

Department for Education and Children

## APPENDIX A

### LAND HELD IN TRUST BY CARMARTHENSHIRE COUNTY COUNCIL



**EICH CYNGOR arleinamdani**  
[www.sirgar.llyw.cymru](http://www.sirgar.llyw.cymru)

**YOUR COUNCIL doitonline**  
[www.carmarthenshire.gov.wales](http://www.carmarthenshire.gov.wales)

Photographs



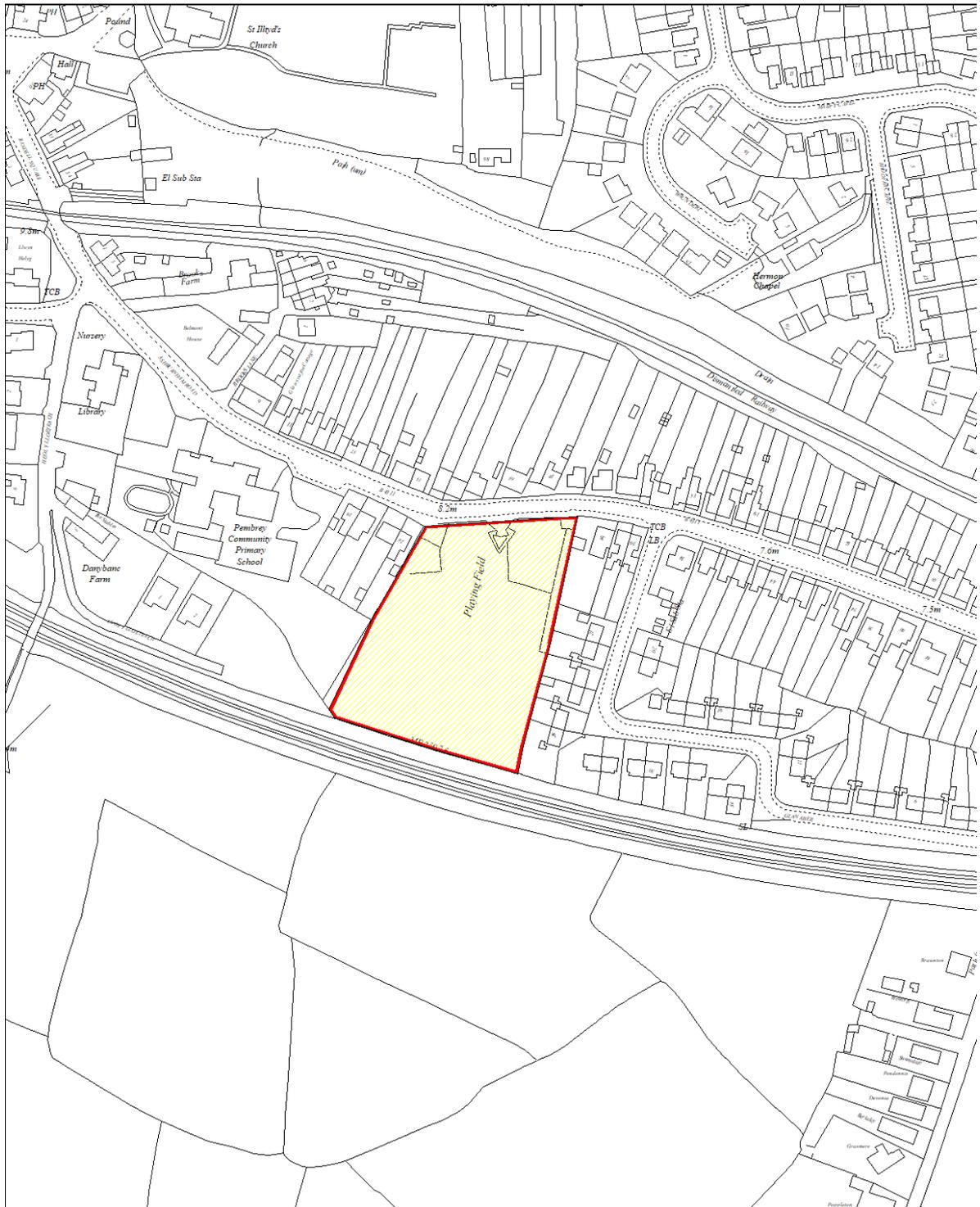
3



4



# Site Location Plans



Plan title: Land off Ashburnham Road, Pembrey

Case type:

Key

Map title: SN4200NE  
Scale: n/a

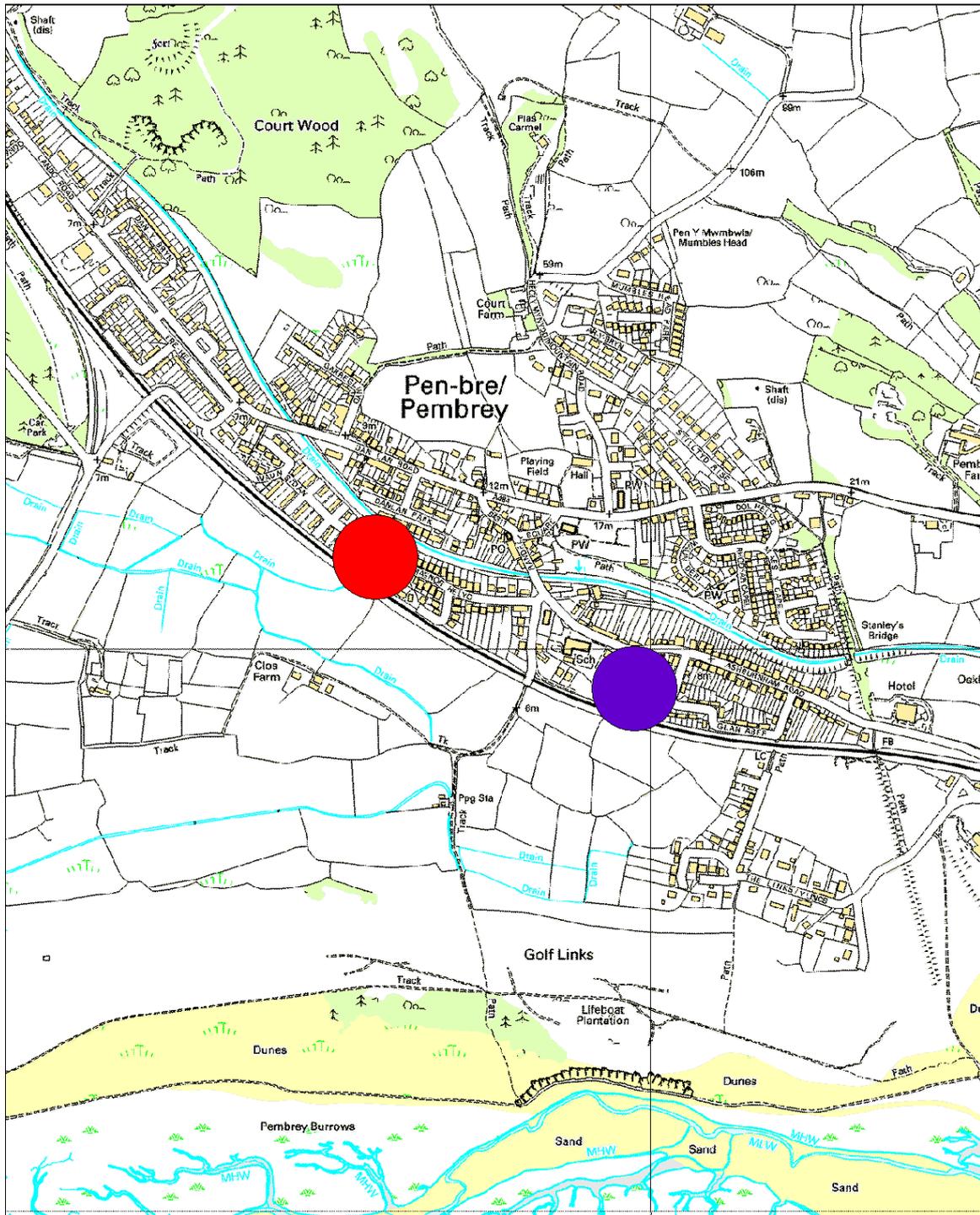
Coordinates: 242986,200940  
Area: Perimeter:



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Date: 16/10/2018

Highlighted in **Purple Only**



Plan title: Land off Waun Sidan (Red) & Land off Ashburnham Road (Purple)

Case type:		Key
Map title: SN40SW Scale: n/a	Coordinates: 242723.201017 Area: Perimeter:	
		

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CHARITY COMMISSION  
FOR ENGLAND AND WALES

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Charity Commission  
PO Box 211  
Bootle  
L20 7YX

**T: 0300 065 1805**

**Your ref:**  
**Our ref: C-487793**

**Date: 23 October 2018**

Dear Sir/Madam

### **Pembrey Recreation Ground - 512080**

Thank you for your enquiry of 2 August regarding the above charity. Please accept my apologies for the delay in responding.

As you note there is a clear (and significant) conflict of interest between the Council in its capacity as trustee of the charitable recreation ground and in its capacity as Education Authority. Your enquiry makes it clear why the proposed disposal is in the best interests of the school but says little about why it is in the interests of the charity.

Charity trustees must act in the best interests of their charity and have a duty not to place themselves in a position where they are subject to a conflict of interest. It is not clear how the Council as trustee intends to deal with the conflict of interest. It may find our [guidance on conflicts of interest](#) and [Council's as charity trustees](#) helpful.

The trustee will also need to ensure that it meets its duties with regard to decision making when considering the matter. Guidance on these duties are available in our publication [It's your decision: charity trustees and decision making \(CC27\)](#)

The charity is governed by a Commission scheme of 23 November 1981. We are of the view that the land is designated land IE held for a particular purpose of the charity; as a recreation ground for the use of the inhabitants of Pembrey with the object of improving their conditions of life.

The scheme contain a power of sale. However it is only exercisable if the land is no longer required for use as a recreation ground. We note the arguments of alternative recreational facilities being available. That does not however necessarily equate with there being no requirement for a recreation ground on the current site. The trustees must act in the best interests of furthering the objects of the charity for the benefit of its beneficiaries. We would therefore expect the trustee to have properly consulted with the inhabitants of Pembrey as potential beneficiaries of the recreation ground before concluding whether or not the recreation ground is required. That consultation should be done in the Council's capacity of charity trustee and limited to consultation on the effects

#### **On track to meet your deadline?**

Visit [www.gov.uk/charity-commission](http://www.gov.uk/charity-commission) for help on filing your annual return and accounts

**t:** 0300 066 9197 (General enquiries)  
0300 066 9219 (Textphone)

**w:** [www.gov.uk/charity-commission](http://www.gov.uk/charity-commission)

of the proposal on the use of the recreation ground for recreational purposes and not for example promoting the benefits of the new school.

Only if the trustee:

- Properly addresses the conflicts of interest;
- Meets its decision making duties (see link above)
- Has properly consulted with the inhabitants of Pembrey; and
- Properly concluded the recreation ground is no longer required;

can it rely upon the power of sale in the current scheme. Any sale would need to satisfy the relevant provisions of Section 117 to 121 of the Charities Act 2011. [Guidance on the disposal of charity land](#) is available on our website.

If the disposal is to a connected party, as would appear to be the here, then the trustee would need to obtain an order from the Commission before disposing of the property. We would expect the trustees to have obtained a report on the proposed disposition from a qualified surveyor acting exclusively for the charity. They will also need to give notice of the proposed disposition in accordance with the requirements of Section 121 of the Act (This is separate from the consultation required).

To enable us to consider granting an order the trustee will need to:

1. Clearly set out how the conflict of interest has been addressed;
2. Provide details of the outcome of the consultation with beneficiaries;
3. Provide a copy of the surveyor's report required under part 7 of the Charities Act;
4. Provide details of the trustee's deliberations and conclusions with regard to the proposed disposal, clearly demonstrating why it is in the best interests of the charity.

It should be noted that where a local authority is the sole trustee of a charity which owns land, the question may arise as to whether it can grant a lease of some or all of that property to itself in its statutory capacity or vice versa.

The case of *Rye v Rye* [1962] A.C. 496 established that it is not technically possible for an individual to grant a lease to himself. This is because an individual cannot be both covenantor and covenantee under an agreement. In that specific case, however, the leasehold and freehold interests were both held for the private benefit of the same individual: neither of the interests was held on trust. The principles of that case are therefore not identical to those that arise with a trust.

In addition to the information requested above we would appreciate the Council's view on whether or not the *Rye v Rye* issue is relevant in this case and if so how it will address the matter.

If you wish to discuss these matters then please give me a call on 0300 065 1805.

Yours faithfully

Tim Reese  
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