Highways and Transportation

This goes wrong almost from the off as it relies upon the so called Completeness Report and therefore seeks to *bypass* the observations of the general public. The attitude shown to the Completeness Report is another example of controlling the narrative and infringing the EIA Regs. The Appellant expects this Inspector to avoid criticising the earlier Inspector.

The author goes on to claim some reliance upon the officers at the LPA but as we understand it the LPA has acknowledged it is conflicted. It seems very strange to be allowed to quote a conflicted party. The obvious reason for taking such a course is to make use of poor material rather than producing proper material that tells the real tale.

We hope the Inspector can be with us with the complaint that if an expert wants to claim to have followed certain advice then that advice should be supplied to the general public to allow us to know better why certain steps have been taken but also what parts of the advice have been ignored or misunderstood. (para 4.3.3)

We need to have this material especially because of the use made for paragraph 4.3.4. We find it bizarre that the Rules the author claims are applicable in all circumstances. There must be a difference between the impact on free flowing traffic on the one hand and jammed traffic on the other.

We have spoken to a number of people affected by the current state of Weycock Cross Roundabout and they would not agree with the description given in paragraph 4.3.14 of being at or near capacity. There is a lot of frustration with this junction. Bear in mind that the junction was upgraded relatively recently but the issues are still there.

Significant space is taken up with pedestrian issues and buses. We do not recognise the bus service alleged by the author and suggest some better evidence should be included if the author is making use of this. For reasons we have touched upon, a chat with an officer at the LPA is not evidence. The reliance on the trains and with connections to the buses (a service the author states will stop) is hardly going to reduce the use of cars to get to site. That ought to be obvious.

Similar comments apply to the College that is to be constructed opposite this appeal site. The likely/possible increase in traffic is perhaps made light of, at best. According to the author this is a pending application which might make this chapter in the ES out of date.

The reference to Fonmon is particularly light even though the owners of Fonmon Castle are developing their site for significant tourist activity. The author seems to have written that off.

There does not appear to be any real effort to take account of the likely significant impact on traffic numbers at the Weycock Cross roundabout and other areas although we are always prepared to look at things we might have misunderstood.

Landscape and Visual Character

Something we consider is missing, bearing in mind that this is a rural location, is a colour assessment analysing and specifying colours for any development to at least attempt to harmonise with the surrounding environment. It is always possible we are wrong but we thought that Welsh planning policy requires that landscape character is considered in development proposals even more so where there is the possibility that a development is likely to be incongruous in a way that could be mitigated. A suggestion of a colour palette would have been so easy to produce.

We do have the airport and the College is about to be built but the Vale of Glamorgan has always been known for its wonderful countryside with stone built buildings in a bucolic landscape. The fact that there are aspects that impact on this image is no excuse for disposing of an old productive farm for an industrial development for which there is no demand. Others might be helpful to raise other issues.

Socio-Economics

We noted the declaration that there is no formal measures of assessing impact significance for socio-economic receptors. We also see the 7 bullet points in paragraph 7.2.5. However, the decision to avoid 5 of the bullet points seems to be unexplained. The bullet points left out seem to be of importance as having possible local effects.

We know the Appellant is keen to scope out of the ES areas that raise difficulties for the Appellant which leaves us concerned about this decision.

Climate Change

We noted at paragraph 8.8.13 that the proposed development is assumed to predominantly be an office, industrial, and warehouse use development.

We can imagine what an office development looks like and even understand a warehouse development. However the reference to industrial development is very vague. We are reminded that we are expected to comment on reports where the information is hidden by the Appellant thus allowing free rein to experts to report in ways that might be unhelpful at the end of the day. The Appellant should have some idea of the possible uses or is this an indicator that they have no idea if this is a development with any chance of success due to the likely lack of demand.

This is an important section but seems to have to rely on guesswork.

Ecology

We will be leaving this to others.

Like many people we are aware of the diversity of plant and animal life and are concerned that there is really no place for the plant and animal populations to relocate. Going south takes it to a park area where it has to be consistent with public access at all times. The college will have caused disturbance of its own to wildlife and perhaps unfortunately for the Appellant this needs to be factored in as the section should be considered out of date.

The Notice of Appeal

There is an issue here that we cannot resolve. We look for assistance from PEDW or the Inspector.

We 1are not so much looking at advice (PEDW denies it has such responsibility) but we do expect the point to be considered and any arguments (presumably from the Appellant) are invited early on so that they might be bottomed out with any counter-arguments at or prior to the directions hearing.

The Reason for the Appeal is given as "the failure of the LPA to give its decision within the appropriate period (usually 8 weeks) on an application for planning permission." We believe it is apparent that the Appellant never filed an ES that would satisfy the requirements of the EIA Regs. The Appellant might try to argue that is not the case but we are confident the arguments do support our contention. Does this make the issue, if the Appellant never filed a full application (a qualifying ES included) they ought not expect a decision – Regulation 3 of the EIA Regs. In effect the Appellant is appealing their own default and seeking some advantage from that. It seems to us that the law could not have been drafted to allow such behaviour.

The formal notice relies upon a separate Statement of Case to develop the grounds.

The Statement of Case was settled by experts and we can therefore assume that it is argued to the fullest and the grounds are precisely what the Appellant relies upon.

The Statement of Case begins by confirming it is an appeal against the non-determination of application reference 2019/00871/OUT by the Vale of Glamorgan Council (VoGC). But as Regulation 3 bites we fail to see an issue that assists the Appellant.

The progress made in this Appeal tends to show the application placed before the planning committee was incomplete and incapable of a decision. The Appellant put the Committee in the ridiculous position of having to consider something that could not be considered or had to be denied.

The Reason for Appeal is next and this tells us:-

> *Application 2019/00871/OUT was presented at the VoGC Planning Committee on the 1st March 2023. The case officer's report presented to the Planning*

Committee recommended that the application be approved subject to conditions and a Section 106 Agreement. The Planning Committee voted against the officer's recommendation. The application was not refused. Members of the Committee were unable to provide reasons for refusal in order for the application to be determined.

The first point is that it took the Appellant (on the face of this paragraph) something approaching 4 years from the lodging of the application to the final submission. We assume that there must have been discussions and extensions agreed? By the sound of it there was agreement that listing the matter on the 1st March 2023 was not a complaint. For all we know the Applicant agreed to extensions implicitly if not explicitly. We did not notice any complaints leading up to the relevant Committee hearing.

This would suggest that the real issue was the failure to give reasons on the 1st March. We do not see how voting against the Officer's recommendation leaves the Appellant able to argue the application was not refused. The Appellant makes it clear that the officers in attendance had a conflict and could not be allowed to advise on reasons. Quite frankly the Appellant should, if concerned with a lawful hearing, have made representations against the officers continuing as then there might have been independent advice available at the hearing so as to allow matters to be concluded. The Appellant was content to allow the conflicted officers to be in attendance and give advice that all but ignored the issues over the EIA process.

The decision by the committee was clear. We should be able to infer the reasons by looking at the situation and concluding what was available. Regulation 3 would have been available to the committee but the officer may have had his own reasons for failure to advise on this.

We say that the Statement of Case makes it clear that the Appellant and the officers were as one to infringe the EIA Regs. Neither wanted to deal with the problems on the ES.

Our understanding of events on the 1st March is that the committee made it clear that they refused permission. The officer (who was conflicted) then seems to have advised that instead of recording the refusal with grounds to follow, the decision was not recorded as such and the whole matter put over. A bizarre decision by a conflicted officer.

That advice, assuming we are correct, was poor and clearly designed to assist the Appellant.

The penultimate paragraph of the statement of case tells us that "*Application reference 2019/00871/OUT should be granted planning permission as recommended in the report presented to the Planning Committee in March 2023*".

There are problems with this assertion. If the LPA granted planning permission it would have infringed the EIA Regs and committed an offence as Regulation 3 was a problem for the Appellant preventing any such conclusion. The argument therefore includes a complaint that the Committee should have committed an offence.

Also, the LPA was prevented from granting planning permission due to the Notice served upon the LPA by the Welsh Government preventing any grant of planning permission. We think the officer decided not to draw this to the Committees attention in suitable terms. But our concern is that such lack of advice coupled with a clear recommendation to grant planning permission might be a misunderstanding on our part as the potential for this to be supporting evidence of an intention to ensure an offence was committed is just too disappointing.

The Appellant appears to be complaining that something did not happen that was impossible to happen. For all the reasons set out Planning Permission could not be granted. If the Appellant was concerned to have a formal refusal to be recorded all they had to do was wait a matter of a few weeks at which time there would have been a refusal with independent advice given as to grounds.

We are at a loss to understand how such an appeal can be entertained by PEDW but at present we have to rely upon this part of the history to demonstrate our concerns about the potential for serious infringement of the EIA Regs.

Exclusion Paragraph

There is in our view a fundamental issue with the papers relied upon by the Appellant.

I begin by relying on something that PEDW appears, reasonably, to have adopted from PINS.

It is an advice note dealing with expert evidence. As it remains on the Welsh Government website I assume it is current advice that impacts PEDW. It looks correct although some might think it might need some additional tightening if our worries in this case hold water. What we see is:-

Who provides expert evidence?

> *1.1. Expert evidence is evidence that is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion.* ***It is the duty of an expert to help an Inspector*** *on matters within his or her expertise. This duty* ***overrides*** *any obligation to the person from whom the expert has received instructions or by whom he or she is paid.*
> *1.2. The evidence should be accurate, concise and complete as to relevant fact(s) within the expert's knowledge and should represent his or her honest and objective opinion. If a professional body has adopted a code of practice on professional conduct dealing with the giving of evidence, then a member of that body will be expected to comply with the provisions of the code in the preparation and presentation (written or in person) of the expert evidence.* (our emphasis)

2. Endorsement

2.1. Expert evidence should include an endorsement such as that set out below or similar (such as that required by a particular professional body).
This will enable the Inspector and others involved in an appeal or a called-in application to know that the material in a Written Statement of evidence, written statement or report is provided as 'expert evidence'.
An appropriate form of endorsement is:
2.2. "The evidence which I have prepared and provide for this appeal reference APP/xxx (in this Written Statement of evidence, written statement or report) is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions".
2.3. Giving expert evidence does not prevent an expert from acting as an advocate so long as it is made clear through the endorsement or otherwise what is given as expert evidence and what is not.

We have spent a bit of time earlier in this document dealing with the qualifications of those with input into the purported ES and the meaning of the endorsement that limits the document's use. This Advice Note emphasises the point by stressing the role of an expert in these proceedings as opposed to an expert acting as advocate.

This is a case where the description as to the way in which the experts have produced their reports makes it very clear that the reports are advocacy and not expert reports to be included in an ES. There is no ES.

Screening

We want to step back to the application by the then applicant for a screening decision.

Reg 5-7 of the EIA Regs deal with this subject.

The decision on screening is a binary decision, is it or is it not EIA. Does the proposed development fall within schedule 1 or schedule 2 (with significant impacts) of the regulations. That is the limit of what is required on a screening decision. The LPA does not need to look at everything that might affect that decision. There is no need to consider everything because once you decide, as in this case, that it is schedule 2 with significant impacts there is no point whatsoever considering all other potential factors. That would be a waste of time and costs if the decision is made and nothing later can affect the decision.

The High Court Order made on the Judicial Review is never explained by PEDW, never referenced by PEDW, was probably an Order about the CPI at PEDW who appears to have made or been involved in the unlawful decision referred to. The Order should have put the Inspector on notice of a possible issue in this case. The Inspector would have, at least, wondered about the history of the matter if told that an earlier grant of planning permission very much involved the CPI and was overturned by agreement due to the unlawful conduct involving the present head of PEDW. The possibility of confirmatory bias is obvious. This is the case whether by the CPI or those working below her. The history is relevant but the information seems to have been buried.

The EIA Regs do not appear to allow a scoping decision to be tacked on to a screening decision. The processes are different. The officers should be assumed to know this.

The application for a screening decision needs to be accompanied by

> *(b)a **brief** description of the nature and purpose of the development and of its possible effects on the environment;* [our emphasis]

It is not an in depth analysis. It is almost a quick and dirty look perhaps but there are obligations of disclosure by the Applicant and an obligation on the part of the LPA to make use of its local knowledge. We might describe it as 'quick and dirty' but that does not relieve the Appellant from ensuring that the application sets out the impacts. They failed to do so. That is important from the perspective of advocating for a poor decision to benefit the Appellant.

The actual **decision** made is:

> *Accordingly, there is considered to be a requirement for a **formal** Environmental Impact Assessment to be submitted under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017.* (our emphasis)

All it says is a formal EIA has to follow. No limits. Follow the rules. Nothing excluded. Nothing scoped out. (The Appellant misrepresents the decision. That could only be to avoid parts of the requirements of the EIA Regs which would surely be another infringement of the same?]

Some other details that come out of the screening decision include that the decision was considered on the details of the proposed scheme as detailed in the information submitted. The failure to be completely open in the application explains why some matters are not included in the decision. This is not something for the Appellant to rely upon, it is a criticism of the approach made by the Appellant.

The decision included the following observation:-

> *It is nevertheless anticipated that the size of the development could have significant associated impacts relating to traffic congestion, in particular, and in conjunction with the Airport.*

The LPA appears to be raising concerns that the EIA needs to consider wider impacts and in particular with regard to the Airport. The Appellant appears to have overlooked this.

Then the decision makes it clear that:-

> *The areas surrounding Bullhouse Brook have been identified as a Site of Importance for Nature Conservation. The development is near to a country park which supports habitats such as ancient woodland and saltmarsh and there will be other wildlife and biodiversity of interest within the site.*

This stresses the importance of nature conservation on this important site but we are concerned that the Appellant might have overlooked the need to deal with these matters.

We are of course grateful to the Appellant for drawing our attention to the decision albeit by misquoting it.

More information from the screening decision to note includes:-

> *A part of the site is located on an historic landfill associated with a former quarry site at Model Farm, where the nature and extent of infilling at the site is unknown. It is indicated within the submission documents that a desk based risk assessment has been carried out and that the site is not contaminated.*

It is understood that the landfill is indeed historic which should be a warning signal. There is no record of what is dumped and perhaps not even the extent of the dump. With that in mind a desk based risk assessment hardly sounds sufficient. If there is nothing to look at then a desk based risk assessment is, at the least, risky. Although the VCU seems to be content to rely on rumour and guesswork to leave this subject untested, the precautionary principle means we ask the Appellant to do the job properly.

The screening decision dealt with the LDP briefly but only it seems in relation to the impact on screening. The short quote from page 6 is:-

> *While it is noted that the land is allocated within the LDP, this is not considered to weigh significantly against the need for an EIA. The allocation of the land, which accepts the principle of the development, does not infer that there would not/could not be significant impacts.*

Although mentioned in relation to the task being dealt with, it will be a matter for the Inspector to decide if the comments about the LDP assist more generally based upon the impacts found to be remaining.

The Traffic and transportation section of the decision makes reference to the possibility of changes to the Weycock Cross roundabout etc but without any words to show acceptance that those works will be carried out in an area where land is presumably owned by various private owners. The changes are mere wishes especially when the developer is pleading poverty in the sense that the project is expected to lose millions of pounds.

In any event, even with the unrealistic wishlist the section ends up with:-

> *The development, despite the potential for mitigation measures, is still likely to result in a significant impacts relating to traffic and transportation that could extend beyond the immediate locality, due to the size of the development. This impact to the wider highway network is considered to require EIA.*

The decision goes on to raise other concerns but, as indicated already, to some extent the concerns are limited by the disclosure made by the Appellant. The decision does confirm

the wording found in the covering letter namely '*formal Environment Impact Assessment to be submitted under the Town and Country Planning (Environmental Impact Assessment)(Wales) Regulations 2017'.*

Scoping

Scoping is very different from screening. Regs 14-16 give directions on how to go about scoping and that has not happened here.

There is a clear process for scoping; you would only ask for a scoping if the project is EIA. Scoping is not mandatory, the applicant decides whether to request a scoping decision but a process must be followed. A scoping process was never followed in this case. One part of that process involves a mandatory requirement to involve the statutory consultees in the process. It did not happen.

> *Reg 14(4)*
>
> *(4) An authority* ***must not adopt*** *a scoping opinion in response to a request under paragraph (1) until they have consulted the consultees, but must, subject to paragraph (5), within 8 weeks beginning with the date of receipt of that request or such longer period as may be agreed in writing with the person who made the request, adopt a scoping opinion and send a copy to the person who made the request.* [our emphasis]

There was no scoping request, no scoping exercise, no obligatory consultation with the consultees.

Without a scoping request and decision, properly made, the ES must cover everything relevant.

There is not much we need to look at, bearing in mind the screening decision, to realise that the Appellant is not following the EIA Regs, no matter what they (and the LPA) claim.

It is likely that the Appellant having been light on the information for the screening application is forced into trying to avoid the material it ought to have produced for screening. At the very least we look at confirmatory bias. It might be more planned than that when you compare the full facts of the behaviour to date.

The ES at paragraph 1.3.1 claims the LPA's opinion was that a focused EIA was required. Not true. That could only arise if a scoping in accordance with the Regulations had taken place. The Appellant simply rewrote the decision by changing 'formal' to 'focused'. This is an attempt to avoid a lawful process and might itself be subject to the CJS as a clear attempt to infringe the EIA Regs.

If in fact there is correspondence to support this claim then that may be significant evidence of a conspiracy to infringe the regulations. Presumably the Appellant will want

to clarify their claim of a focused ES. The Inspector should decide to find the explanation in case it implicates the LPA.

The screening decision is clear. The Appellant is to produce a formal environmental impact assessment under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. That is not what we have in front of us. They do not want to follow the EIA Regs. The clear inference is because the appeal would fail if they did and if the failures are dealt with in accordance with the EIA Regs and the 2011 Directive.

If the Appellant had confidence in its position it would have been honest on the screening application and the result of that screening. It was well aware from earlier representations made that there were issues with flooding and the sewers as two examples. Both make the project non-viable environmentally.

Cardiff Airport – Impact on the EIA process

The ambit of their ES is inadequate. It can and should be rejected. The history of this application shows that it is meant, at least in part, to enhance the work/reputation of the airport. It is expected to help to increase the business at the airport. There is nothing in the ES that takes account of this issue, this claimed impact.

The intended increase in traffic at the airport will be expected to increase road traffic, increase noise, increase emissions, increase pollution.

This also demonstrates the failure of the LPA to work within the EIA Regs, to understand them and ensure the EIA Regs work as they are intended. The LPA was always aware of the intended symbiosis that is meant to enhance the success of both.

The documentation makes it clear that the development is linked to the Airport. The Airport is a Schedule 1 development. There can be no doubt that the application for planning permission is not only promulgated on the basis of the existence of the airport but on the assumption that the proposed development will impact on the airport - to make it busier.

The potential success of the development will impact on the success of the airport and vice versa. The possible increase in use of the airport brought about by the development, or for any other reason, needs to be taken account of in any ES as the two together will no doubt have joint impacts on health, the environment and pollution.

Put a slightly different way, the success of this development is likely to be measured in terms of the way in which use of the airport is enhanced. The two are inextricably linked and need to be addressed together to ensure a proper understanding of the environmental impacts.

The airport is a large area where climate change might cause significant run-off of surface water. It is suspected that there is already a drain from the airport or industry connected to the airport into Bullhouse Brook such that the increase in water and pollution from the airport into Bullhouse Brook will need to be accounted for with the arrangements for the proposed development.

With Climate Change any increase in the drainage via Bullhouse Brook should mean less ability for the developers of Model Farm to rely on natural drainage that avoids flooding further down the fields, through privately owned land and into Porthkerry Park.

For these reasons the ES needs to be rejected as failing to be complete to a satisfactory standard, taking full account of the new TAN 15 and climate change.

The College Development

This has already been mentioned above and is book-marked to return to the details.

This is a significant development, with planning permission that is expected to be completed. The sort of traffic movement (and perhaps other impacts) must be a part of the ES otherwise the ES will be inadequate/out of date and the Inspector will be asked to make a decision on the basis of inadequate/out of date material that will be a deliberate avoidance of the requirements of the EIA Regs.

The college development is bound to have an impact on traffic along Port Road. There is nothing at all in the NTS about this.

Aberthaw Site

This has already been mentioned above and is book-marked to return to the details. The LPA has a significant interest in the development of the site and although no planning permission has yet been granted the LPA must confirm that this will happen and significant employment opportunities will be created. At the very least the Inspector needs to take notice of the significant area of brown field development potential that would mitigate away from losing good farming land.

For the same reasons given above for the College, the Aberthaw site should be taken into account with the ES. It hasn't, therefore the ES is inadequate, out of date and Regulation 3 of the EIA Regs bites and planning permission cannot be granted.

Although there is not yet planning permissions on the Aberthaw site (that we are aware of) it is interesting that in the NTS chapter on Highways and Transportation the Appellant seeks to rely upon future developments of the road system that are not even at a planning stage, certainly do not have planning permission. The Appellant has not taken on the cost of the transformation at Weycock Cross and has not make an application for planning permission at that problem area.

The developments that are very likely to happen at Aberthaw and in the North West of Barry will not doubt be argued about by the Appellant ensure they are not taken into account but at the same time the Appellant wants to make reference to a development that, at present, is mere wishful thinking for the Appellant who wants to raise it as an imaginary point support. Are they really allowed to use arguments that are diametrically opposed and make a mockery of planning?

Bro Tathan site

The heading to this section is also a link to the Welsh Government website that introduces the site and its importance to this area[7].

It is clearly a significant industrial/brownfield site that the Welsh Government is promoting but which has plenty of space not taken up. It is connected to the airport business with its own runway. It is obvious that this site is not fully utilised with room for much industry. It demonstrates that losing a productive farm to add more industrial space is unnecessary with so much more convenient space already available in the vicinity.

The current lack of take-up at Bro Tathan is also evidence for the Inspector to take into account to demonstrate the lack of need for this development in this place.

L&G should be told to go to Bro Tathan if they want this development. If they did it might not cost them such a big alleged loss on the development.

A development at Model Farm has to take from the Bro Tathan park tenants that may be better accommodated at Bro Tathan.

Bro Tathan shows there is no point in developing Model Farm as an industrial park as it will be in competition with Bro Tathan. Bro Tathan is an industrial site that already exists and should be promoted to be fully occupied prior to any possible need to take away the farm. The environmental issues would probably not arise for a similar development at the Bro Tathan site.

[7] Bro Tathan | GOV.WALES

The Non - Technical Summary (NTS)

The Institute of Environmental Management and Assessment (IEMA) defines a NTS as:

> *A non-technical summary (NTS) is a concise document that provides a description of the EIA process and its findings in a manner that is both appealing to read and easily understood by the general public*

The IEMA advice sets out a list of minimum requirements for the NTS including:-

> *A non-technical summary of:*
>
> *• a description of the project comprising information on the site, design and size of the project,*
>
> *• a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,*
>
> *• the data required to identify and assess the main effects which the project is likely to have on the environment,*
>
> *• an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects. **

> ** As set out in Article 5 of Directive 85/337/EEC, as amended.*

Surely this Appeal is a very good example of the reasons why advice from independent bodies that the experts either claim to comply with or should have complied with should be appended to any statement. That is the only way that the general public could possibly comment on deficiencies. This has not happened. It should be ordered by the Inspector assuming PEDW does not bother to request such disclosure.

Reading on in the IEMA advice the Inspector is likely to find that in good practice terms the NTS should also provide an effective outline of all the key points set out in an Environmental Statement.

We would ask, perhaps rhetorically, whether the NTS fails if it does not explain what is omitted from the ES and the reasons for this.

The NTS informs the reader of the findings of the assessment and **consults them on the decision to be taken**; it should therefore be seen as one of the last steps in an effective pre-application engagement process. (our emphasis).

Note that the NTS does not bother to set out the issues that objectively arise with the project. Examples include the complete absence of discussion over the lack of sewer as well as no adequate discussion on flooding. In fact we do not believe any part of the NTS invites discussion. It does well as advocacy on behalf of the Appellant which is of course the very opposite of what it is meant to be.

A good NTS will improve public access to environmental information and is important in terms of EIA Directive compliance. For organisations registered to IEMA's EIA Quality Mark, we believe there are other quality mark criteria to be complied with including:-

i. *Does the NTS provide sufficient information for a member of the public to understand the significant environmental effects of the proposed development* ***without having to refer to main text of the ES?*** *(*our emphasis*)*
ii. *Are maps and diagrams included in the NTS that, at a minimum, illustrate the location of the application site, the boundary of the proposed development, and the location of key environmental receptors?*
iii. *Is it clear that the NTS was made available as a separate stand-alone document?*

The NTS should not be partisan. It should not act as advocacy for the Appellant.

If RPS is not a member of IEMA that should not deter the Inspector from having access to the IEMA advice as the best available template for compliance with the EIA Regs.

We understand that the IEMA advice also suggests:

> *Technical editors or communication specialists may be of help in writing complex technical information in an understandable way, but this must not change the meaning of what is being said. The narrative should aim to tell the story about: what is proposed and what else was considered, what the environmental implications are of the proposal and how they will be managed. There should be a logical flow, which need not reflect the order of chapters in the Environmental Statement. Information can be made more tangible and engaging for the public by presenting it in an alternate manner (e.g. presenting the size of the development in relation to a car, house, a jumbo jet, etc). Follow general rules on non-technical writing, including: keeping sentences short; avoiding jargon and acronyms, where possible, and; using the common names if describing species.*

This is a clear, succinct direction that ought to be followed. It assists experts to understand that their particular expertise is not in communicating their knowledge to those without the same training.

It is clear, we say, that this NTS has not been prepared with the advice from IEMA in mind even though the author will (surely) be aware of it. The failure to comply with the IEMA advice is further evidence that the purported ES is not a valid ES.

Their NTS fails to use correct language as well as directing the member of the public to documents for more information where those other documents are certainly not written with the public in mind.

An expert will possibly read the document and follow what is being said. That does not mean the general public will follow the document and understand it. The document is not 'standalone'. The references to the main text destroy any possibility of this document qualifying as an ES. At best it is a lazy, cheap alternative to a NTS.

Bearing in mind what an NTS is meant to achieve we would imagine that an expert with appropriate expertise in all the areas allegedly covered would be able to highlight other issues where the NTS has just ignored important issues. To make it more understandable did the author merely miss out technical stuff so as to avoid trying to explain in terms that would mean something to the general public.

We hope to make brief observations as we work through the NTS and will use the paragraph numbers in the NTS for ease of reference.

We believe it is important to note that the burden of proving the NTS is compliant lies on the Appellant. We seek to raise this as an issue and expect the Appellant to produce reliable evidence of compliance. We remain hopeful that experts in planning do not try to decide whether the content of the purported NTS is sufficient. That would be the task of a better, different qualified expert as stated by the IEMA.

We will work through the NTS and make some comments but we do not profess to be able to cover all the areas where the NTS fails to meet expectations. The numbers will relate to paragraph numbers unless otherwise described:-

1.1. Already the author will have lost the public as this paragraph is written in such a way that a member of the public is having to try to look up other documents to work out for themselves what is being talked about. It claims 'all matters reserved' but that is not correct and is meaningless. It is an opening designed to 'encourage' the general public to give up. When the Appellant uses the phrase 'all matters reserved' does it mean to confuse, leave the reader to wonder what it means and perhaps come to the wrong conclusion. When listing the matters reserved is the Appellant merely accepting there are these are significant impacts for the project but indicating the reader should not worry about them because they are reserved!! Seems to us that this is an admission of failures in the ES and the Appellant needs the Inspector to rescue it by removing the impacts from the EIA process. This might be an invitation to the Inspector to join with the Appellant to infringe the EIA Regs and the 2011 Directive.

1.2. Another paragraph that makes reference to other documents but the reference can only be inserted to confuse as it adds nothing. You probably have to check other documents to realise it adds nothing. In passing we note that the paragraph refers to 'this updated ES supersedes the original ES' which could only be understood by the general public as a

standalone, fresh ES. PEDW prefers to read it in a way that suits them ie as a mere Reg 24 update.

1.3. This is a bold assertion that on close examination is untrue. However, the member of the general public is told the EIA Regs are complied with. There is no debate invited by the Appellant.

1.4. The NTS fails to explain that the reference to 'matters reserved' is in fact a list of environmental effects the Appellant does not want to have assessed.

2.1 The IEMA guidance advises against the use of terms such as 93.20ha. The site location plan is mostly illegible in the supplied hard copy. A larger plan would have worked better albeit the plan would need to be folded into the booklet. This paragraph is simply lifted straight out of the site description in the ES paras 2.1.1 and 2.1.2. We believe more paragraphs are lifted from the ES but we do not have the time to consider each time this occurs.

2.2 For a person to understand this will mean other checking has to be carried out. It is put forward as a fact, there is no debate, there is no indication of the importance of the assertion. The document could have said, quite accurately, that the farm is productive.

2.1.1 There are two paragraphs with this number that are randomly inserted. That merely has the potential to confuse as well as demonstrating the NTS was not prepared to a professional level. The second version of paragraph 2.1.1 has similar faults as those identified at 2.1 above. It also fails to let the reader know what the various classes mean and gives no indication of the type of user that will be likely in each area. The plan is confusing for the average member of the public who is not used to such things.

2.6 The names of the heritage assets are included later but we make the point that the NTS hard copy does not have a plan that is legible and identifies the assets.

2.7 The paragraph makes reference to 'no operational development'. This might imply there is some development but the NTS author wants to avoid talking about it?

2.8 This paragraph is confused/confusing. The meaning is lost, the paragraph appears to need the reader to go off and read other complex material within the ES.

3.1 This paragraph requires the reader to go off and look up the Local Development Plan as well as other, but not listed, material. The impression is that the author assumes this document is a mere ‘foreword’ to the ES?

3.2 Yet again, the author refers the reader to other technical material instead of explaining the content and relevance. The reference to the site being part of the wider St Athan – Cardiff Airport Enterprise Zone is meaningless on its own. However, we note the admission although the fact that there is a lot of land that is unused within the zone is left off. The situation seems to be that there is no call for an extension to the Zone.

3.3 see 3.2 above. The development apparently relies upon there being a demand for industry use in the area, a demand not yet in existence and with no attempt to show the demand will suddenly arise. The space at Bro Tathan demonstrates the opposite. No wonder the Appellant things the project will create a large loss.

3.4 It needed some explanation, it was omitted. Research is needed but should not have been required.

3.5 An assertion without explanation for relevance.

3.6 See the comment at 3.2 above – the author needed to explain the ‘importance’. Who can tell if, at some future time, this proves to be correct. The evidence does not exist to support this project now.

4.1 There is a suggestion here that the reader needs to read other material to understand the section. The author keeps referencing the ES when it should not be necessary. No note of the impacts that are expected.

4.2 The alleged changes are not explained. The reader cannot gauge what changes and what impacts. Just like the rest of this document, it is mere advocacy on the part of the Appellant. It does nothing to allow/encourage debate for the general public.

4.3 Lapsing into techspeak demonstrates how the author does not have the correct qualifications to construct a NTS. The use of ‘AADT’ will be ordinary speak for the author but there is no glossary and not explanation of the term. There is really no explanation for omitting the construction phase. The type of traffic for construction will probably be different from traffic for the operational period. It will also be sooner with no plan for easing the traffic problems that already exist. This is clear advocacy as it leaves no room for discussion.

4.4 The author has had to be very imaginative here to advocate that there is no problem expected for traffic – ever! The type of jobs they claim to be available will be well paid and the people with well-paid jobs are less likely to travel to work by bicycle or public transport. The reason the author has added 8 bullet points is to make it look like a great deal of work has gone in to avoid traffic delays in an area already notorious for traffic delays. The author should have made clear what is a wish list that the Appellant has no control over and no intention to pay for as opposed to those matters included in the plans.

4.5 This, again, is mere advocacy as it does not give the reader the information to enter into a debate.

4.6 The expression 'moderate significant adverse effect' should not be used. It has a technical meaning that the ordinary member of the public is not expected to understand. The claim that the delay is identified from operational assessments is complete nonsense. The route is already subject to long delays and this will impact on those delays significantly. Any future changes in the road structure is a part of the ES (or should be). It must be a worry that the Appellant relies, in part, on pie in the sky optimism around the A4226 roundabout.

4.7 This is mere advocacy but should have given information to allow the reader to debate. The author should/could have added that there is no such proposal anywhere at present.

4.8 This is and was was intended to be gobbledegook to the ordinary reader who is required to read the relevant chapter in the ES to try to get data to make up their own mind.

4.9 This is pie in the sky and meant to advocate for the Appellant so convince the reader that a lot is already built in to avoid traffic issues. However, it is interesting that the author produces nothing to support the claim that what is proposed will achieve the promises made. There is no evidence to support the contention that the type of jobs to be offered will attract people who are amenable to public transport or cycling to work. In fact the type of jobs suggested would strongly suggest private transport to the site. A lack of parking would impact on the roads close to.

4.10 The wording is meant to shut down any prospect of discussion on the point.

5.1 The opening words tell us that this is a notification section and will not give rise to any prospect of debate on the subject.

5.2 Repeats a point badly made earlier so as to underline the ‘fact’ that this cannot be argued. We jump straight in to tech-speak which then continues through this chapter making it impossible for the ordinary public.

5.5 If was ever intended to make sense to the public reading it then it fails. If it was meant to be obscure, it succeeds.

5.6 With no attempt at describing the use to be made by any tenant this paragraph should have set out the worst type of uses envisaged so as to set a realistic impact for somebody to at least attempt to consider. But why use simple language and give information when it is easier to confuse.

5.7 This is mere advocacy with nothing to allow a person to make up their own mind.

5.8 We hope we are wrong but surely this paragraph is not just advocacy but is asserting facts that cannot be guaranteed.

5.9 We read this as saying the only mitigation will be in areas that will not impact on the visual effects of the development.

5.12 The author clearly expects the reader to have to read the main chapter on this subject within the ES. A serious breach of the standards for a NTS. The invitation is to check up on the 16 representative viewpoints. You cannot be expected to follow the next paragraph without the detail in the ES.

5.1.1 This reads like a decision is made thereby encouraging a lack of debate.

6.5 In order to identify these ‘receptors’ and those in 6.6 it looks like the reader will need to refer to the relevant chapter in the ES? Firstly, that is not made obvious but perhaps that is because the author knows they ought not do that. Appendix 2.1 appended to the NTS document might have assisted to identify the properties if only the font size permitted.

6.7 It is always possible we can be wrong but surely Egerton Grey is all but surrounded by the site which would make the assertion in this paragraph incorrect.

6.9 We note that the surrounded Egerton Grey (as well as some other properties) is said to have a neutral significance of effect. It sounds like an oxymoron. The way we read the two sentences is that they deal with the same subject but come to completely different conclusions.

6.10 This is an interesting assertion as it tends to suggest that there are no measures proposed to ameliorate the issues of foul and rain water – we deal with these elsewhere. Nothing is listed so the general public must be expected to assume there are none?

6.11 This really brief paragraph is amazing in its level of opacity.

6.12 This is our first noted reference to the CVCA that has planning permission. Will we need to soften our representations on this subject depending upon the full details in the ES? Unlikely as the NTS tries to put the impact to bed.

6.13 although the paragraph is removed, the reason for removal looks to be an acceptance that the LPA is considering other development proposals which would need to be assessed cumulatively. The author seems to have regretted relying on this claim previously and is perhaps a pointer towards the proposals under consideration needing to be considered. Or is this another of those situations where the Appellant gets to pick and choose, be in conflict with its own choices or merely drop a claimed advantage when it becomes an issue.

7 The heading will put off further reading for many. The content fails to be non-technical. We note the absence of the Viability Report notwithstanding this was the subject of unlawful secrecy previously and notwithstanding costs have grown significantly thereby questioning the viability of the project to a greater extent than the previously hidden viability report. It seems unnecessary to repeat the same point for every paragraph. It is not a non-technical section at all.

8.2 The failure to give sufficient information to assess this issue is evidence of the failure of the documentation to reach the definition of ES. This very brief paragraph is an indicator that more mitigation is needed but the Appellant chooses to keep the necessary information to a level that ensures an inability to deal with this important matter. The Appellant is refusing to supply the information and hoping the Inspector joins in with the ambition to effectively leave this section to the non-EIA area of planning conditions?

8.3 Reliance upon datasets from pre-2010 is not acceptable. Much work has gone into research for climate change since 2010. It suits the Appellant to avoid the latest trends including the susceptibility of our weather to significantly increased and violent rainfall. The paragraph is relatively technical and designed to mislead.

8.4 If the mitigation measures are based upon out of date data then the mitigation measures are insufficient. We will look at the flood risk amelioration later.

8.5 Whenever the author refers to the ES the author is indicating a need to go to the document in breach of the requirements for an effective NTS. The paragraph is totally opaque to the public.

8.6 An assertion that does not brook discussion and is another failure for a NTS.

8.7 Another attempt at controlling the narrative by throwing at the reader a mass of data with no opportunity for the reader to understand the impacts. The reader is presumably meant to assume the figures (whatever they mean) are on the high side due to the Appellant's refusal to better outline the uses that are expected. Even then the impact is said to be significant. Reference to assumptions raises another issue, what were they?

8.8 The author appears to accept that Climate Change is an EIA issue but slips in that this can be left to a process where the EIA Regs do not apply. That is unacceptable and a mere indicator of the lack of detail in the ES, detail that should be included and not used as an excuse to avoid the EIA Regs.

8.9 This continues the assumption that EIA Regs impacts can be ignored for the ES analysis. They give no authority for this. It is a deliberate undermining of the EIA Regs and the 2011 Directive and might be one of those issues that the Minister assumed would be covered by the Fraud Act. Rhetorically we ask just who is meant to be able to understand this paragraph in terms of the EIA Regs?

8.10 An assumption without authority for accepting EIA Regs impacts and claiming they can be ignored by passing on to a process outside the EIA Regs. A clear infringement we say that seeks to draw in not only the Appellant its advisers but also others so as to take an investigation into the realms of criminal conspiracy?

9 This Chapter is totally outside the scope of a NTS due to it authorship. There are no details to explain impacts, there are no details to explain how mitigation measures will be implemented and to what extent these will be sufficient. The chapter is opaque and the references to the earlier surveys does not give any detail to the reader. The author is again hoping to move these matters outside the scope of the EIA Regs process but

> without any authority for doing so. The chapter does no more than highlight the light touch approach to the ES encouraged by the Appellant which is not acceptable. It is however consistent with parts of the screening application where similar claims were made. It is perhaps a natural result of reliance upon a purported ES that is no more than a report that "**shall be used for general information only"**. (our emphasis of the Appellant's words.)

In summary, the NTS fails to follow guidance, fails to achieve what it is meant to achieve, demonstrates the ways in which the Appellant seeks to circumvent the EIA Regs and undermines the ES in seeking to avoid issues whilst being advocacy for the Appellant.

Members of the public understand they are outsiders when it comes to decision-making in technical matters; the Public often has no alternative but to accept that the nature and status of expertise often leads to asymmetric power relationships when dealing with complex decision-making.

This is simply brought about because of the assumption the general public is comprised of experts so cannot be expected to get such complex matters correct. Experts in the various fields tend to do too little to explain themselves in language that has some chance of educating rather than confusing and encouraging exclusivity. It is almost as if (some) experts fear explaining decision-making to make it more transparent to larger groups of the public in case their expertise is questioned.

What can be missed by experts is that the public will know their living area better, the public will ask, on occasion, questions that an expert who is not worried about losing their power differential will take on board and adjust their view of a subject to take account of a fresh insight.

The purported Non-Technical Summary fails to satisfy the requirement for it to qualify as an NTS – see IEMA advice.

We have set out our views on the inadequacy of the NTS. We are concerned with a population across a number of areas designated as of high deprivation. We are talking about members of the public with mental health issues. We are talking about people who may be too poor to have broadband, a computer, a mobile phone. We are talking about people with poor health who will not be comfortable spending time in public areas to read documents that are opaque.

We are talking about the Applicant disenfranchising these people from the process. That is contrary to Welsh Law on an ES consultation.

The Appellant has done nothing to assist the general public. There have been no sessions arranged for members of the public to ask questions of the authors to help

people to understand the paperwork. There has been no real effort to draft paperwork for the locality, for our population.

To date, the Appellant has been encouraged in its behaviour by PEDW, the Inspectors and the LPA. We do not, yet, excuse the VCU from similar.

The Wellbeing of Future Generations (Wales) Act is pertinent to an Appeal to develop a project designed permanently to destroy a productive biodiverse farm and replace it with an industrial site where the evidence is that there is no need for it due to the availability of other designated land for similar purposes close by.

Although the Inspector in the Completeness Reports did not criticise the NTS, the Inspector did not commend the report as satisfying a proper test for a NTS.

Before moving on we should comment upon the 2 plans annexed.

Figure 2.1 – The Site Location Plan. This is further evidence that the NTS is cobbled together with no real understanding of the qualifications that should attach to it. The plan is not clear. Perhaps it can become clear if some time is spent with the full ES but requiring the reader to go looking for clarification in the ES would be a breach of what is required for the NTS. The blue lines defining the land owned by L&G (Not Legal & General (Strategic Land) Ltd is incomplete. There appears to be another colour on the plan that is undefined. The font used on the right of the page is too small to be read.

Figure 2.2 – Indicative Concept Masterplan. Similar comments apply here as with Figure 2.1. it is a very busy plan that does not clarify issues to the left on 2.1. It does nothing to feed into the EIA process with the actual types of business anticipated. The Appellant needs to deal with this before the public can adequately consider representations. At present the page is simply a pretty map with much that cannot be read.

Environmental issues on the document

Flooding

There are two brooks, Bullhouse Brook and Whitelands Brook, at Model Farm. Elsewhere we believe NRW or the Appellant might have suggested they should be considered rivers.

These two waterways flow down towards Porthkerry with many trees growing along their banks.

They both flow along the natural lie of the land and towards the Bristol Channel, via other privately owned property and Porthkerry Park. The brooks join up and become one towards the bottom of the slope.

The level of development proposed along the top part of the land will necessarily mean that more water will run off rather than be absorbed and follow the natural form of the land, and end up in either of the two brooks. Whichever brook the run-off joins, it will be part of the single brook after the confluence.

Not enough work has been done to identify the impact on the brooks, the trees along the brooks, including the trees on land in other ownership. It is submitted that not enough work has been done to identify any impacts closer to the viaduct and in Porthkerry Park. The Appellant or NRW appears to identify the brooks as being rivers which might impose other conditions not addressed.

This is a task that ought to have been carried out within the Environmental Impact Assessment. Failure to identify and demonstrate how the issue is to be addressed is a failure of the process such that the ES relied upon is inadequate on the issue and should be rejected as incomplete.

A further point on this is made by NRW in their letter dated 02-03-2022 sent to the LPA.

Within that letter NRW includes the following:

> **Pollution Prevention**
>
> *We note that two watercourses, Whitelands and Bullhouse brooks, lie within the extended redline boundary. However, we note that point 2.5 of the technical summary states there are no water features within the application site.*

When there is a difficult matter for the Appellant their imperative seems to be to ignore it presumably on the basis that would be the best way to get it nodded through.

NRW appears to be acknowledging that the ES was deficient which is another reason for rejection of the ES. The two brooks were always clearly visible and this must call

into question the quality of the ES and the Appellant's tactics. They seem to treat this a bit like a game where nothing is admitted until shown by others to be needed.

It was surprising that NRW needed to point out the two brooks.

NRW helpfully refers the applicant and the applicant's experts to the Guidance for Pollution Prevention[8]. The failure to have regard to this within an ES is very telling.

NRW raises its genuine concern over pollution of the brooks due to pollution escaping from the site during the building stages. This has not been addressed. It is not something that is recognised as a mere 'reserved matter' to be dealt with in some way at some indeterminate later stage. An impact is something that falls within the EIA.

Perhaps the failure to address the issue in the ES is an indication that it is too difficult to produce a plan that would satisfy the Inspector, the Minister, and be affordable within the context of a development that is unviable?

NRW did suggest that this be addressed by way of a condition for a Construction Environment Management Plan. We suggest that NRW fell into the trap of assuming this is yet another planning matter, not one caught by the EIA Regs. However, that is not a valid suggestion in this case where any such plan is bound to be restricted by way of the lack of viability of the development. There is no reason why the issue cannot be addressed within the ES as it is an environmental issue. The law on EIAs expects environmental issues to be covered by the ES. It is in the name!

By way of legal authority to assist with this point we refer to the case of Gillespie[9] at paragraphs 41 and 46. The case has stood the test of time and is referenced in the much later case of Swire[10].

Gillespie related to screening of a project but the reasoning is applicable here, the point was made that;

> *'if prospective remedial measures are not plainly established and not plainly uncontroversial, then as it seems to me the case calls for an EIA.'*

In that case it was also said that;

> *'Had an EIA been required, these were all matters which would have gone into the environmental statement under Schedule 3 to the Regulations and been subject to public consultation pursuant to the statutory scheme.'*

[8] https://www.netregs.org.uk/media/1835/gpp-1.pdf
[9] https://www.bailii.org/ew/cases/EWCA/Civ/2003/400.html
[10] https://www.bailii.org/ew/cases/EWHC/Admin/2020/1298.html

The point seems to be that it is at best unsatisfactory to deal with a controversial matter as a reserved matter or subject to conditions when the reality is that a sufficient explanation should be included in an ES to show that remediation is a viable prospect. The point is also well made that these things need to be properly included in an ES as the process is meant to allow the public to comment on proposals. The concept of leaving such controversial matters to conditions on an outline permission is contrary to the intention of the EIA regulations. It is therefore a defect in the ES and as such the ES must be rejected as an infringement, in itself, of the EIA Regs.

When something is dealt with in the EIA process it allows conditions to be added that are consistent with the finding of the EIA.

Rhetorically we ask, are the Appellant and their experts content to argue the contrary bearing in mind that this would be an attempt to avoid the EIA Regs with the consequences of Article 10a coming in to play.

The complaint by NRW was a serious one, the applicant had not addressed it adequately, if at all, and there is a lurking doubt about the reason for its omission especially where the applicant is struggling with the complete lack of viability shown by its experts and more importantly the LPA's experts.

One problem with dealing with the issue at this time as part of the consultation is that the costs then identified will add to the non-viability of the project. On the other hand it is hardly the fault of the residents (and the environment) that the developer chooses an unsatisfactory site for such a white elephant. No doubt the developer would like the public to pick up the cost on this item as well as other obligations. We believe the Appellant has demonstrated this will be an imperative.

It is noticeable that some of the trees along the brooks have already had earth worn away by the action of water along Bullhouse Brook such that roots are showing. There are even more trees along the waterways on Model Farm close to the brook where the damage is not yet as bad as that shown in *Appendix A*. The fact that some trees have already had their roots exposed is clear evidence that others will be similarly affected especially if/when the amount of water diverted to the brooks is increased.

The weakening of the trees means that they may also be more susceptible to forms of pollution in the water. It is known that there was some concern a while back about pollution entering BullHouse Brook (presumably from the airport and/or related industry) but it was never made known whether the concern was raised by the owners (L&G) and/or Dwr Cymru. One of them must hold material that needs to be considered as relevant to the current level of pollution. Perhaps this would add to the reasons why the ES ought to have included the intended increase in traffic for the airport.

Whitelands Brook is similarly lined with trees and a photograph of one of them is included at *Appendix B*. The damage to the root system of this tree from the action of the brook is easily seen and is considered illustrative of the damage to be expected to increase along the brook. The weakening of the trees makes them more vulnerable to other pollutants that may be added to the water over the many years of any irresponsible development. A development where costs need to be cut to achieve any (imaginary) chance of profit.

As nobody seems to have any idea what industry, if any, will occupy the development for the years of its existence, the precautionary principle would require that run-off water needs to be collected and, probably, taken away from site. If the type and quantity of pollutants cannot be identified with any certainty there would seem to be no alternative apart from ‘collect and remove’.

If the development costs are such that the developer cannot add in such precautions then the development should not be permitted. The developer has argued its case strongly that it is a loss making venture and the public should help it out by covering some of the cost - but without any benefit in the equity of the finished product.

With the sort of rain we have seen already it should be clear that any attenuation tanks would need to be very large and the drainage system needs to be sufficient to collect from the whole area. It is trite to point out that there will be pollution collected within the run-off water.

It is obvious that the type of pollutants and the level of pollution is unknown. Climate change does not appear to have been (fully) taken into account when calculating the necessary size of attenuation tanks. This should be addressed and the latest advice on flooding considered together with the necessary increase in expectations to take account of the precautionary principle. It is understood that the latest TAN 15 is based on the ‘risk principle’ but an ES should take account of the precautionary principle which offers greater/safer protection for the environment and residents.

The issue will be important for the trees along the brooks as well as the other flora and fauna dependent upon those trees. The impact flows further down into Porthkerry Park.

The increase in water flowing along these two brooks will mean water travelling with greater speed as well as having greater depth and width, and running for longer. This is likely to have a significant detrimental effect upon the trees and the water course. We have no idea from the ES whether any increased flow can be accommodated within the banks that are established and therefore whether flood water will affect other areas.

It remains a probability that rainwater run-off will, at least occasionally, fail to be collected by an attenuation tank that is full. This will add to the flow over the slope below the development site and increase erosion. There is no suggestion that this is factored in to the ES.

Any attempt to control the water will only result, at best, in holding back some of the water but with a consequent increase in the period over which an increased flow occurs (unless we have efficient collect and remove in place). The increased flow and additional pollution may only be overcome by having attenuation tanks of such a size that nothing is expected to escape down the slope. The way the land drops off from south of the building area must make it more difficult and expensive to achieve this. The lack of viability would suggest that the minimum size of attenuation tank(s) will be added with no account taken of the likelihood that the tank(s) will become inadequate with silt and with the problem that the tanks contain runoff water when a serious amount of rainfall arrives.

The Inspector should assume (in a precautionary way) that the developer and its experts have not considered this. It may not be dealt in the ES due to the increased cost and therefore the worsening arguments on viability. To leave the issue to 'reserved matters' is to accept the danger that in future there will be an unsatisfactory compromise that does too little to protect the environment. This is a reason why environmental matters are to be dealt with before the Inspector considers the potential for a grant of planning permission. (See Gillespie above)

It is not possible for detailed enquiry to be made by us on the land immediately to the south of Model Farm below where the confluence occurs. That land is in different, private ownership. This is a matter for the ES to cover. There is comment elsewhere about the failure of the occupy of that land to take an interest in this appeal.

However, a search of the Woodland Trust website revealed a tree very close to the watercourse that is identified as a Pedunculate Oak (English Oak referred to as one of Britain's most iconic trees) and described as a Notable Tree.[11] See the image of the tree at *Appendix 3,* it is on the Woodland Trust website.

The Woodland Trust site has an advice comment in relation to this tree stating:

> *Advice has been submitted to landowner confirming a view that these trees are of biodiversity and cultural interest, noting continuity of oaks with hedge and stream on 1879 map and noting associated wildlife observed (owls, bats, wood peckers), View expressed that proposed drainage works in root zone of trees is a significant risk to them.*

The owners of Egerton Grey would be well aware of what is on their land and that the tree and the associated wildlife needs protecting. Indeed the Appellant will also be

[11] https://ati.woodlandtrust.org.uk/tree-search/tree?treeid=196268

well aware of the issue and would want to do what it can to ensure the area is not subjected to unnecessary impacts. Clearly a reason for the Appellant to be be in dialogue with the owners of Egerton Grey but this oversight seems to add to the concern some have that there is nothing heard from those owners with nothing said about the impact in that area within anything produced by the ES.

This is a single example of a survey by the Woodland Trust highlighting a notable tree, important to wildlife, that is already affected by the flow down from Model Farm with advice to avoid a drainage scheme. We do not know whether and to what extent the comment applies to other trees along the watercourse as the developer has not considered the issue sufficiently, if at all. Also note the biodiversity referred to by the Trust. We assume such biodiversity has not been considered by the Appellant as there is no specific reference to it.

No proper survey has yet been carried out to check the trees along the path of the waterways notwithstanding the advice is easily found on the Woodland Trust site. Such research ought to have been carried out for the purposes of an acceptable ES. It is one thing to offer some attenuation but it is another to establish whether, even with reasonable attenuation, the damage will increase along the watercourses.

When considering attenuation it is important to adopt the precautionary principle to assess climate change and how this will impact the area. The amount of attenuation and the way in which this is carried out needs to be considered prior to consideration of the application for outline planning permission. There is no logic in granting outline permission for a development that might falter due to the cost of (remedial) works that will be required. That would simply tie the hands of the LPA in future when the LPA decides that the area would benefit from some other proposal. It also impacts adversely on the way in which the farm is run in the meantime and what capital input could safely be incurred.

If outline permission is granted for this site, in the knowledge that it will be unviable and therefore unlikely to be pursued, this will be a serious issue that any proposal for Aberthaw Power Station Site will have to take into account. It will probably make the Aberthaw site impossible to develop in the way suggested by Cardiff City Region. It is merely one example of the way that planning needs to be looked at in a regional manner. To what extent will a poor decision in one part of the Vale impact adversely elsewhere. Development at Aberthaw is not something that might or might not happen. It is a serious development that is being pursued by CCR which includes the LPA. The Aberthaw site is a significant parcel of brownfield land available for developments such as the one envisaged by the Appellant.

When it comes to climate change the Welsh Government has updated TAN 15 and the flood maps. The changes are risk based with good argument that the allowance for climate change was too low. Nothing was allowed for possible error notwithstanding the increasing understanding of the science and the slow way in which progress is made (assuming any practical progress has been produced internationally). The calculations for TAN 15 were made on a risk assessment rather than precautionary. We therefore suggest that when looking at an EIA the TAN 15 is just the starting point.

The Inspector might feel it is a proper expectation for him to accept that international cooperation on keeping control of the rate of increase of the heat in the atmosphere has not resulted in the type of control the science has demanded.

The flood map from the updated TAN 15 shows that even on the limited assessments already made, flooding is expected close to or at the trees in the photographs especially the area dealt with by the Woodland Trust website. There is, as yet, no assessment dealing with the impact of the proposed development downstream. The likelihood is that this will increase the likelihood of more serious flooding between the proposed development site and Porthkerry. There may be property at the point of the anticipated flooding. An EIA should require that account is taken of the updated TAN 15 with the addition of a proper uplift for climate change to take into account the precautionary principle.

We also note that the map with TAN15 shows that flooding is expected in the Porthkerry area. An increase in the rate of flow of water downstream will not only cause flooding between the site and Porthkerry but may add to the level of flooding at Porthkerry Park.

This will also, of course, increase the flow down to Porthkerry Park where there are already drainage issues but nothing has been calculated as to the impact of additional run off. Even without tidal surge there is flooding in the park. An increase in water flow might have an important effect on a popular part of the park.

We make the point that at current levels shown by TAN 15 the flow will increase and cause damage. With a proper (precautionary) assessment of climate change the dangers increase, possibly exponentially. We do not know the answers because the ES is meant to give them to us; it fails to do so.

In the present case this would seem to be all the more important due to representations already made by the developer that there is too little profit to accommodate attenuation, leaving cost with the LPA and its residents due to undeserved reduced section 106 compliance. The LPA needs to be satisfied that any impact that the development might cause is covered financially by the developer/owner and not left for the public to pick up.

The public should not be expected to pick up the cost of improvements for a project the Appellant describes as a financial liability.

Note that we have included notes about firewater implications previously in this document.

Increased Traffic

We believe that the situation surrounding the traffic impacts of this development is unsustainable and cannot be allowed to proceed. The officers recommendations are outrageous and inexplicable. Any testing of the traffic is out of date. The college must be taken in to account and if the Appellant believes this site will become significantly occupied then they must also accept increases in traffic from Bro Tathan, the airport, the new housing at St Athan and the brownfield site at Aberthaw. There are indications in the previous arguments by the Appellant that other proposals being considered by the LPA should also be included.

In order to deal with the impact on traffic L&G was to mitigate the infrastructure by way of its suggested sustainable travel scheme but then L&G refused to fund the necessary changes. No funding had been secured from Welsh Government in substitution. It transpires that the traffic assessments were misleading and any suggested ameliorations are imaginary.

The significant traffic delay expected as a result of the L&G project was to be mitigated by L&G committing to updating infrastructure, public transport, cycle paths and public footpaths as part of the financial agreement to build and were to use a modal shift away from car journeys to reduce traffic numbers significantly.

L&G backed out of the agreement saying it would cost too much money therefore making the development even less viable for them. The cost of upgrades to the roads relied upon by the Appellant to mitigate the extra traffic are, it would appear, is to be met by the LPA and public purse. That cannot be allowed to happen. The public should not be funding a significant part of a non viable project especially when that project is also unnecessary. The decision to fund altered infrastructure is an example of incurring debt unnecessarily for later generations to pay back. This would, at best, be reckless.

The LPA, on the advice of officers, apparently agreed to L&G not upholding their commitments to improve the road system. The officers had unlawfully withheld the documentation on viability from the public and planning committee members presumably to help L&G to achieve unlawful arrangement.

Previously the LPA was given information about the Welsh Government's wish for remote working. It was said that the Welsh Government (WG) had a target of 30% of people working from home. The Appellant wanted to extrapolate that aspiration to reduce the traffic impact but their analysis was faulty.

This was a misquotation on behalf of the Appellant as the Welsh Government announcement was for support for remote working so people can work **from an office *near* their home** one or more days a week **instead of commuting long distances**, in line with our wider Welsh Government target of 30% of the workforce to work remotely on a regular basis. (Our emphasis)

The WG is not aiming for 30% of people working from home. The WG target is "close to home". It is an aspiration. No matter how valid an aspiration, it is just that. Working from home tends to be less of a magnet for industrial sites.

There is no definition of *close to home* but it is obviously to be compared with the concept of *long distances*. Barry is close to the development, it is close to the airport and Bro Tathan. Anybody coming from Barry is already satisfying the definition of working close to home. If 30% of the proposed workforce is coming from Barry, Rhoose, etc then the target is achieved with no change in traffic projections.

If somebody changes their work commitment for one day per week then that is hitting the target for the WG. The hope of the WG is not 30% for every day of the week. If the 30% was for the minimum of one day then the effect over the working week of 5 days will be 6% on average. But why spoil a good story by checking the numbers.

As 'close to home' is defined as 'not a long distance' it could be considered that there is too much flexibility within the aspiration. It might be for example that a commuting distance of 10 miles is not considered to be a long distance. For some routes perhaps a greater distance could be 'close to home' and not a long distance.

Another factor for the WG aspiration is that it appears (for obvious reasons) to be limited to office workers. All we know about the proposed development is that we know nothing about the likely occupiers and usages although something in the order of 3,500 to 5,000 employees are expected to occupy the site when completed. Quite clearly the developer does not expect these people to be working remotely.

Alternatively the figures might take account of the WG's aspiration such that the true occupation is much greater with a % working remotely? Without this sort of information the Inspector might consider that the traffic figures are guesswork and any assumptions should therefore be against the more optimistic figures previously put to the LPA.

We should be able to assume that at the time of the traffic surveys in 2018 there will be a significant number of commuters already working close to home. To assume that there will be a big shift to satisfy the WG's aspiration is therefore an unwarranted/dangerous assumption. The whole 30% figure might already be in place due to proximity as between Barry and the villages. There seems to have been no research into this which is a defect in the ES for what is a very important issue for Barry and the Villages.

The use of this aspiration by the Appellant is a sign of panic and a failure of expertise. It is mere advocacy and reckless advocacy at that.

Improved travel facilities are not likely to occur in the area as even the long expected link road to the M4 was cancelled. The Inspector should therefore be looking at this issue with the greatest of care. Is the Inspector happy with the way the ES has dealt with the issue? Does it seem that the Appellant is looking to the Inspector to be as sympathetic as possible to the Appellant and to make its arguments for the Appellant?

Sewer Implications

The Sewer Works at Cog Moors cannot comply with the law at the present time. Overflows, including into the Bristol Channel and via CSOs throughout Barry, are already breaching regulations. NRW is not enforcing compliance with the law which disguises the lack of capacity at Cog Moors to meet the Urban Waste Water Treatment Regs.

Included are the legal reasons, as well as more obvious practical observations, why this issue cannot be left to be considered as a reserved matter as wrongly preferred by the Inspector.

The question of connection of any new sewer system from the proposed development into the Cog Moors system is too important to the area to just leave to one side until the pressure on the Vale Council and Cog Moors becomes so great such as to permit any connection rather than an optimum/acceptable connection.

The lack of capacity in the public sewer system has already been accepted by the Inspector but there is a false assumption that the impact can be left to a process that is not EIA Regs based. That is a misunderstanding of the law. The finding already arrived at is in fact a serious matter that explains yet again why the purported ES is not in fact an ES for this development.

This is a subject that needed to be considered within an EIA - the environmental impacts of untreated sewage discharged into the sea and Barry CSOs needs to be described and methods to avoid or mitigate these impacts outlined. Not just a desktop suggestion, actual, costed and acceptable proposals should be the minimum needed prior to considering the question of outline permission.

The EIA process will work out the way in which this issue must be addressed and conditions may then be imposed to ensure compliance. If the Inspector is saying that is too complicated for him then the answer should be obvious.

Leaving this to be considered after the grant of outline permission will breach the EIA Regs, be a failure to deal professionally and properly, may be an offence as it will be a clear infringement. The position is that Cog Moors cannot take the significant additional foul material generated by such a large development without harm to the environment. There is not any appropriate connection at this time.

Any hopes for Blue-flag standards at Barry beaches will be lost. It would be wrong to allow outline permission until there is a real prospect of solving this situation. Until the EIA Regs are fully complied with, there is no solution. In truth it looks like the developer cannot afford a proper solution. The Welsh Government wants to comply with public concern and bring sewage works up to standard – discharging untreated sewage only under exceptional weather conditions – so the LPA needs to cooperate with this aim to comply with the law (Urban Waste Water Treatment Regs. and Bathing Water Regs).

The LPA is in fact keen to avoid the issue and infringe the EIA Regs. They have a history of persuading Inspectors on Appeal to breach the Regulations, ask the DCPI.

A proper EIA needs to identify the possible load that the development will add to the sewer system. Even under normal weather conditions Cog Moors 'spills' untreated sewage about 80 times per year and we suffer overflows from CSOs around the area including in Barry. Data on spills is freely available from Welsh Water so should be given in the Environmental Statement.

Article 5 of the 2011 Directive includes:-

> *3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:*
> *(a) a description of the project comprising information on the site, design and size of the project;*
> *(b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;*

Ignoring the issue for the EIA is not a lawful answer.

Note the very clear requirement set out in Article 5.3(b). At the 1 day public inquiry it appeared that the Inspector, the Appellant, the LPA, Counsel for the VCU, all agreed that this requirement could be avoided by leaving it to be dealt with by a reserved matter without the ES dealing adequately with the issue. If that is the case then surely it is caught by Article 10a. Everybody agreeing to that course of action is holding themselves out for investigation for an obvious infringement. Why would anybody do such a thing for an organisation that will give no thanks.

PEDW has decided to keep from the public the recorded details of purported agreements. They will not remain hidden from the authorities.

The LPA, with the assistance of Dwr Cymru, identified problems already. They are not minor issues as the LPA has to have regard to protecting other users of the system, residents and businesses, the environment. Rhetorically we would ask why the LPA would not want to check these matters at this early stage when the LPA is well aware of the problems at Cog Moors, and therefore that residents and existing businesses, already have.

- The Vale has identified the need for submission of a drainage strategy showing how the development site would be drained. These are matters to ensure the developers deal adequately with surface water with calculations made on a precautionary basis, taking account of current scientific advice. This is advice that continues to develop including with the very latest IPCC report.
- The Vale has also identified the need for a hydraulic modelling assessment of the public sewer system in the area of the development. This needs to be undertaken to assess the capacity of the system to accommodate the flows generated from the site. We know there are frequent discharges from the main

sewer to Cog Moors into Barry Dock via the CSO. As this is more frequent than spills from the Cog Moors CSO, it's possible or even probable that the hydraulic capacity is exceeded already. This requirement, basic to the local needs, cannot reasonably be left to a later stage.

- Is the pumping station immediately below the site sufficient for the increase load that is expected under peak storm conditions? If there is any prospect of an overflow at this point how will it affect the surrounding land/environment? This information needs to be in the Environmental Statement. Why wouldn't the LPA need to know the answers now?
- The Vale includes in its assessment the need to identify a suitable point of connection on the existing system. A desktop suggestion is hardly sufficient especially when that assessment assumes access to a connection point across land in third party ownership with no regard to the ground conditions and whether there will be appropriate access to the proposed pipeline permitting future maintenance.
- The LPA should be aware already that the additional material from this site is not something that Cog Moors and Barry Dock can accommodate without concern over public health and safety. The Vale knows that there will be a need for reinforcement/upgrade of the system. Such works need to be funded by the Applicant. The works will need to be completed before any development begins in order to ensure the works are adequate. The viability reports, both of them, make it clear that the Applicant cannot afford this additional expense. The development proposed is uneconomic and cannot meet the expense. It cannot meet proper standards in order to protect the public and the environment. Why wouldn't an authority that is charged with protection of the environment and residents fail to have the answers before moving forward with the application?
- The Vale is also well aware of the need for likely reinforcement works of the local water supply system. The Vale indicated it will require a hydraulic modelling assessment to be completed. There is no obvious reason why this cannot be carried out ahead of consideration of planning permission as part of the EIA. The fact that the development is not viable and the developer cannot afford to carry out the work now is a reason for ensuring the task is carried out ahead of possible planning permission. These are not matters of mere tweaking. The LPA cannot afford to be pushed into acting in a way that forces it to ignore its basic duties to the local population.
- The LPA has not yet obtained an assessment of the sewage and/or water supply systems in the area notwithstanding the need has been identified and notwithstanding the likely impact on the local residents and environment of such a significant proposal.
- A word of warning when it comes to any assessments by Dwr Cymru. We were previously advised by Dwr Cymru that to check if they had capacity they would assess the system for a dry period. This is unacceptable from the public safety point of view. Such a reckless way of calculating capacity means that the system overflows more when wet weather intervenes. It is an offence on a number of

levels. Any assessment by the water company needs to be questioned. We make that clear as it is what the company said and now, for the EIA purposes, people are on notice.

Although the applicant has suggested a route for a new sewer, there is nothing to show whether it is a viable option. It might simply be a convenient line drawn without any regard to what can be delivered. A line that takes no obvious account of the wider issues that seem to arise. As the Appellant would like to leave this to a process avoiding the EIA Regs perhaps the importance of the impact is made out by them. The importance and the ambition not to have to pick up any cost.

Are all necessary permissions in place, what is the state of the ground that has to be worked to lay any pipework. Perhaps the failure to produce appropriate information on which assessments can be made by the Inspector ahead of the possible grant of outline planning permission is not accidental? The Appellant will be well aware of the issues but has, it seems, decided the better way (for the Appellant) is to ignore any issues at this time. Unfortunately for the Appellant the issues are known and they need to be addressed up front, it is a legal requirement.

Any attempt at a professional project might mean that there is material available to allow for some sort of assessment within the EIA process but that material clearly must be adverse to the Appellant's case.

It is trite to point out that any sewer connection to the public sewer network, must comply with the Sewer Design Standards set out by Welsh Ministers. Even a lay assessment of the proposed route may identify a number of physical and environmental constraints that might confirm the route is not practicable. If that is correct then the applicant is playing fast and loose with public health and the environment. A game that the Inspector and the Minister cannot participate in.

The viability reports show the applicant cannot afford to upgrade the sewer system or make any or any significant contribution to it. The site is inappropriate due to the likely difficulty of proper disposal of foul sewerage and/or the cost of achieving the disposal. The refusal to update the viability reports must be taken as an indication of an increase that is unsustainable. Anything less would result in reports being made available.

PEDW knows the history of the viability reports on this project and that their CPI agreed she acted unlawfully in relation to the material. PEDW ought to have made sure they distanced themselves from any possibility they might fall into the same error. We are unaware of any request for the material. It might exist but if so we are again to be kept from it.

We suggest that it is in the interests of:

- good planning policy and more likely to be compliant with the Law to address known essential, development-restricting issues prior to considering an application for permission;
- the public who already have issues with the sewer and water systems;
- the environment that already receives much untreated sewerage from CSOs and other spills;
- Dwr Cymru, as that not for profit organisation should not be expected to take on further issues that will ensure it breaches legislation to a greater extent than at present;
- The Appellant so that it is better informed as to the level of losses such a development will produce, causing damage to reputation and losses to investors.

With the build-up of significant additional expense for a non-viable development, any determination to continue on the part of the applicant will call into question its openness in negotiating somewhat favourable terms on section 106 obligations. Openness by applicants is an important aspect of planning matters.

The issues with sewage are such an obvious problem for the applicant. Why would anybody agree to break the law and move the issue to reserved matters? Has the Appellant even considered the wider implications of the issue and the expense it will incur? We find it hard to believe that this has not been considered in detail but where is the information?

A more detailed consideration of the purpose and extent of *reserved matters* might be helpful.

Leaving important issues to later consideration can cause issues further down the line with the very real danger that the public is then required to cover the cost of issues that suddenly need to be sorted notwithstanding they were always known.

The LPA is already short of funds for all sorts of necessary services. No chances should be taken that the LPA might need to find a load of money to solve a developer's problems.

It seems strange that basic and very important issues can be left in this way. The Legislation might offer some guidance on the way that big business is operating on these matters and help decision-makers to make better decisions for the public rather than optimum decisions for the developer.

The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 regulation 3 deals with *reserved matters* for outline permission:

Applications for outline planning permission

3. (1) Where an application is made to the local planning authority for outline planning permission, the authority may grant permission subject to a condition specifying reserved matters for the authority's subsequent approval.

(2) Where the local planning authority who are to determine an application for outline planning permission are of the opinion that, in the circumstances of the case, the application ought not to be considered separately from all or any of the reserved matters, they must within the period of one month beginning with the receipt of the application notify the applicant that they are unable to determine it unless further details are submitted, specifying the further details they require.

(3) Where layout is a reserved matter, the application for outline planning permission must state the approximate location of buildings, routes and open spaces included in the development proposed.

(4) Where scale is a reserved matter, the application for outline planning permission must state the upper and lower limit for the height, width and length of each building included in the development proposed.

(5) Where access is a reserved matter, the application for outline planning permission must state the area or areas where access points to the development proposed will be situated.

In order to better understand the provision, the definition of *reserved matter* is included in regulation 2:

"reserved matters" ("materion a gedwir yn ôl", "materion a gadwyd yn ôl") in relation to an outline planning permission, or an application for such permission, means any of the following matters in respect of which details have not been given in the application-

(a)access;

(b)appearance;

(c)landscaping;

(d)layout; and

(e)scale, within the upper and lower limit for the height, width and length of each building stated in the application for planning permission in accordance with article 3(4);

There is nothing to suggest that environmental issues should be left to reserved matters just because they are too difficult for the developer and others to cope with in EIA Regs deliberations.

It seems obvious that *reserved matters* are mere tweaking, fine tuning, of the development. Although these are important matters for the locality they are not the issues that affect the wider community, that deal with the environmental issues, that take account of the issues arising and which proper planning necessitates decision-making by the LPA.

The arrangement for sewage is not a reserved matter. It has to be something that is considered at the application stage when the ES is under scrutiny. The Inspector needs to know what the necessary arrangements are and that they are acceptable on behalf of the large part of our community that will be (adversely) affected, before considering the grant of an outline permission.

Made up land

There has been no investigation into the made-up land on the farm.

There is anecdotal evidence as well as material coming the surface that during the second world war Cardiff Council dumped rubbish (but the content is unknown) on part of the land. It is believed this will be in the top west section of the farm but the extent of the dumping is undefined.

We note the VCU is content to rely upon anecdotal evidence. We hope the Inspector is more professional.

It is not possible to indicate the size of the dump but this will affect the potential use of the land and may be important from the point of view of pollution and its potential for shift especially with climate change.

There is also a considerable area that was made up to be usable agricultural land and which may be affected by building works. The potential for extra water coming its way with climate change and water run-off from the site of any development may have an adverse effect on the state of the land perhaps leading to some drifting. This would make the calculation of attenuation tanks vital. At present it does not appear that the proposed tanks are adequate to protect from the run-off. This needs to be considered afresh with the benefit of the new TAN 15 and supporting documents.

Assumptions that the dump is benign are not acceptable. The Appellant has the obligation to make sure and produce the evidence.

The extent of the problem from run off needs to be identified, the possibility of significant further run off needing to be collected before previous run off has dissipated needs considering, the question of possible fire-water run off should be considered, the impact of the proposed solution upon the land and upon the areas south of the site should be made clear.

Just because the Appellant will want to say everything is fine, the history of the matter demonstrates the need for good expert advice on the material proposed.

Biodiversity and Ecology

I will keep this very short as there are various reports, arguments and counter-arguments dealing with the problems.

In brief, the Appellant has not dealt with the need to protect the biodiversity/ecology already on the farm and nothing or nothing sufficient to protect and enhance the biodiversity to satisfy the Environment (Wales) Act 2016.