at the valeting of vehicles, I accept the genuine views of witnesses, that valeting of vehicles took place on occasions and certainly after the building was completed. However, the aerial photographs of 1982 and 1987 show an unroofed valet building and casts substantial doubt on the contention that the valeting, by between 6 and 8 persons, took place without

interruption from before 1982. On the balance of probability, it seems to me that, occasionally, vehicles may have been washed in the vicinity of the valet building but that that activity has not taken place continuously since 1985.

42. Now turning to the parking and storage of vehicles, it appears to me that, on the basis of the oral and written testimony, vehicles have been parked and stored on parts of the site since 1982, at one time or another; this is borne out by the photographic evidence: the Appellant's aerial photographs of 1982 and 1985 shows a number of vehicles parked just below the "concrete section" boundary and the LPA's photographs of 1984, 1991 and 1992 show the occasional vehicle and trailer in the "bottom" yard.

43. My assessment of the evidence leads me to the view that, on the balance of probability, it was generally the case that no more than one or two vehicles were stored in the main body of the notice site, below the valeting building. But, as the aerial photographs show, a number of vehicles were parked on the notice land between the "concrete section" boundary and the valeting bay; equally, the aerial photograph of 1987 shows an absence of vehicles in that area. It seems to me that the amount of parking and storage of vehicles up to early 1995, when the activities complained of in Notice B allegedly took place, was intermittent and of low intensity. Since that time, the activities have been more than noticeable to local residents. Bearing in mind the physical changes to the site, (again, as alleged in Notice B) particularly the compacting and surfacing of the yard, which has been a notable contributory factor, it seems to me that there has been a sea-change in the impact of the alleged activities on the surrounding area, particularly on the residential area immediately to the west. I am inexorably led to the view that the intensity and character of the use is markedly different from what it was in 1985.

44. I recognize that parking and storage for an auction might be expected to produce peaks and troughs to correspond with auctions, and I accept that the inability to use the flooded area for some of the time does not necessarily indicate a break in the continuity of the use. Nevertheless, against the background of the evidence and on the balance of probability it appears to me that parking, storage and valeting of vehicles, in line with the activities as they were at the time of the notice, have not been continuously carried out on the notice land for the requisite 10 years.

45. I conclude, on this ground, that the alleged activities are not immune from enforcement because they have continued for more than 10 years. Accordingly, enforcement action is not precluded at the time the notice was issued and the appeal under ground (d) fails.

Ground (a)

46. You asked me to consider this ground whether or not you

succeeded on ground (d).

47. The deemed application is for the use of the appeal site for the storage, parking and valeting of vehicles in association with the adjacent car auction premises. Policy E3 of the approved development plan, the Mid Glamorgan County Structure Plan Proposals for Alterations No.1 approved in 1989 favours the release of land for commerce and industry to meet unforeseen needs for expansion of existing firms on or adjacent to existing sites. The emerging policies are; Policy E3 of the Mid Glamorgan Draft Structure Plan and Policy T3 of the Merthyr Tydfil BC Draft Local Plan. Arising from those Policies and from my consideration of the evidence, the representations and my site inspection, it appears to me that the main considerations are what impact the alleged deemed use would have on a) the safety and convenience of those using the nearby highway and b) the residential amenities of nearby houses.

48. Emerging Policy E3 says that, where possible, land adjacent to industrial premises will be released to accommodate expansion, subject to considerations of parking, traffic generation, access, conservation of the environment and maintenance of amenity. Emerging Policy T3 identifies an alignment for an alternative route to the A465 (T); the text says that in the longer term it would be desirable for the railway cutting, which runs north/south in parallel with Pant Road, to be used as an alternative road line. The appeal site lies within the area so identified. On its face, the use conflicts with Policy T3 but I note that no structures would be constructed on the route, thus the route would not be irrevocably "lost", were permission forthcoming. Paragraph 55 of Planning Guidance - (Wales) Planning Policy says that LPA's should safeguard routes for road schemes which will be implemented within the local plan period together with those which the Highway Authority consider should be protected in the long term. However, Policies E3 and T3 are not, as yet, formal development plan policies.

49. I understand that the southern access to the site is normally kept closed and that it is only used when access through the top gate is not viable, maybe because of auctions taking place. The evidence of local residents is that the bottom gate is used more frequently and that there have been several instances when a long articulated vehicle, such as a transporter, has parked while the driver waits for the gate to be opened. On such occasions the trailer sometimes lies partly in the road but every time a large vehicle gains access (or egress) it has to swing out into Victoria Street. As that street is of substandard width, the long vehicle interferes with the free flow of traffic and causes hazards to both road users and pedestrians; they suffer additional dangers because of the mixed vehicle/pedestrian approach to a footpath which leads to Penywern, lying just to the south of the site. Because of parked vehicles on Victoria Street, any likely road hazards are increased.

50. Visibility from the appeal site down Victoria Street is about 33 metres from a point some 3m back from the kerb. The

Annex to PPG13 (March 1994) says that for a vehicle speed of 20 mph the major road distance should be 33m; that the minor road distance should be 3 m but that, for an access serving a single dwelling or a small cul-de-sac of 6 houses, the minimum acceptable distance is 2.4m; in urban areas with a speed limit of 30mph or less this distance may be reduced to 2m. At the inquiry and in correspondence after the inquiry, the speeds of vehicles on Victoria Street has been in contention. In my opinion, it is apparent that visibility from the access point to the south is just below, or at best, on the bare minimum in relation to advised standards - PPG13 (March 1994). Clearly, the existing southern access is far from ideal. However, this access has historically provided entry and exit to a coal yard and a haulage depot, as well as occasional use in connection with the auction business. On this issue, I conclude that the highway disadvantages would not be sufficient on their own account to warrant refusing planning permission.

51. The substantial amount of complaint from local residents to the local authority and the police, as well as evidence at the inquiry, indicates clearly that the use has generated an unacceptable amount of noise and disturbance; caused by the arrival of vehicles, the positioning of vehicles, the starting up and idling of engines which has occurred not only during the day but, sometimes, in the evening when it has been particularly unwelcome and obtrusive. In my opinion, that injury to amenity is demonstrable. This is quite apart from that which was caused by the alleged operations regarding Notice B.

52. Overall, it appears to me that the activities associated with the use enforced against have been demonstrably undesirable and that, without substantial controls, such activities should not be granted planning permission. At the inquiry, in line with national advice, I sought from the main parties comments on conditions that might be applied were I minded to grant permission.

53. Draft conditions were prepared and were modified so that a complete landscape scheme could be considered directly (rather than be left for further approval). The effect of the conditions would be to; a) limit the area designated for the parking/storage of vehicles prior to auction and the area for valeting and associated parking; b) designate an area for vehicle circulation; and c) provide a landscape area: in effect, this would ensure that vehicles would not be parked or turned in that part of the site that lies close to the houses on Llewelyn Street: d) limit activity on the site to between 08:00 hrs and 18:30 hrs weekdays and Saturdays, save for a transporter arriving and parking only when the auction is taking place in the upper yard: and e) provide a particular type of fencing along the whole of the western boundary to the site. The residents have expressed a wish for Orsa type fencing (were that to be implemented you would wish to fix razor wire inside); a solid concrete panel fence would be too obtrusive, a post and wire and a timber fence would require ongoing maintenance. I consider that palisade fence would be appropriate and would have the

advantage of matching the existing fence.

54. Bearing in mind firstly, the previous use, secondly, the long-standing and interrupted use of the southern access and thirdly, the opportunity to control and limit activity on the appeal site were planning permission forthcoming, it seems to me that on balance the granting of planning permission with conditions would be appropriate on this occasion; notwithstanding the draft policy objections to which I referred earlier.

55. In coming to this conclusion I have taken into account the history of non-compliance with planning procedures which has been associated with the site but it seems to me that that should not preclude a permission with conditions. There appears to me to be no cogent reason why those conditions could not be enforced against were there to be further non-compliance. I have taken into account the arguments regarding what might be a lawful use (viz. your contention, that the nature of the alleged use is not so inconsistent with earlier uses so as to break continuity and, in any event, "abandonment" is inappropriate in these circumstances) and all the other matters raised in respect of granting permission but none are of sufficient weight to override my conclusions.

56. Accordingly, your client's appeal succeeds on ground (a), and I am granting planning permission in accordance with the deemed application under S177(5) which will now relate to the corrected allegation.

Grounds (f) and (g)

57. As the appeal succeeds on ground (a), these grounds do not remain for consideration.

NOTICE B

The notice

Ground (c)

58. You accept that certain parts of the works, the construction of the ramp and the associated excavation of the nearby bank, and the removal of retaining walls are engineering operations. The "middle" of the lower yard has been noticeably raised and the yard has been surfaced in hard materials; these works go well beyond what might be regarded as maintenance. In my opinion, engineering operations have taken place. Even if I am wrong in calling the changes engineering works, operational development has taken place without planning permission. Accordingly, the appeal under ground (c) fails.

Ground (d)

59. The evidence, oral, written and photographic, overwhelmingly points to the works having been carried out within 4 years of the issue of the notice. Therefore, enforcement action is not

precluded at the time the notice was issued and the appeal under ground (d) fails.

Ground (a)

60. The deemed application is for the development cited in the notice; in this case, the removal of retaining walls; the excavation of and cutting into embankments and batters; the importation, deposition and compaction of inert material and the re-contouring and surfacing of the land.

61. Generally, the policy background which I set out in relation to appeal A (paragraphs 47 and 48 above), applies in a similar manner to this appeal.

62. The works which have been undertaken have removed the tendency for part of the site to flood and have provided a larger area which could be more commodiously used for storage and parking. There is evidence that customers to the auction have found the change most agreeable. Whilst I support the view that the operations have "tidied up" the site, I am also of the opinion that they have changed its character and its impact on the neighbourhood. The evidence given in association with Appeal A supports a contention that the unauthorized works have and would facilitate greater activity on the site. This is a contributory factor regarding the impact of the operations. Nevertheless, the application which is before me is for the retention of the works that have already been carried out.

63. The evidence of local persons at the inquiry convinced me that the carrying out of the works complained of in the allegation caused a significant amount of noise, disturbance, distress and anxiety to local residents. However much torment and unpleasantness the residents suffered, that work has been carried out and refusing permission would not "set the clock back" on what has been a most undesirable episode in the lives of residents. It seems to me that the way forward is to exercise control over the use of the yard which I deal with under my consideration of the other appeal.

64. One of the effects of the filling in of the depression is that vehicles in that area are now more likely to be seen than when the ground level was lower. Nevertheless, it seems to me that visual screening at the western edge of the site could reduce the visual impact of tall vehicles in the centre of the site to an acceptable extent.

65. In all the circumstances, it seems to me that the public interest would be best served by granting planning permission subject to controlling conditions.

66. In my opinion, satisfactory drainage of the area is important and permission should not be granted without a condition to ensure that the land would be properly drained. At the inquiry a plan was produced which showed how drainage of the site had been accomplished to the satisfaction of the Council.

Also, in view of the possibility of increased visual impact, some landscape screening should be provided. For the avoidance of doubt and for expediency, relevant conditions identical to those applied in relation to appeal A should be applied.

67. Accordingly the appeal succeeds on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

LATE REPRESENTATIONS

68. A substantial number of late representations were received after the inquiry closed. These were copied between the parties and they are included within the inquiry documents. The evidence which those representations contain has been taken into account by me in my decisions.

FORMAL DECISIONS

Notice A

69. In exercise of the powers transferred to me and for the reasons given above I correct the enforcement notice by the deletion of the words "associated with the adjacent car auction premises" and the substitution of the words "associated with the adjacent vehicle, plant and equipment auction premises".

70. Subject thereto, I allow your client's appeal and quash the enforcement notice. I hereby grant planning permission, on the application deemed to have been made under S177(5) of the amended Act for the development already carried out, namely the use of the land shown edged and hatched in black on the plan annexed to this letter and the building shown on that plan for the storage, parking and valeting of vehicles associated with the adjacent car auction premises subject to the following conditions:

- a. this permission relates to the uses identified on the Lower Yard Area Layout Plan, reference LAF 1, and the use and layout of the site shall be strictly in accordance with that plan otherwise than shall be expressly agreed in writing by the local planning authority;
- b. this permission shall relate to the levels shown on the Lower Yard Survey Plan (as existing) Reference LAF 2 modified to incorporate the land forms shown on the landscaping Plan, reference 1588/ASK plans 01 and 02;
- c. the means of fencing to the western boundary of the site shall be by means of a palisade fence 1.8m high and colour coated to match existing fence and shall be implemented within one month of the date of this letter;
- d. the landscaping scheme shall be implemented in accordance with Drawings ASK 01 and ASK 02 and the

specification Landscape Works, Wyn Thomas PLC April 1996: within the first 3 months of the start of the first planting season following the date of this letter; any trees or plants which within a period of 5 years from the date of this letter die, become diseased or are removed shall be replaced in the next planting season with others of a similar size and species unless the LPA gives written consent to any variation;

- e. no activity shall take place on the site before 08:00 hrs or after 18:30 hrs on weekdays and Saturdays, nor at any time on Sundays or Public Holidays, (the sole exception to this condition being in the event of a transporter arriving whilst the auction activities are being undertaken in the upper yard, such transporter shall be permitted to enter the lower yard for the purpose of parking only;)
- f. a kerb shall be provided at the edge of the planting area (to define the area and to avoid damage to that area by a manoeuvring vehicle);
- g. a 1.2m high chestnut paling fence shall be provided to enclose and protect the planting during the 5 years maintenance period,
- h. details of any proposed floodlighting shall be submitted to and approved in writing by the local planning authority before the lighting is installed and any such floodlighting as may be approved shall be used solely during the authorised hours specified in condition e) above;

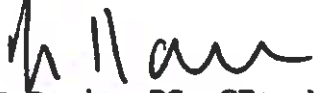
NOTICE B

71. For the above reasons, and in exercise of the powers transferred to me, I allow your client's appeal and direct that the enforcement notice be quashed. I hereby grant planning permission on the application deemed to have been made under S177(5) of the amended Act for the development already carried out, namely the carrying out of the following engineering works: the removal of retaining wall/s on the land; the excavation of and cutting into embankments and batters on the land; the importation, deposition and compaction of inert material on the land, the re-contouring and surfacing of the land on land east of Pant Road, Merthyr Tydfil referred to in the notice subject to conditions (a) to (h) above.

RIGHTS OF APPEAL AGAINST DECISIONS

72. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'R Davies', written over the typed name.

R Davies BSc CEng MICE
Inspector

APPEARANCES

For the Appellant

Mr V Pugh QC

Instructed by Dennis J Harmer & Partners
Planning Consultants
39 Lambourne Crescent, Cardiff.

He called

Mrs P A Weaver
Director and Company Secretary
Merthyr Motor Auctions Ltd.
Bryn Bedw, Pontstigell, Merthyr Tydfil.

Mr L Forse MSc MRTPI
Dennis J Harmer & Partners
Planning Consultants
39 Lambourne Crescent, Cardiff.

Mr P Jones
Nicholson Jones Partnership,
Consulting Engineers, Newport.

Mr M Connors
Auctioneer with Merthyr Motor Auctions

For the Local Planning Authority

Mr M Bishop QC

Instructed by the Solicitor to Merthyr Tydfil County
Borough Council

He called

Mr A N Davies BSc DipTP
Planning Officer with Merthyr Tydfil CBC

Mr A Gilchrist CEng
Senior Drainage Engineer
Merthyr Tydfil CBC

Mr J C David BSc CEng MICE
Highways Engineer (formerly with County Council)
Merthyr Tydfil CBC

Interested Persons

Mr C Thomas	Rhosbren Fach, Llewelyn Street, Dowlais, Merthyr Tydfil.
Mrs M Evans	38 The Hafod, Pant, Dowlais, Merthyr Tydfil.
Mr R Roberts	9 Ifor Terrace, Dowlais, Merthyr Tydfil.
Mr A Jones	Gwernllwyn Fach, Llewelyn Street, Dowlais, Merthyr Tydfil.
Mr A Davies	1 Cross Ifor Terrace, Dowlais, Merthyr Tydfil.
Mrs S Thomas	Rhosbren Fach, Llewelyn Street, Merthyr Tydfil.
Mrs Y Jones	Gwernllwyn Fach, Llewelyn Street, Merthyr Tydfil.
Mrs Davies	Ty Newydd, Llewelyn Street, Merthyr Tydfil.
Mr A Davies	Ty Newydd, Llewelyn Street, Merthyr Tydfil.
Mr A J Price	1 Hecl-y-Castell, Pant, Merthyr Tydfil.

DOCUMENTS

1. List of those attending the inquiry.
2. Notification of the inquiry.
3. Bundle of correspondence from interested persons including Mr Ted Rowlands MP.
4. Documents referred to by Mr Forse;
 - /1 Plan showing MMA current premises and photographs;
 - /2 Plan illustrating planning history;
 - /3 1987 EN appeal decision;
 - /4 Planning permission 52860926;
 - /5 Planning refusal 52940526;
 - /6 Statement of Mr Weaver;
 - /7 Extract from Merthyr Tydfil Consultation Draft Local LP;
 - /8 Extracts from Mid Glamorgan SP;
 - a) Proposals for Alteration No.1;
 - b) Replacement - Deposit Version;
 - /9 Photograph site of Gwernllwyn Fach and Rhosbren Bach;
 - /10 Extract from PPG13 ;
 - /11 Documents regarding use of lower yard area;
 - /12 Letters regarding improvements to lower yard;
 - /13 Survey plan and section with requirement of Notice B added;
 - /14 Fax 15.04.96;
 - /15 Plan - Surface-water Drainage Layout (as built) No 4403, J1;
 - /16 Update on Proof of Evidence of L A Forse;
 - /17 Photographs
 - Aerial view, on display at inquiry 12:06:82,
 - Upper yard 1985,
 - Whole yard 1990,
 - Night photographs 1990/91,
 - Lower Yard condition March 1991,
 - Trailers in lower yard Feb and Aug 1993;
 - /18 Schedule of total items sold (referred to by Mr Connors);
 - /19 Letter from Nicolson Jones (undated);
 - /20 Letter from Nicolson Jones 12 June 1996 enclosing copy letter from Merthyr Tydfil CBC 4 June 1996 and copy letter of Nicolson Jones 12 April 1996;
 - /21 Letter from L Forse, 4 July 1995.
5. Documents referred to by Mr Davies;
 - /1 Copies of notices;
 - /2 Site plan;
 - /3 Site Plan 1:1250;
 - /4 Planning History from 1960 to present day;
 - /5 Copy of Planning Manager's letter to Merthyr Motor Auctions, 1 June 1995;
 - /6 Copy of Planning Manager's letter to Mrs Weaver 7 July 1995;
 - /7 Extract from Planning Officer's Report to Dev. Cont. Committee, 14 June 1995;
 - /8 Site Sub-Committee meeting, 19 June 1995 as reported to Development and Planning Control Committee, 5 July 1995;
 - /9 Requisition for Information forms sent 30 June and relevant replies;

- /10 Fax from Dennis Harmer & Associates received on 5 July as reported to Development and Planning Control Committee on the same day;
 - /11 Extract from Mid-Glamorgan Draft Replacement County SP - Deposit version 1993;
 - /12 Extract from Merthyr Tydfil Borough Local Plan - Consultation Draft August 1994;
 - /13 Copies of letters/petition from local residents in connection with alleged breaches and planning applications between May and November 1995;
 - /14 Copies of correspondence from Mr Ted Rowlands MP since May 1995;
 - /15 Extract from Brecon and Merthyr Railways;
 - /16 Planning application (for steel framed building and vehicle maintenance) 16.10.86;
 - /17 Calculations to show increased run-off following May '95 to Apr '96 works;
 - /18 Statement by Mr Boden (relating to 1987 inquiry);
 - /19 Plan showing position of Valet building re 1987 inquiry.
- 6 Not used.
- 7 Conditions:
- 1/ Draft Conditions;
 - 2/ Additional points arising from landscape scheme;
 - 3/ Specification - Landscaping Works;
 - 4/ Orsogrill - Grating Fence;
- 8 Bundle of affidavits:
- 1 Gordon Davies
 - 2 Merlin Davies
 - 3 Simon David Hall
 - 4 Clive Vician Jenkins
 - 5 Alun Price
 - 6 Alun John Price
 - 7 Yvonne Veronica Shipman
 - 8 Robert Paul Thomas
 - 9 Glyndwr Clifford Wright
- [see also statement of Mr Weaver doc 4/6]
- 9 Correspondence received after the inquiry.

PLANS

- A Copy of plan which accompanied Notice A.
- B Copy of plan which accompanied Notice B.

MMA LOWER YARD LIGHTING DECISION NOTICE

3/9/2021

P/20/0262/a

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)
The Town and Country Planning (Development Management Procedure)
(Wales) Order 2012 (as amended)

FULL PLANNING PERMISSION

To: Merthyr Motor Auctions c/o Herbert R Thomas Ltd F.a.o. Mrs Anna Cheney 11-12 Jellicoe Court Atlantic Wharf Cardiff

WHEREAS you submitted an application on the 29th October 2020 to develop: Merthyr Motor Auctions Pant Road Dowlais Merthyr Tydfil CF48 3SH short particulars of the application being as follows:-

Name of the Applicant

Merthyr Motor Auctions
Red Barrel House
Pant Road
Dowlais
Merthyr Tydfil

Description of Proposed Development

Removal of condition H attached to appeal decisions APP6410/C/95/508749 and APP6410/C/95/508750, which currently restricts the use of the floodlighting (Removal of Condition Application) (Removal of Condition)

The Council in pursuance of its powers under the above mentioned Act and Order hereby **GRANTS PERMISSION** for the carrying out of the proposed development as described above and in accordance with the application and plans (if any) submitted with the application subject to compliance with the following conditions.

CONDITIONS

Please see attached.

Date: 3rd September 2022

Signed:



(Director of Neighbourhood Services)

**IT IS IMPORTANT THAT YOU READ
THE NOTES ATTACHED TO THIS FORM**

CONDITIONS

- 1 The development shall begin not later than five years from the date of this decision.

Reason - To comply with Section 91 of the Town and Country Planning Act 1990.

- 2 The revised floodlighting scheme shall be installed in accordance with the following approved plans and documents:

- Qoda Light, 2463.R9 - MMA Lighting Report, received: 8th March 2021.

Reason - To ensure compliance with the approved plans and to ensure that the proposed lighting would not have an adverse impact on the amenities of nearby occupiers, ecology or the natural environment, in accordance with Policies SW11, EnW1, EnW2, EnW3 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.

- 3 The floodlights, hereby permitted, shall not be used between 18:30 and 08:00 hours until they have been installed in accordance with the approved details as shown on pages 8-10 of the Qoda Light Report (Revision 9) received 8th March 2021. Thereafter the floodlights shall be retained as such in perpetuity.

Reason - To ensure that the proposed lighting would not have an adverse impact on the amenities of nearby occupiers, ecology or the natural environment, in accordance with Policies SW11, EnW1, EnW2, EnW3 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.

- 4 The floodlights, hereby permitted, shall not be brought into use until details of a wildflower strip on the grass verge that runs along the eastern boundary has been submitted to and approved in writing by the Local Planning Authority. The details shall include the area of land to be planted/seeded, the mix and density of plants/grass/seeds noting species, an implementation programme and a wildflower management plan. All planting and seeding comprised in the approved details shall be carried out in the first planting and seeding seasons after the floodlights, hereby permitted, are brought into use.

Reason - To enhance the ecological value of the site in accordance with Policies EnW1, EnW2 and EnW3 of the Merthyr Tydfil Replacement Local Development Plan.

Condition 4 discharged on 29.11.2022 App No. P/22/0304

- 5 The use and layout of the site shall be operated strictly in accordance with the details indicated on the Lower Yard Area Layout plan (Drawing LAF 1 - approved at appeal ref: APP6410/C/95/508749 and APP6410/C/95/508750).

Reason - To protect the amenities of nearby occupiers and ecology in accordance with Policies SW11, EnW1, EnW2, EnW3 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.

- 6 No activity shall take place on the site (i.e. as identified on the Lower Yard Area Layout plan Drawing LAF 1 - approved at appeal ref: APP6410/C/95/508749 and APP6410/C/95/508750) before 08:00 hours or after 18.30 hours on weekdays and Saturdays nor at any time on Sundays or Public Holidays, (the sole exception to this condition being in the event of a transporter arriving whilst the auction activities are being undertaken in the upper yard, such transporter shall be permitted to enter the lower yard for the purpose of parking only).

Reason - To protect the amenities of nearby occupiers in accordance with Policies SW11 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan.