

## **APPELLANT'S RESPONSE TO REPRESENTATIONS SUBMITTED IN RESPECT OF APPEAL CAS-02641-G8G7M5**

This statement is prepared by RPS Consulting UK & Ireland on behalf of Legal & General (Strategic Land) Ltd. (the appellant) in relation to the appeal, in accordance with Section 78 (2) of the Town & Country Planning Act 1990, against the non-determination of application reference 2019/00871/OUT by the Vale of Glamorgan Council (VoGC). This statement considers representations submitted by or on behalf of the following parties:

- The Vale of Glamorgan Council Statement of Case
- The Vale of Glamorgan United against Model Farm (representing the majority of respondents)
- Cllr William Andrew Hennessy
- Simon Barry (Boyer) on behalf of the Stevens family
- RSPB Cymru
- Coed Cadw Woodland Trust
- Other interested parties comprising members of the public

### **Vale of Glamorgan Statement of Case**

The Statement of Case submitted by the VoGC confirms the following putative reasons for the refusal 2019/00871/OUT:

1. In the absence of an up to date preliminary ecological appraisal, the proposed development fails to appraise the biodiversity interests at this site. Therefore, the proposed development fails to incorporate, conserve or enhance biodiversity interests, as those biodiversity interests have not been quantified in the first instance. As a result, the development is contrary to the requirements of Policies SP1 (Delivering the Strategy), MD2 (Design of new development) Criterion 10, MD9 (Promoting Biodiversity) and MG19 (Sites and Species of European importance) of the Vale of Glamorgan Local Development Plan 2011 – 2026, guidance within the Biodiversity and Development SPG; National guidance contained within Planning Policy Wales (Edition 11, 2021), Policy 9 of the Future Wales National Plan 2040 and the Sustainable Development Principle No.2 of the Well-being of Future Generations (Wales) Act 2015; AND
2. The proposed development by virtue of its layout, scale and massing would have a harmful impact on the setting of historic assets. The benefits of the scheme are not considered to outweigh the identified harm to the designated heritage assets. The proposed development is therefore contrary to Policies SP10 (Built and Natural Environment) and MD8 (Historic Environment) of the Vale of Glamorgan Local Development Plan 2011 – 2026, guidance within the Porthkerry Conservation Area Appraisal and Management Plan SPG, National guidance contained within Planning Policy Wales (Edition 11, 2021) and Technical advice note (TAN) 24 (the historic environment).

On the basis that only matters relating to the appraisal of biodiversity interests at the site and the impact on the setting of historic assets are cited as reasons for refusal by the VoGC, all other matters relating to the application are deemed to be acceptable. This statement therefore addresses the reasons for refusal only. It

also sets out the appellant's position in respect of matters raised within representations submitted by Interested Parties to the appeal.

## **Appraisal of biodiversity interests**

The putative reason for refusal conflicts with the Council Ecologist's position as set out in the 2023 Committee Report which recommended approval of planning application 2019/00871/OUT. The Committee Report confirmed in respect of biodiversity that all matters had been addressed satisfactorily in the most recent version of the Preliminary Ecological Appraisal and that the Species Management Objectives were sufficient. Natural Resources Wales (NRW) recommended that planning permission should be granted subject to conditions.

Notwithstanding the above, it has been necessary for an updated assessment of the biodiversity interests of the site to be undertaken in support of the appeal as a result of the time that has lapsed since the assessments were undertaken in support of planning application 2019/00871/OUT.

In June 2023 Planning and Environment Decisions Wales (PEDW) issued an ES completeness report which formally required the appellant to update its Environmental Statement (ES) as part of the appeal process. The appellant subsequently submitted an updated ES in October 2024 which included a new chapter to provide an assessment of the impact of the proposal on ecology. The ES included an updated Preliminary Ecological Appraisal dated 2024 and a Protected Species Survey Report dated 2024 included as Appendix 9.1 and Appendix 9.2. ES Chapter 9 together with Appendix 9.1 and Appendix 9.2 provide an up-to-date Preliminary Ecological Appraisal and an assessment of the biodiversity interests of the site.

The impact assessment contained within the ES chapter relies on embedded mitigation which comprises areas of the site that are secured for the provision of new and enhanced habitats on the Indicative Concept Masterplan and accompanying Parameter Plans. In addition to embedded mitigation, additional mitigation measures are proposed as set out in the ES chapter and include controls on construction works, implementation of a lighting strategy and commitment to the preparation of a Detailed Biodiversity Strategy.

The updated information submitted in support of the appeal addresses the VoGC's first putative reason for refusal of the planning application by providing an updated appraisal of the biodiversity interests of the site, such that the reason for refusal should be dismissed.

## **Impact on the setting of historic assets**

The 2023 Committee Report which recommended approval of planning application 2019/00871/OUT confirmed that on balance, the proposal was acceptable relative to the impact on the setting of historic assets.

It was acknowledged that the proposal would result in a certain degree of change to the setting of several identified heritage assets. In considering the proposal against the VoGC Local Development Plan (LDP), it was acknowledged that the proposal did not adhere to the strict requirements of Policies SP10 (Built and Natural Environment) and MD8 (Historic Environment) to preserve or enhance the affected assets. Notwithstanding, it was determined that the fundamental principle of developing the site for employment use was set by the allocation of the site in the LDP. In recommending the application for approval, the 2023 Committee Report deemed that the strategic importance of the location, coupled with the economic benefits associated with the proposal outweighed the identified impacts to the heritage assets concerned. In respect of nationally designated assets, Cadw acknowledged that the proposal would be seen as part of the very wide landscape setting which also includes the Cardiff Airport, surrounding buildings, and the settlement of Barry. In this regard, Cadw stated this would not alter the way that these designated heritage assets are understood experienced and appreciated. Cadw confirmed no objection to planning application 2019/00871/OUT.

The appellant subsequently submitted an updated ES in October 2024 which included an updated ES Chapter 6 Built Heritage in response to the PEDW completeness report. ES Chapter 6 was not subject to any specific direction from PEDW in the ES completeness report, but was updated to address matters that concerned the wider ES. The conclusions of the updated ES Chapter 6 remain consistent with the conclusions of the ES submitted in support of planning application 2019/00871/OUT that the effects predicted during the construction or operational phase of the proposal that are not significant in EIA terms.

On the basis that the updated ES Chapter 6 identifies that there will be no significant effects in EIA terms on the setting of identified historic assets, together with the context of the strategic LDP allocation and economic benefit associated with the proposal, the reason for refusal should be dismissed.

## All Other Matters Raised in Representations

As set out above it is the appellant's position that the proposal subject of the appeal is acceptable in terms of its appraisal of biodiversity interests and its impact on the setting of historic assets. By virtue of the fact that no other issues have been identified by the VoGC in confirming the putative reasons for refusal, it is the appellant's position that there are no further matters for consideration in the determination of this appeal. Notwithstanding, the appellant acknowledges the representations raised by other Interested Parties in respect of the appeal. The matters raised in other representations have been summarised in Table 1 below and an appellant response is provided to those matters.

**Table 1. Summary of matters raised and appellant response**

Matter raised in representations	Appellant response
<p>The site is not an appropriate location for development due to:</p> <ul style="list-style-type: none"> <li>- Availability of other brownfield sites.</li> <li>- Loss of agricultural land.</li> </ul>	<p>The principle of the development of this site is established by virtue of Policies MG9 – Employment Allocations &amp; MG10 St Athan - Cardiff Airport Enterprise Zone of the Vale of Glamorgan Local Development Plan 2011-2026 (LDP).</p> <p>The 2023 Committee Report which recommended approval of planning application 2019/00871/OUT confirmed that the principle of the development proposed in the application is clearly established through the adoption of the LDP.</p> <p>The matter is therefore not a principal concern in the determination of the appeal.</p>
<p>Concern over the viability of the scheme and the demand for industrial units B1/B2/B8 in South Wales.</p>	<p>The VoGC Adopted LDP relies on the delivery of this site to meet employment land requirements during the plan period. The proposed allocation of the site in the Replacement LDP demonstrates the VoGC's reliance on the site to encourage inward investment and consolidate the role of the Vale of Glamorgan within the Capital Region.</p> <p>Public intervention in the property market is not uncommon due to widespread and persistent market failure, whereby the costs of development exceed the market value of sites, disincentivising private sector development. An updated Delivery Report was submitted in support of the appeal which confirms that there is a lack of new and modern floorspace across most sectors of the office and industrial market. The proposal presents a major project that can transform the approach to Cardiff Airport and can provide a critical mass of employment floorspace in this location. The proposal will contribute towards the realisation of the allocation to deliver high quality employment land which will play an important role in both the Vale of Glamorgan and the Cardiff Capital Region.</p> <p>The matter is therefore not a principal concern in the determination of the appeal.</p>
<p>Development of the site will result in increased traffic congestion in the area and road safety issues, both as a result of the project alone and as a result of the project in combination with</p>	<p>The impact of the Proposed Development on traffic and transport as a result of both the project alone and the project in combination with other projects identified, is assessed in the ES that was submitted in support of planning application</p>

other projects and/or sites including the proposed Cardiff and Vale College Campus, Aberthaw Power Station redevelopment and Cardiff Airport.

2019/00871/OUT and has been updated in support of this appeal. The ES concludes that the additional travel demand can be accommodated safely and satisfactorily on the local transport network subject to a set of specified improvement measures being implemented.

The 2023 Committee Report which recommended approval of planning application 2019/00871/OUT confirmed that the supporting documentation demonstrated that the existing highway network could accommodate the forecasted traffic, without resulting in an unacceptable traffic impact locally and in the within the wider highway network. It was deemed that the proposal was in accordance with the relevant LDP policies. The VoGC Highways Officer confirmed no objection to the application.

The matter is therefore not a principal concern in the determination of the appeal.

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Development of the site will result in flooding issues at Porthkerry Park.

The majority of the site is not in an area identified as being at risk from flooding according to the NRW Development Advice Map (DAM) or the draft Technical Advice Note (TAN) 15 Flood Map for Planning (FMfP) which represents the best available information on flood risk. A small portion of Area B is affected by Flood Zones 2 and 3, however, no built development is proposed in Area B. The proposal incorporates provision for sustainable drainage features to manage surface water flows.

Accordingly, the proposal is in full accordance of Policy MD7 (Environmental Protection) of the LDP as acknowledged in the 2023 Committee Report. The VoGC's Drainage Section confirmed no objection to the planning application subject to the application of conditions relating to the requirement for a Flood Exceedance Plan, management details, and a Construction Environmental Management Plan.

The matter is therefore not a principal concern in the determination of the appeal.

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Development of the site will have an adverse impact on Ancient Woodland, hedgerows, habitat connectivity and bird species.

This matter has been addressed under the response to the VoGC's putative reason for refusal above.

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Suggestion that a detailed biodiversity management strategy should be provided prior to determination of the appeal.

The appellant has committed to the preparation of a detailed Biodiversity Management Strategy that can be secured by a condition of the appeal. The 2023 Committee Report which recommended approval of planning application 2019/00871/OUT confirmed that both NRW and the VoGC's Ecologist were satisfied with the information provided and that the necessary management objectives were secured within the application documentation.

A detailed Biodiversity Management Strategy would be prepared and submitted to the VoGC for approval prior to the commencement of construction. The strategy would be substantially in accordance with the agreed management objectives.

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The matter is therefore not a principal concern in the determination of the appeal.

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The VoG Council's Heritage Officer has stated that harm would be made to historic assets, including Listed buildings.

This matter has been addressed under the response to the VoGC's putative reason for refusal above.

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Concern that a foul water solution cannot be achieved for the development.

Dwr Cymru Welsh Water stated no objection to the planning application in the 2023 Committee Report subject to the application of a condition requiring a foul water drainage scheme be agreed prior to any approval of reserved matters or commencement of development. This was secured by proposed Condition 9.

The matter is therefore not a principal concern in the determination of the appeal.

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## Summary

This statement confirms the appellant's position in respect of the VoGC's putative reasons for refusal of planning application 2019/00871/OUT and other representations submitted to the appeal by Interested Parties.

The first reason for refusal in respect of the assessment of the biodiversity interests of the site conflicts with the conclusions of the 2023 Committee Report which confirmed that the biodiversity interests of the site had been satisfactorily considered. Updated assessment has been submitted to the appeal and addresses the matters raised. In determining the appeal, the reason for refusal should be dismissed.

The second reasonable refusal in respect of the impact of the proposal on the setting of heritage assets should be considered in the context of the strategic LDP allocation and the economic benefit that the proposal will bring to the region. When built and functioning as a business park the development has the potential to generate gross wages of £127 million, and when factoring in leakages this equates to a £94 million net increase in local wages. The anticipated level of employment floorspace could create the capacity to accommodate approximately 1,000s of Full Time Equivalent (FTE) jobs. Those impacts on the settings of heritage assets have been appropriately assessed and deemed to be not significant in EIA terms. In determining the appeal, the reason for refusal should be dismissed on the basis that the impact on the settings of heritage assets is outweighed by the LDP allocation of the site and the economic benefits that the proposal will deliver.

For the reasons set out herein, we respectfully request that the appeal is allowed, and planning permission is granted, in order that the contribution of the proposal to the regional economy can be realised.