REPRESENTATIONS FOR MODEL FARM APPEAL

Reference Number: CAS-02641-G8G7M5
Appellant: Legal and General (Strategic Land) Ltd
Appellant's agents: R P S Group Limited

Submitted by

Dennis Clarke
The Court
4 Mount Pleasant
BARRY
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for himself as a resident of Barry
and obo Various other residents
who have contributed to the content

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Glossary

2008 Directive	2008 European Parliament and of the Council Directive 2008/99/EC
2011 Directive	2011 European Union Directive 2011/92/EU
2014 Directive	2014 European Union Directive 2014/52/EU
85 Directive	1985 European Parliament and of the Council Directive 85/337/EEC
Agriculture EIA Regs	The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017
CA	Competent Authority
CCM	Climate Change Minister
CCM	Climate Change Minister
CJS	Criminal Justice System
CPI	Chief Planning Inspector (of PEDW)
CPI	Chief Planning Inspector
DCPI	Deputy Chief Planning Inspector (of PEDW)
DCPI	Deputy Chief Planning Inspector
DIAG	Docks Incinerator Action Group
EIA	Environmental Impact Assessment
EIA Regs	The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017
ES	Environmental Statement
IEMA	Institute of Environmental Management and Assessment
IEMA	Institute of Environmental Management and Assessment
LPA	Local Planning Authority (Vale of Glamorgan Council)
NRW	Natural Resources Wales
NTS	Non-Technical Summary
PEDW	Planning and Environment Decisions Wales
POCA	The Proceeds of Crime Act
SoCG	Statement of Common Ground
The Convention	1998 Aarhus Convention
The Principle	The Principle of Effectiveness in European Law
VoG	Vale of Glamorgan Council

A non-technical brief summary

Our representations are meant to support, as a minimum, the following issues:-

- Failing to follow the EIA Regs is an infringement capable of being a criminal offence under the Fraud Act and others;
- There are many steps taken that appear to be infringements of the EIA Regs;
- Many issues have been air-brushed out of consideration notwithstanding we believe they are obvious and therefore considered by experts;
- The purported ES fails to fulfil that role on a number of points;
- Overall, the performance by those already involved means that the public has to be allowed a full role in any Public Inquiry as there is nobody left to ask their questions;
- PEDW has acted and continues to act in a way to marginalise and mislead the public.

Introduction to these representations

We have had to deal with the differences we have with the other parties (that we are aware of) to support out view that members of the public must be allowed to ask questions and take full part in any Public Inquiry and other preliminary matters. Although the other parties will want to join together to deny our position, we believe we are right and it would appear that there is nobody involved in this Appeal that can deal with our questions on our behalf.

The first point we need to make is that we set out our position at length for a reason.

We make no apologies for this. Going back to basics, reminding oneself of what one thinks one knows, can help to identify where process and convenience has sought to alter the lawful processes that must be followed when dealing with an Appeal involving the EIA Regs and the 2011 Directive, as amended.

We could have kept the document very short by having bullet points. We felt that merely made it easy for the experts to dismiss our input. An issue we had was that the experts involved in this matter either have not looked at the same areas as us or they have come to different conclusions. It is clear we need to argue our corner as we have a credibility problem. There is an assumption/reality of *information asymmetry* leading to another assumption that we do not know what we are talking about. (see later for comment by Lord Hoffman).

Although it may be correct that we do not know what we are talking about, the case law appears to be with us, we are permitted to raise issues, the Inspector should deal with them, explain why he says we are wrong or alternatively accept that we have seen a previously hidden truth.

If our representations on the impact of Article 10a are correct (wholly or partly) then we can see how other complications set in as decisions already made need to be considered in the light of Article 10a. Perhaps the repercussions of infringements of the EIA Regs etc come as a surprise to some experts.

We accept for the purposes of our submission that Article 10a is well known to all the experts in this case. The impact on their actions might need discussing.

We may need to ask questions about decisions already taken and to be taken but we do so as points to discuss, not as allegations. We do not purport to point fingers, that is for others with the necessary skillset. We may appear to step over the line from discussion to allegation but we try not to do so and any indication to the contrary merely reflects upon our inability to word the material appropriately. If a proper process is followed we are content to follow this.

We had included our views on the impact of Article 10a of the 2011 Directive (as amended) at an early stage of our preparation of these representations. Having completed our thoughts on the subject, the very next day we came across the Welsh Government's views on the impact of Article 10a and why it was not addressed within the EIA Regs. That is why that very helpful additional snippet is found at the very end of our document. We accept that all professionals involved in this and similar matters will already have read the relevant Welsh Government document, the 2011 Directive and understood what it took us a long time to appreciate.

We have decided to include all of our thoughts on Article 10a with much of our early reasoning as this is an important subject that did not appear to be discussed anywhere. We extrapolate the Welsh Government view so as to take the point further than the declaration by the Minister. The extrapolation is considered by us relevant for all involved.

We may have made our points strongly but without intending to accuse any party of deliberate wrongdoing. There may be excuses. We could be wrong. It might be a matter for PEDW, the Inspectors and the LPA to decide (initially) if failures, whether discussed below or not, are in fact infringements within the possible scope of Article 10a requiring additional investigation.

The Explanatory Notes at the back of the EIA Regs include comment on Reg 43:-

> ***Penalties and enforcement***
>
> *Regulation 43 contains the duty on local planning authorities to have regard to the need to secure compliance with the requirements and objectives of the Directive in the exercise of their enforcement functions.*

At the very least this brief note should have got the grey matter bursting into life for the LPA, PEDW and the Inspector.

Bearing in mind our notes on enforcement of the EIA Regs and possible actions that might come within the scope of Article 10a, both the LPA and PEDW might agree to look into some of our representations.

Regulation 43 stresses the onus on the LPA and PEDW with:-

> ***Duty to ensure objectives of the Directive are met***
>
> ***43.*** *Relevant planning authorities, in the exercise of their enforcement functions, must have regard to the need to secure compliance with any law which implemented the Directive and with the objectives of the Directive.*

This is an obligation that could not be clearer. It is a wide ranging obligation placed upon the LPA and PEDW to get things right, even after they had gone wrong.

Related to this is Regulation 52. A regulation that ought to be superfluous but the Welsh Government clearly thought it was worth mentioning:-

> ***Objectivity and bias***
>
> *58.—(1) Where a local planning authority or the Welsh Ministers have a duty under these Regulations, they must perform that duty in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.*
>
> *(2) Where a local planning authority, or the Welsh Ministers are acting as a developer and that authority or the Welsh Ministers, as the case may be, are also responsible for determining their own proposal, that authority or the Welsh Ministers, as the case may be, must make appropriate administrative arrangements to ensure that there is a functional separation between those persons who seek or require permission for development and the persons responsible for determining that proposal.*

We understand that the LPA in this case identified it had a conflict but it appears to have reacted by inputting matters designed to prejudice the proper processes for this appeal.

We are concerned that the LPA and PEDW may fall into the trap of making mistakes, not acknowledging them and continuing to act as if there is nothing wrong. Making mistakes is caught by Regulation 58(1) above. Mistakes have to be identified, and corrected. A mistake raises a conflict.

The authorities, at least, could conclude they need to look at their processes. They need to protect their employees, Ministers, and councillors from suggestions of misconduct merely for following advice and processes set out by PEDW and the LPA.

Possible disenfranchisement of the Public

The EIA Regs are an important part of this appeal as they deal with matters that directly impact on residents. The public is entitled to see compliance with the strict requirements of the law. This needs to be done in a way that the public can follow and, hopefully, accept that their concerns are considered, respected and dealt with appropriately. The public needs to be encouraged to be involved not encouraged to leave matters to the professionals. Without public involvement the process is likely to be no more than a tick box, desktop exercise.

Democracy, even at a local level, is very important but often misunderstood. As a consequence the public can *learn* that its views are irrelevant to decision-makers – whether or not that is true in all cases.

Local democracy is an important animal. It is often something that runs hand in hand with the Rule of Law. The one depends upon the other.

The present appeal is a valid example of how local democracy and the rule of law can be attacked, whether deliberately, recklessly, negligently. The more that this happens the

more the public feels disenfranchised, the more the public loses its democratic rights, the more the public can only sit back and grumble at what it sees as errors by those with the power and duty to make a difference.

A professional qualification can narrow a world view, it can blinker the holder of the qualification so as to cause the wider picture to be invisible. That is the importance of the public's thoughts. It is why there is so much said about the need for the public to be involved in matters affecting their health and environment.

Blinkers are used to make a racehorse run faster by hiding the big picture. When experts are blinkered, it is the process that is rushed to the detriment of the law and the public. Experts can move on but the public has to pick up the pieces when errors are made.

Missing Objectors?

We appreciate that there could be many reasons why people do not get involved in a planning appeal but there are at least two sets of people in this case where questions might properly be asked. These two are not involved as supporters of the project which leaves other possibilities on the table. Objectively both are more likely to be objectors. At the very least they would be expected to be significant sources of relevant environmental information.

There is no sign of the present occupiers of Model Farm nor from the owners/occupiers of Egerton Grey which is the privately owned land towards the south of Model Farm. Both would appear on the face of things to have a keen interest in the development, both would have knowledge, both are very closely affected, both are absent.

The present occupiers of Model Farm could be thought to be in the most vulnerable position. The question arises whether they have been persuaded by or on behalf of the Appellant that it would not be in their interests to support objections. Presumably the occupation of Model Farm by the family continues as these proceedings rumble on but with the possibility that any extensions of the arrangements to occupy being under threat in some circumstances. We make no assertion, but the question should be asked if any consequences have been brought to the attention of the occupiers. If they have been dissuaded from taking part in these proceedings then we suspect that may be an infringement of the EIA Regs and/or the 2011 Directive. That could be an offence.

Egerton Grey may seem to be a stretch too far to include in the same section of these representations but as it is obvious that the address may be more vulnerable to impacts from the development proposed than almost anything else, the absence of the owners is another possible issue.

It is thought by some that there is an arrangement entered into by the Appellant or on behalf of the Appellant, that prevents the owners of Egerton Grey either objecting or supporting objectors. It would explain their absence. If there has been a transaction accompanied by a requirement that they did not in any way support objections to the

development, perhaps with an accompanying NDA that may be an infringement of the EIA Regs and/or the 2011 Directive. That could be an offence..

Both of these matters can be settled with a couple of direct questions of the Appellant. Perhaps something as simple as a letter that can be produced to the two sets of people making it clear that the Appellant would appreciate it if they would kindly explain their lack of involvement or such terms as would demonstrate no pressure has been exerted upon them.

We raise the point after having talked to people and been advised neither of those parties can be involved. We appreciate that third parties who have advised this may be wrong but…

These are important as if the appeal happened to be tainted by such actions then it might follow that the appeal is tainted by criminality. In those circumstances everything would need to be questioned and the Appellant should not expect to profit from such behaviour.

We acknowledge that we have no basis to claim any bad behaviour but the combination of the matters raised should support asking appropriate questions.

Background to the Process

Environmental Impact Assessments were introduced to protect public health and the environment; to help decision making on planning matters to ensure the impacts of a development are properly assessed to ensure a project was 'safe' or, in some cases, as safe as it can be.

An overall imperative was to involve the public in the process, to let the public vent its concerns and by doing so help the professionals to reach the best decisions and have their, the public's, concerns considered. In that way the public can have better insight into developments as well as helping to ensure local knowledge is fed into the planning process, which improves local democracy.

As the ES is meant to inform decision making in the planning process it follows that the EIA process should precede the planning decisions. Any planning decisions (even draft decisions) made early, ie before the EIA process is finished, may have the potential and sometimes the intention to undermine and infringe the EIA process. For the professionals involved, such avoidance of the need to complete the EIA process would be a serious matter, with repercussions. The 2014 Directive highlighted, by amending the 2011 Directive, the prospect of repercussions for such conduct. The Welsh Government has chosen the CJS to enforce the EIA Regs. We noted the Minister referred to the Fraud Act 2006 in her explanation. The possible sentences on conviction on indictment are up to imprisonment for a term not exceeding 10 years or to a fine (or to both). That conviction would lead on to proceedings under the Proceeds of Crime Act. The Minister decided infringements of the EIA Regs were very serious and needed to be dealt with appropriately.

Our thoughts are developed towards the end of this document to explain why we say there may be reports made by the Inspector about behaviour. We invite PEDW to state its position on the point as criminal sanctions seem to be something the professionals have avoided mentioning or acknowledging (with one exception we will include).

Experts have had at least 40 years to get the hang of Environmental Impact Assessments but there still seems to be a lack of understanding of its purpose, its usefulness; the dangers to individuals and organisations who seek to infringe it.

The 85 Directive introduced the idea of making EIA a legal requirement in EU member states. Since then there have been a number of Directives and legislation beginning in 1988 when the UK implemented the 1985 EIA Directive with the Town and Country Planning Regulations for England and Wales.

The current 2011 Directive appears to be a consolidating document that makes it much easier to appreciate what is needed.

The original EIA Directive was amended again, following the EU's signature of the 1998 Aarhus Convention. An important adjunct to the law and the rights of people and the environment. It is useful to record the full name of the Convention, which is:-

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

Article 1 of the Convention tells us:

> *Article 1*
> *OBJECTIVE*
> *In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.*

Please note the **requirement for public participation** in decision-making. More on this later but we say this should include allowing a resident to question an appropriate witness relied upon by the Appellant to gainsay anything asserted by the member of the public. Discussions about the Appeal or some part of it should also be in the presence of those members of the public who wish to be involved.

A concession from the experts that the public can write in to make their representations and might even be allowed to read out their document at a public meeting is merely a sop, a nod to the need for public participation. As a rule it is an insult. There may be cases where that is enough but it is likely that most EIA Appeals require more to be compliant.

Steps have already been taken to reduce the public's participation in this Appeal. The Appellant and the LPA have taken steps to circumvent the EIA Regs, the 2011 Directive, the Aarhus Convention. This will be expanded in later parts of this document. PEDW and possibly the Inspectors may also be criticised for following a lead handed to them by others.

The public should not be treated as a nuisance whose involvement gets in the way of an efficient system. The system should ensure that the public understands it has the right to participate. On behalf of future generations perhaps the public has a duty to participate. Effective participation includes asking relevant questions, adding to the debate, being as fully involved in the debate as may be possible.

For the reasons we will develop, it is essential in a case like the present that the Inquiry is not, in effect, controlled by the Appellant and LPA. PEDW and the Inspectors ought to have ensured that the Public had every opportunity to be involved in preparatory matters to avoid being excluded from important issues.

PEDW has clearly been operating against the public interest.

The EU Consolidated Directives in 2011 and 2014, make it even more an imperative to protect health and the environment notwithstanding the Appellant seems to advocate for a relaxation of the rules. This has led to The Town and Country Planning (Environmental Impact Assessment)(Wales) Regulations 2017[1] (the EIA Regs).

We are not in a position to comment on the qualifications of those involved in the production of the documentation on behalf of the Appellant. We do not seek to do so.

However, we do not believe any expert's report used within the ES bothers with the paragraph required by Welsh procedure, namely the declaration:

> *"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".*

It is not surprising that an expert will not give this declaration when the experts have expressly distanced themselves from accuracy of the material relied up and any report is be used for general information only. That ought to have been considered by PEDW, the LPA and the Inspectors but we are disappointed at decisions to ignore the obvious.

The paragraph quoted above for an expert's report is a basic requirement explaining for all involved how the experts have conducted themselves in producing the reports.

If it is sufficient to assume this is how the experts conducted themselves there would have been no need for the Welsh Government to require it. On the other hand, if there are reasons why the reports could be considered to infringe the EIA Regs then omitting the paragraph might be seen as helpful in trying to avoid criminal responsibility. There seems to be no logical explanation for the paragraph to be left out. After all, what it says is basic.

The expert is asked to confirm the report is true. The expert chooses not to.

[1] https://www.legislation.gov.uk/wsi/2017/567/contents

The Welsh Government regards the guidance of the expert's professional institution be followed. We do not have access to this and in view of the unsatisfactory position the experts have put themselves into, they should be asked to supply digital copies of the guidance indicating which reports relate to which guidance.

The absence of the paragraph in all parts of the ES must be a deliberate decision by the experts. Any expert will know the importance of the Welsh Government requirement. It follows that the experts may not have been in a position to make that declaration which should be an important point that disqualifies the various reports from forming a part of the ES in this Appeal. We invite PEDW and the Inspector to accept that a deliberate refusal to comply should be assumed to be a clear indication that the declaration is incapable of compliance. If the Inspector feels it is necessary and proper then the experts can explain their decision to avoid the declaration but in the meantime the ES should be rejected.

The Inspectors who have considered the papers have decided to ignore this obvious requirement thereby encouraging or empowering the Appellant to avoid the production of an ES that is compliant. I say 'ignore' as the point is so basic that any expert in the field of this type of litigation would recognise its importance. We feel we are within our rights to ask for an explanation in case it gives rise to other submissions.

PEDW has failed to include on the register the material, if it exists, demonstrating they checked the material and how they omitted any concern over this subject.

PEDW appears to have accepted that the lack of certification by the experts should be ignored. PEDW must have failed to draw this issue to the attention of the Inspectors. PEDW, as a whole department of experts in this field, effectively acting on behalf of the Welsh Government would be very unlikely to be unaware of such requirements. For this reason we can assume that their decision is deliberate. We feel we are within our rights to ask for an explanation in case it gives rise to other submissions.

Counsel for the Appellant is expert in the field but continues to rely upon the ES as drawn. The obligations on any expert in proceedings will be bread and butter to experienced Counsel who might be looking for even longer declarations of independence from their experts.

Presumably the Appellant relies on the fact that others involved do not take the issue seriously which gives them carte blanche to avoid the rules. It does not. Putting forward such a deficient document seems to be in line with the warning given by the Welsh Government for the way breaches of the EIA Regs should be dealt with. The Minister did not mention the likelihood of the Proceeds of Crime Act following on from other potential offences. An Act often, we believe, described as draconian. As indicated, the Welsh Government has taken the view that breaches of the EIA Regs is very serious.

The LPA does not bother to record the lack of declaration even though they have the benefit of their expert planning department, their legal department, independent Counsel and the point having been brought to their attention much earlier. The LPA must be assumed to be aware of the requirement but the LPA appears to have decided to avoid the issue (with full knowledge) and assist with what might be a serious breach of the Regulations. We feel we are within our rights to ask for an explanation in case it gives rise to other submissions and questions relating to infringing the EIA Regs on the part of the LPA.

There was never a problem with raising this issue if the various parties thought it would be easily remedied by way of an amendment or a short declaration to be added to the bundle. Without a proper explanation, it may be assumed that the various parties were concerned that the experts are not able to give the declaration. Without a credible explanation what is the public supposed to think? What should PEDW and the Inspectors think?

We acknowledge that the ES does contain a declaration by the Experts. The declaration is worth studying. The declaration is repeated within the paperwork.

An example of the endorsement is found in the ES at Appendix 1.4. This repays careful but obvious analysis.

PEDW, the Inspectors, the Appellant and its advisors, the LPA have all decided to avoid what we consider to be the obvious.

We reproduce the paragraph below, our comments will follow. Couple this declaration with the decision to avoid the Welsh Government endorsement and it becomes apparent that the experts may have seen the need to include material to hand them a defence to an investigation for infringing the EIA Regs.

> *The report has been prepared for the exclusive use and benefit of our client and solely for the purpose for which it is provided. Unless otherwise agreed in writing by R P S Group Limited, any of its subsidiaries, or a related entity (collectively 'RPS') no part of this report should be reproduced, distributed or communicated to any third party. RPS does not accept any liability if this report is used for an alternative purpose from which it is intended, nor to any third party in respect of this report. The report does not account for any changes relating to the subject matter of the report, or any legislative or regulatory changes that have occurred since the report was produced and that may affect the report.*
>
> *The report has been prepared using the information provided to RPS by its client, or others on behalf of its client. To the fullest extent permitted by law, RPS shall not be liable for any loss or damage suffered by the client arising from fraud, misrepresentation, withholding of information material relevant to the report or required by RPS, or other default relating to such information, whether on the*

client's part or that of the other information sources, unless such fraud, misrepresentation, withholding or such other default is evident to RPS without further enquiry. It is expressly stated that no independent verification of any documents or information supplied by the client or others on behalf of the client has been made. The report shall be used for general information only.

We want to pick out and comment upon those elements that we believe are of greatest importance. We do not claim to raise all the issues that might arise but we do believe all these should be debated notwithstanding the apparent determination on the part of the professionals to avoid problems. The quotes are in bold with comments following in italics.

1. **The report has been prepared for the exclusive use and benefit of our client and solely for the purpose for which it is provided**.
    a. *We need to see what the contract is between RPS and L&G to establish what the purpose is precisely. This should not be assumed. The section makes it clear that the client is L&G (Strategic Land) Limited, not the inspector, not PEDW, not the LPA, not the public. However, we should not assume L & G paperwork is irrelevant;*
    b. *We might learn what if anything the client was told about the details of this clause;*
    c. *On the face of it the authors might not have authorised its use for the purposes it is being used. There is nothing that says otherwise;*
    d. *Note the use of the words **benefit of our client**. On the face of it this would be contrary to the terms of the endorsement required by the Welsh Government (see above). It is a declaration of advocacy rather than what should be an independent assessment of the environmental impacts. It is the opposite of what it is meant to be;*
    e. *It is possible that this is an endorsement to protect the authors from the sort of consequences the Welsh Government has highlighted by way of oversight be the CJS;*
    f. *The range of people protected is very wide demonstrating significant concern by the authors and RPS;*
    g. *In terms of the endorsement required by the Welsh Government, this endorsement is unrecognisable.*
2. **no part of this report should be reproduced, distributed or communicated to any third party**. **RPS does not accept any liability if this report is used for an alternative purpose from which it is intended,**
    a. *Yet again, we need to know the limits of the arrangement; disclosure of the terms of engagement and any other relevant documentation is essential to understand what these restrictions mean to this process;*

b. *There is the possible embargo on distribution etc but not only has the Appellant appeared to breach that restriction, the Appellant has in fact released it to the world at large;*
c. *The second sentence of this extract is a restriction on liability in circumstances that have not been made clear but need to be clear. Surely such a restriction for liability is inappropriate where the authors' responsibility is meant to be to the Inquiry, to compliance with the EIA Regs, the 2011 Directive etc. Is it correct that there is no liability to the public etc? Do the authors think they can avoid criminal responsibility if it is decided there are deliberate or reckless breaches of the EIA Regs? What is it that they are worried about? Does this make the need for appropriate expertise with the LPA, PEDW, on behalf of the Inspector even more important;*
d. *As RPS has put the documents forward as the ES we need to know that the authors have agreed to this. It might be telling to know if the experts are employees of RPS and whether they have any arrangement with RPS on liability that should be disclosed;*
e. *As asserted above, the endorsement might have been considered necessary to try to protect the authors and their employer from the sort of liability highlighted by the Welsh Government.*

3. **nor to any third party in respect of this report**.
    a. *So much for the requirement for the duty to help an Inspector. It seems to leave us, the people for whom the EIA process exists, out in the cold?*
    b. *Rhetorically one might ask whether this process assumes no responsibility to the Public, the environment, future generations? That is most unlikely bearing in mind the 2014 Directive made criminal responsibility more obvious with the new Article 10a that it added to the 2011 Directive;*
    c. *On the face of it, the endorsement is a rejection of the Welsh Government's preferred endorsement with the assertions of independence of the Appellant and acknowledgement of responsibility to the Inspector etc;*
    d. *If professionals can avoid responsibility for their actions this would be a significant failure by the Welsh Government to comply with the treaty obligations it had at the time of the EIA Regs. The Welsh Government covered the Article 10a responsibility and the endorsement that has been relied upon by RPS and their employees would not work if the document was released for use in this Appeal.*
4. **The report has been prepared using the information provided to RPS by its client, or others on behalf of its client**.
    a. *Surely this part of the declaration incorporates the material referenced, produced by nameless individuals, into this Appeal and should therefore be made available to us, the Inspector, Counsel for the Appellant (if not already supplied), PEDW, the LPA. It makes the information disclosable;*

b. *We do not see the list of qualifications of those at the Appellant, and others? The terms of engagement of RPS and perhaps the paperwork passing between and/or on behalf of the Appellant and RPS needs to be available to us if they want to continue with making use of this hidden bundle;*
c. *It is beyond belief that all the professionals in this Appeal have decided to ignore the fact that it is impossible to conclude that due diligence has been followed in collecting and collating the material.*
d. *The inspectors' acceptance of expertise is inexplicable as there is nothing to explain the expertise of those at the Appellant as well as others unnamed assuming there is any expertise whatsoever. The quality of the report depends on the expertise of the people who supplied the necessary information for the reports. Any experts at RPS have made it clear that they did not check the material for accuracy so we can assume there were no checks for material that was adverse to the requirements of the Appellant.*

5. **The report shall be used for general information only.**
    a. *This is the bottom line making everything highlighted above of high importance.*
    b. *This sentence should be the death knell for this as an ES. It tries to ensure that there is no failure on the part of the professionals that would lead to a CJS investigation;*
    c. *This is not an expert report. It was not intended to be.*
    d. *This is yet another reason to look at the terms of engagement, the full records leading up to the report relied upon with any drafts that were produced. It is possible and likely that some negotiating has taken place as between the Appellant and the experts to come to a final document that could be agreed, albeit with provisos that emasculate the final result;*
    e. *The fact that the Inspectors, PEDW, the LPA have decided to ignore the issue without explanation is now the issue.*

On the face of it, this document, this purported ES, is at best, advocacy by experts and not a report designed to assist the Inspector, to satisfy the requirements of a lawful EIA. It is not even independent advocacy.

The material is clearly submitted as an ES by RPS on behalf of the Appellant with the intention that all other interested parties should rely upon it in reaching an informed conclusion. It has failed basic analysis. Merely because the Appellant is relying on the document as an ES does not make it so. It is unfortunate that, on the face of it, the authorities have decided to ignore the obvious imperfections.

We hope we can receive the material recorded by PEDW and the LPA showing compliance with Regulation 43 of the EIA Regs. We expect that PEDW's analysis of the declaration might explain the Inspectors' failure to deal with the issue.

The points are clear on the face of the paperwork. If there are no notes showing compliance with Regulation 43 then that would be another reason why the Public needs to be given every reasonable opportunity to take a full part in the proceedings and not be pushed as far to the side as is ambitiously thought possible.

We already have a situation where the Public is being placed at a significant disadvantage by professionals who may have agreed to avoid responsibilities imposed by the EIA Regs and the 2011 Directive.

If only it was only one example.

It is always possible that reports are produced quite properly relying upon instructions/information from the client. But not in a case such as this.

Such instructions might not assist to ensure that the end result is objective, accurate, in compliance with the strict demands of the EIA Regs. The present case is one that illustrates the need for the declaration required by the Welsh Government to be used. Rather than use the 'official' declaration we have one that appears to be the opposite of what is expected. If the Appellant produces something now that purports to be in compliance with standard practice (surely the experts' governing bodies require a form of declaration) then the process should assume this particular horse has bolted and any attempt to shut down the stable will not be acceptable - without a full and credible analysis.

The decisions of the professionals on this point, bearing in mind Reg 43, is just one possible reason for a CJS investigation due to the Article 10a issue.

We understand the role of experts is to be one of objectivity, there is a responsibility to the decision-maker to ensure that the decision-maker is fully and accurately advised; a responsibility to help to ensure mistakes are not made; a responsibility to the residents of a town/area affected by the proposals. These experts must be well aware that the LPA and statutory consultees have relied on their paperwork to make important decisions.

We would be surprised if the Appellant and its advisers were not aware of the failures of the LPA. Instead of taking advantage of the obvious limitations the at the LPA, there must be an obligation on the Appellant to assist to ensure a proper/lawful process.

The authors cannot avoid responsibility. If losses follow then they may be sued. They may be prosecuted in any event. If they have misrepresented any aspect why shouldn't they be prosecuted as envisaged by the Welsh Government? They continue to support the Appeal by appearing with the Appellant at the one day inquiry hearing. That is inconsistent with the words of their declaration so we are left wondering what the declaration was meant to achieve. If things moved on why wasn't a different declaration used? Afterall, the same declaration was used for the first attempt at an ES. To be included in the subsequent ES after the experts must have been aware of the use being

made of their work should mean that they need it to be included to try to limit responsibility.

The experts should help to ensure the health of residents etc will not be adversely affected; a responsibility to explain the ES so that the residents affected understand the issues; a responsibility to ensure the environment is not damaged. The responsibility is high. If they comply with this then the question of sincere co-operation on the part of the Welsh Government is unlikely to give rise to an issue. At present, we say, the obligation seems to require the Welsh Government to refuse permission. The obligation is for the Inspector to advise the Minister to refuse permission.

The responsibility that the experts have towards the 'client', their paymaster, should be to ensure that all these matters are dealt with fully and accurately on the assumption that the client would not want to see errors introduced that might impact on the health and lifespan of ordinary people and/or damage the environment or create issues later for the project. The experts have no other responsibility to the 'client', it is not their place to argue for a result that is of greater financial benefit for the 'client'.

We assume this is a trite summation of the parameters the experts (should) operate within.

We have researched material to help better understand the role of experts which leads us to such descriptions as:-

> "*Expert evidence is admissible to furnish the court with information which is likely to be outside the experience and the knowledge of a judge or jury.*"

This seems to suggest outside the experience of an Inspector, PEDW, the LPA and certainly the Public. As the Public is an important part of this EIA process there should be an obligation to ensure the Public is properly informed. That the reports should be transparent, legible for the public. There appears to be an assumption that other 'experts' involved will not have the necessary expertise that the individual experts bring to bear. Perhaps this is because the Appellant's experts are expected to have investigated the surrounding circumstances for themselves to better advise on impacts.

Those involved with experience of environmental matters cannot be expected to ask the questions that the public will need to ask of the experts. If you are blinkered you will not ask the same questions but you will probably not appreciate the blinkers are attached, after all, you are expert

This was an expression of the responsibility for an expert that we could not improve upon:-

> "*The duty of an expert witness is to help the court to achieve the overriding objective by giving opinion which is objective and unbiased, in relation to matters within their expertise. This is a duty that is owed to the court and overrides any obligation to the party from whom the expert is receiving instructions*."

We also noted that

> *"all experts are obliged to disclose to the party instructing them anything (of which the expert is aware) that might reasonably be thought capable of undermining the expert's opinion or detracting from their credibility or impartiality."*

We assume that the 'client' is then obliged to release that information to PEDW and the rest of us. Yet again we suggest that failure is an infringement of the EIA Regs possibly by both the expert and the Appellant.

There is a long list of material that is said to be disclosable in criminal proceedings[2] and which should apply here. Perhaps advice in planning appeals needs to be updated/improved. The list can be viewed in the link added. The rules seem to be designed to ensure the right decisions are reached. If it results in a bit more time needed to process matters then that is a small price to pace for getting things right.

Errors can be introduced in the way experts are instructed even if the instructions are carried out by lawyers. This case appears to be an example of the experts having been controlled by non-experts.

I would invite the various authorities to consider their position having looked at the whole of the Aarhus Convention. An example where I would say that PEDW, the Inspectors, the Appellant and the LPA are clearly in breach of the Aarhus Convention includes Article 6(3) where it is said:

> *3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.*

It was made abundantly clear that the imperative was to avoid effective participation on the part of the Public by restricting the period for responses to the ES to 30 days which period included a bank holiday and a week when children are on holiday; a period when many families go on holiday.

PEDW (and hopefully they shared this material with the Inspector) had been told over previous months that they were in default in not even having a public consultation on the ES. PEDW kept that material off the Register, away from the public and anybody else who might have an interest.

PEDW seemed steadfast in its desire to avoid the public consultation notwithstanding it is a very basic requirement. PEDW should check its decision-making process for this issue in case a person is identified as acting beyond or outside the EIA Regs requiring education or more. An explanation would be welcome. At present an ambition to infringe

[2] https://www.cps.gov.uk/legal-guidance/expert-evidence

the EIA Regs seems clearly made out. There might be an innocent explanation? For now an implication is the removal and replacement of the case worker and any line manager.

In fixing the original Inquiry date for a 4 day hearing we do not know what the Inspector was told about the poor decisions made by PEDW. It might be that it was the Inspector who supported the Public by reducing the Inquiry to a single day and telling PEDW they had to have a consultation. We do not know as PEDW avoids putting the material on the Register. That is probably another important and deliberate failure by PEDW.

PEDW showed its colours and intent by fixing a consultation in the terms mentioned above in complete opposition to the Welsh Government advice on public consultations never mind common sense. Surely it was impossible to fix such an inappropriate period by accident but if PEDW investigates the background to such a poor decision that might help the public to understand how these things can creep in.

It was only at the 1 day Inquiry that the Inspector, Counsel for the Appellant, Counsel for VCU all appeared to agree that PEDW were wrong, with advice being sent back to PEDW to allow the usual minimum advised by the Welsh Government. In passing we make the point that the only people at the 1 day Inquiry who wanted to keep the original period was the LPA team. Again, this demonstrates an animus against the public, an intent to limit any involvement. We mention the apparently admitted conflict the LPA has and their likely concern that the Appeal process might decide the Appellant did not comply with the EIA Regs. That seems to be an agreed position for reasons we might touch on later.

We believe there can be no doubt that PEDW decided to have a *destructive* period allowed for the consultation, supported by the LPA, with the intention of keeping the public participation to an absolute minimum if not removing it. On the face of it a clear breach of Article 10a, the 2011 Directive, the Aarhus Convention. On its own this decision should be considered for investigation.

Representations on the EIA Process

Our submissions in this section are mainly based on quotations from government websites and EU material. We do not claim particular (or any) credit for insightfulness. We do however put forward the following as important matters that need to be highlighted at a preliminary stage. Much of it is basic stuff but sometimes it is good to revisit the basics. This helps to show the level of incompetence or worse.

Outline planning applications are used to gain an understanding as to whether the nature of a development is acceptable; this can help ensure viability up front. Specific details known as ‘reserved matters’ can then be confirmed later. This allows planning permission to be granted subject to the condition that reserved matters are approved before development begins. However....

The use of 'outline planning permission' in an EIA development is inappropriate if the result is to remove from the EIA process consideration of an impact. The Inspector, PEDW, the Appellant and the LPA may already have moved matters outside the scope of the EIA process notwithstanding the apparent agreement that such matters are impactful in an EIA sense.

In fact it looks like the reason for moving the items to a planning condition is **because** they impact the EIA process and the Appellant has no answer! The safeguards of the EIA Regs is lost on any impact that is moved in this way. The Inspector has already misrepresented our position on this by asserting we were against any consideration of the sewer point by objecting to the removal of the sewer issue in this way. There appears to be no real understanding of the ways in which the EIA Regs may be infringed.

Moving any matter that might have an EIA impact would be contrary to the EIA Regs and the 2011 Directive. The deliberate nature of such a move can only be to assist the project to avoid the more rigorous checks within the EIA Regs. We suggest this would be a clear infringement of the EIA Regs and 2011 Directive.

The present case highlights the need for early consideration of important issues. The project is already claimed by the Appellant to be financially nonviable and yet the full likely cost has not been considered. Notwithstanding the viability reports had to be released during the LPA process we now find there is no update so the Inspector is probably invited to consider viability on the basis of out of date material.

For some reason the LPA is working on the basis that the local residents can take the gamble of picking up a significant amount of cost so as to allow the project to go ahead. This is clearly shown by the way in which the Appellant tries to explain away the traffic issues. The public is expected to cure the issue although the Appellant fails to explain properly the true nature of the issue and also fails convincingly to demonstrate how its wish list for public expense will solve its issue for it instead of dealing only with other issues expected to arise elsewhere.

The LPA already appears to have accepted some costs and yet the full cost to the Vale Council and therefore for us residents is not calculated yet.

The LPA (and by necessary extension the Chief Planning officer at PEDW) is in a position that requires extra transparency as it has a history of acting forcefully and unlawfully to support this attempt at planning permission. The LPA, and some might say, the Chief Planning Inspector at PEDW, has an interest in seeing the Appeal succeed as a failure to satisfy the EIA Regs would be yet another admission of failure of the LPA etc when strongly advising the Planning Committee to grant permission.

This is another reason for the public to look askance at the LPA's attempt to keep the period for consultation to the unrealistic 30 days period. Perhaps an attempt to avoid

representations being made that brings the spotlight on the LPA's limitations when dealing with the EIA Regs.

The claim made by the Appellant that the development is a significant loss to them is a worry that the EIA should take account of. Matters left to conditions may not be affordable thus either moving the cost to the public purse or cutting back on safeguards. The non-viability of the project might be an important part of the EIA deliberations. This has been shown as no concern to the Inspector, the Appellant, the LPA nor it seems the VCU as attempts are made/agreed to move the sewer issue to a much later date after planning permission is granted.

There are undoubted significant impacts created by this project. The EIA needs to consider all of these, see if there are remedial works that ameliorate the impacts satisfactorily, but if those works are likely to be too costly for the project it would be a breach of the EIA Regs to proceed.

On the other hand if the Appellant is claiming a lack of viability to avoid paying the proper cost including section 106 monies then that would be dishonest, probably a criminal conspiracy as well as a Fraud Act and Proceeds of Crime Act investigation and could not be allowed to succeed.

This is the area that could be the basis for the LPA to have acted unlawfully previously but it seems to have disappeared from the paperwork with no up to date viability report.

It should be checked. The reasons for no updated report should be investigated. This is an area that was relied upon by the Appellant to ensure the LPA was as kind to it as it could possibly be. On the other hand, why did anybody believe that the Appellant was intending to pursue and investment that was bound to lose it £millions.

The impression given by professionals is that the public participation in this process is a mere formality that interferes with their *proper/speedy/simple* planning processes. The process has no time for questions that the experts do not expect.

Rhetorically we ask how leaving anything/everything to be decided to a much later date assists the developer to understand more accurately the viability of the project? It makes no sense on many levels. You cannot carry out an Environmental Impact Assessment by only considering a part of the proposal, ignoring the really difficult aspects that just happen to be the expensive aspects and those the Appellant has ignored. When considering viability it would make no sense at all to ignore those matters. It will be a breach of Reg 3 of the EIA Regs and probably a deliberate attempt to circumvent the EIA Regs bringing the requirements of Article 10a into play. Surely there is no business related reason for avoiding full inquiry at this time.

This is especially the case when the natural result will be to decide there is no sufficient ES and therefore no planning permission can be granted.

The rush to do so on the part of the Appellant, PEDW and the LPA should be examined most carefully.

Prior to considering whether outline planning permission could be given in this matter there are other considerations that, we submit, must be addressed. The law on this can be put very simply, very brief, namely Regulations 3 and 4 of the EIA Regs:

> ***Prohibition on granting planning permission or subsequent consent without environmental impact assessment***
>
> *3. A relevant planning authority or the Welsh Ministers or an inspector must not grant planning permission or subsequent consent for EIA development unless an environmental impact assessment has been carried out in respect of that development.*

An EIA process is not just an inconvenient part of the project. An EIA is not something that is divisible. The EIA should/must consider all relevant aspects. There is no provision for leaving out the important albeit difficult impacts. We invite the Inspector to explain why he wants to do this and on what authority he decides that.

Regulation 4 of the EIA Regs spells out what is meant by an EIA:

Environmental impact assessment

> *4.—(1) The environmental impact assessment is a process consisting of-*
>
> *(a)the preparation of an environmental statement by the person seeking or initiating planning permission;*
>
> *(b) any consultation, publication and notification required by Parts 5, 9 and where relevant, Part 12 of these Regulations, the 2012 Order or the 2016 Order in respect of EIA development; and*
>
> *(c) the steps required under regulation 25(1).*
>
> *(2)* ***The environmental impact assessment must identify, describe and assess*** *in an appropriate manner, in light of each individual case,* ***the direct and indirect significant effects of proposed development*** *on the following—*
>
> *(a) population and human health;*
>
> *(b) biodiversity, with particular attention to species and habitats protected under ;*
>
> *(c) land, soil, water, air and climate;*
>
> *(d) material assets, cultural heritage and the landscape; and*
>
> *(e) the interaction between the factors listed in sub-paragraphs (a) to (d).*
>
> *(3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include—*
>
> *(a) the operational effects of the proposed development, where the proposed development will have operational effects; and*
>
> *(b) the expected effects deriving from the vulnerability of the proposed development to risks of major accidents and disasters that are relevant to that development.*

> *(4) The relevant planning authority or the Welsh Ministers, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.*
> (emphasis added)

If any EIA matter needs to be left to conditions then that can only mean there is no complete ES to satisfy Reg 3. The Inspector indicated a wish to leave the question of the inability for the public sewer system to cope with this development to conditions.

The ES does not deal with it, it is obviously a difficulty for the Appellant who with the agreement of all other parties seems to be excused compliance. That is not a lawful process.

It means the inspector does not intend to carry out an assessment on the projects impact on the sewer system which would surely be a failure to carry out the Environmental Impact Assessment to at least that extent. A clear infringement of the EIA Regs and the 2011 Directive. Why would you take the chance? The Appellant has made it clear, we say, that this is a real issue and must be part of the ES but for whatever reason it refuses to deal with it in accordance with the EIA Regs.

There is Welsh Government material said to be ***Guidance: Planning: guidance on environmental impact assessments (circular 11/99)***[3].

These Guidelines are intended for use by the Environmental Impact Assessment (EIA) practitioner and developer. These advise practitioners for EIA on the often complicated issues of cumulative and indirect impacts, as well as impact interactions.

When asking the LPA to screen the proposal for EIA purposes the author of that request was the firm RPS. They argued against the need for an EIA which unfortunately demonstrated that they were already dismissing the relevance of both indirect and cumulative impacts as well as more obvious significant impacts. This adds to the distrust the local population has to the way the Appeal is dealt with by the Appellant.

This sounds like an infringement of Article 10a if their experts had already identified issues that needed investigation but withheld the information from the application for screening.

The alternative is that their experts were not able to identify the significant impacts which calls into question their objectivity and/or expertise. The saving feature is that their experts were expected to and did rely on information supplied by and on behalf of the Appellant but from unnamed sources to produce the reports. No wonder they are not complete.

The assessment of indirect and cumulative impacts, and impact interactions should not be thought of as a separate stage in the EIA process. The assessment of such impacts should be an integral part of all stages of the process. Using the outline planning

[3] Planning: guidance on environmental impact assessments (circular 11/99) | GOV.WALES

permission stage as a means of avoiding elements of the EIA process should be regarded as unlawful. It is clearly so in this case. It should be caught by the Welsh Government's views on penalties as an obvious infringement of the 2011 Directive.

What is clear from the totality of the documentation produced is that the present application is seen as an adjunct to Cardiff International Airport and Bro Tathan.

The former development is a close neighbour to the proposal.

The latter is possibly in competition with the proposal or perhaps some symbiotic relationship is envisaged where they are both expected to prosper and expand. The way in which the two are conjoined within the paperwork tends to support the idea of a positive symbiotic development. But where are the cumulative effects dealt with? They are not. Should they be dealt with? Yes, quite clearly they should.

Although known to all parties, nobody is dealing adequately with the planning permission granted to the Welsh Education Partnership (WEPCo) and Cardiff and Vale College (CAVC) for the proposed development of a new education building focused on advanced technology within the Cardiff Airport and Gateway Development Zone.

The details of this development include the proposed facility would provide for circa 1,896 pupils and 215 staff within a building of circa 13,000 square metres, that would be located adjacent to the corner of Port Road and Tredogan Road. The impact on the traffic issues is likely to be significant. We cannot judge what other issues might be brought out due to the failure of the ES to deal with these facts.

The LPA and some others seem to want to bury this information or at least fail to include it within representations or even to warn interested parties about it. See the officers' report beginning at page 111 for more details.[4]

The LPA, PEDW and the Appellant must realise that this cannot be ignored. They must all realise that the ES is deficient but they are proceeding on the basis, presumably, that the Appeal could slip through without this complication being taken into account. The ES is seriously out of date and it ought not be necessary for the public to mention this. The Inspector is being (deliberately) given out of date information as yet another deliberate infringement.

When considering the wider implications it may be necessary to take account of the Cardiff City Region purchase of the Aberthaw site and the promise of thousands more jobs at that site. At the least, this promises significant further traffic using the same roads as the increased traffic to the Model Farm development. The LPA should have been obliged to bring the certainty of the Aberthaw project to the attention of PEDW, the Appellant, the Inspector, as their view by necessity must be that this will proceed. They,

[4] Complete Planning Reports

with others, have invested a great deal of public money in the purchase and arranging development.

It cannot be an accident that they may not have raised this at all and might be a deliberate infringement of the 2011 Directive.

More recently the LPA has held consultations about housing in Barry and the main area that they seem to be planning for housing is close to the Weycock Cross roundabout. There seems to be plans for over 3 hundred fifty houses in the area with the access and egress to the estate being added close to but to the west of the Weycock Cross roundabout. Mention was made to this requiring traffic lights. Should this be brought to the attention of the Appeal?

The LPA's proposals for new housing at St Athan will be expected to add additional traffic to Port Road including around Weycock Cross. Is this to be ignored?

Indirect and cumulative impacts as well as impact interactions may well extend beyond the geographical site boundaries of the project.

Consideration should be given to historical or **potential future impacts**. (emphasis added due to the above reference to Aberthaw and proposed housing). Mapping the geographical and time boundaries can be a useful tool to show areas of potential overlap and therefore where indirect and cumulative impacts as well as impact interactions may occur. The Appellant prefers to avoid such discussions.

There are at least four main reasons why indirect and cumulative impacts and impact interactions should be included in an ES. These include:

- It is required by legislation
- It contributes towards sustainable development
- It is good practice
- It aids the decision making process.

The environmental effects which can result from indirect and cumulative impacts, and impact interactions can be significant. The objective of the assessment of indirect and cumulative impacts and impact interactions will be to identify and focus on the significant impacts. It will also ensure that that these impacts are taken into consideration in the decision-making process.

In this Appeal there has to be a lot of guesswork because the Appellant either cannot state what uses to expect on the developed site or chooses not to give that information. No assumptions should be made that the uses will be benign. If there is guesswork then the rule should be to assume the worse. The appellant apparently having shown no interest in identifying prospective tenants needs to be addressed. Is this a deliberate tactic to try to cut out of consideration of the extent of issues based on the mix of uses

intended or expected? If so then the ES should be rejected. Perhaps the failure means the ES should be rejected whatever the reasons.

The 2011 Directive on the assessment of the effects of certain public and private projects on the environment includes at Article 4:

> *4. Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.';*

At Annex III of the Directive we see:

> Selection criteria referred to in article 4(3) (criteria to determine whether the projects listed in annex ii should be subject to an environmental impact assessment)
>
> 1. *Characteristics of projects The characteristics of projects must be considered, with particular regard to:*
> *(a) the size and design of the whole project;*
> *(b) cumulation with other existing and/or approved projects;*
>
> *3. Type and characteristics of the potential impact The likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, with regard to the impact of the project on the factors specified in Article 3(1), taking into account:*
>
> *(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);*
> *(b) the nature of the impact;*
> *(c) the transboundary nature of the impact;*
> *(d) the intensity and complexity of the impact;*
> *(e) the probability of the impact;*
> *(f) the expected onset, duration, frequency and reversibility of the impact;*
> *(g**) **the cumulation of the impact with the impact of other existing and/or approved projects;** (emphasis added)*
> *(h) the possibility of effectively reducing the impact.*
>
> *5. A description of the likely significant effects of the project on the environment resulting from, inter alia:*
>
> *(a) the construction and existence of the project, including, where relevant, demolition works;*
> *(b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;*

(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
e) ***the cumulation of effects with other existing and/or approved projects****, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;* (emphasis added)

The continued failure of the Appellant to assist the EIA process by explaining the type of uses that could be found at the completed development is presumably designed to prevent full (or any) examination of the possible impacts. Leaving the possible uses out of consideration must be an attempt to circumvent or infringe the process.

Projects, during their various phases, will create emissions of some sort to air, water and land, whether this is air pollution, noise, discharge of cooling water, disposal of construction material etc. Possible uses would also feed in to the likelihood of addition adverse impacts in the event of an accident eg a fire. At the beginning of the assessment, the nature of emissions at each phase should be considered and where possible quantified. Consideration needs to be given to the likelihood of emissions interacting with other elements in the environment.

There is also the cumulative aspect of emissions, not only from just one project, but also where emissions from a particular project could combine with those from other developments and cumulatively have an increased significant adverse effect on a particular receptor. We are even prevented from considering the possible cumulative effects from different tenants/uses at the proposed development.

Emissions from the proposed project need to be considered in the context of both the receiving environment and other existing or future development in the area, eg Bro Tathan, the college development, the airport, and Aberthaw.

Information collated dealing with the above would assist in identifying where possible interactions, cumulative, or indirect impacts would occur. Development plans and consultation with the LPA should also provide information on future development.

These are all part of the general environment. Matters that impact. Whether or not they all have planning permission, they impact on the real needs locally.

In order to enable the potential indirect and cumulative impact and impact interactions to be identified and assessed, the Appellant needs to supply detailed information on the proposed development. This should be obtained wherever possible and practical to do so. This would assist in providing a complete picture of the environmental impacts associated with the development.

A checklist is often a useful tool in ensuring that the ES deals appropriately with the indirect cumulative impacts, as well as impact interactions:

- what key activities are associated with each phase of the project?
- what is the scale of the project?
- what is the proposed layout of the development?
- are there emissions to air, water or land?
- when will the emissions occur?
- what existing emissions are there that may interact in some way (including cumulatively) with the proposed emissions?
- what ancillary development is there associated with the project?
- what are the likely mitigation measures?

This is part of the advice offered by the EU emphasising why an EIA must include these matters.

If this development turned out to be 'successful' at any level the measure of such success might be the way in which the airport traffic increases and additional development at Bro Tathan is encouraged. Both seem to be likely 'advantages' that the Appellant and the LPA would argue for.

It is difficult to see any of that when the Appellant made it clear the project is a financial disaster.

If outline permission was given to this alleged non-viable, badly presented development then, whether the development went ahead in the near future or not, the impact on the proposal and public investment at Aberthaw and housing in the north-west in Barry may be deadly. Any assessment of eg traffic for Aberthaw will have to take account of the high level of expected traffic at Model Farm together with the positive impact argued for at the Airport and Bro Tathan.

As the Aberthaw site is an industrial site with significant plans being developed it seems bizarre for it to be avoided in the current ES. It is a brown field site rather than the farmland that the Appellant wants us to lose.

The LPA, as a partner in the CCR development of Aberthaw, would probably argue that development at the Aberthaw site is not in issue. It will happen, it is foreseeable. Failure by the LPA to make the point may be an example of an attempt to undermine a lawful EIA process, it is a plan - locally - involving a site that must be developed. The Appellant will be well aware of the circumstances surrounding the future of Aberthaw.

The increased noise, pollution, traffic, in relation to these other sites that will be a measure of such success has not yet been factored in to any ES. With that in mind the Inspector and the Welsh Ministers might consider that Regulation 3 of the EIA Regs is a prohibition on this matter progressing any further due to the failure to produce an adequate ES. The Appellant knows this point is a live issue but has avoided it so far as

the Appellant feels it can, thereby highlighting something it knows will be adverse to the arguments for planning permission. A similar point is made against the LPA and presumably PEDW, assuming proper enquiry has been made.

An objective consideration of the project will easily demonstrate that there are related impacts and these should have been covered in what is so obviously an inadequate attempt at an ES – although it might more easily fall into the bracket of a report to *"be used for general information only"* which is how the authors describe it. Much of our thoughts on this subject might be contained in sections where we discuss the ES.

There is a great deal of advice given by the EU to assist a Competent Authority (CA) to deal appropriately with the effects of certain public and private projects on the environment.

The Consolidation of the 2011 Directive includes such useful guidance to help to achieve a compliant result as:-

> Article 1
> *1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.*
> *2. For the purposes of this Directive, the following definitions shall apply:*
> > *(g) 'environmental impact assessment' means a process consisting of:*
> > > *(i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);*
> > > *(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;*
> > > *(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;*
> > > *(iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and*
> > > *(v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.*

What we see here is an iterative process where the CA has an important role to play. The minimum content of an ES is spelled out by the EIA Regs and the 2011 Directive. It is

important to note that these are minima. An obligation placed on the decision-maker can be found at Reg 17(4) of the EIA Regs:-

> *(4) An environmental statement must—*
> *(a) be prepared by persons who in the opinion of the relevant planning authority or the Welsh Ministers, as appropriate, have sufficient expertise to ensure the completeness and quality of the statement;*
> *(b) contain a statement by or on behalf of the applicant or appellant describing the expertise of the person who prepared the environmental statement;*
> *(c) …*
> *(d) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and*
> *(e) take into account other relevant environmental assessments required under [F14[F15assimilated] law] or any other provision of domestic legislation, with a view to avoiding duplication of assessment.*

The basics, the minima, are spelled out in the legislation. It is insufficient to refer matters to await some distant reserved matter determination that removes significant effects outside the EIA process. That would seem to be a clear infringement of the EIA Regs.

It was made clear by the Appellant's own endorsements that 4(a) could not be satisfied as even if in theory the Inspector felt the experts did have sufficient expertise to ensure the completeness and quality of the statement, in this case they proceeded by making no independent verification of any documents or information supplied by the client or others on behalf of the client.

The EIA must deal with issues and demonstrate how they are to be addressed as well as identifying alternatives for the CA to consider. Anything less should mean the material produced does not satisfy the definition of EIA and therefore Reg 3 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 blocks any further consideration of an application for planning permission.

Article 5.2 does not appear to be relevant in this case.

Article 5.3 includes confirmation that the CA must not merely accept what the developer puts before it. The CA has to ensure it has the necessary expertise to examine the material. If that expertise is not within the CA then it should seek expert assistance.

In this case it is, we say, beyond argument that PEDW and the LPA do not have the necessary expertise. They both take the simple road of accepting what they are told and avoiding their clear responsibility under the EIA Regs and the 2011 Directive as amended.

(ii) **Article 6.** 1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, taking into account, where appropriate, the cases referred to in Article 8a(3). To that end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and by public notices or by other appropriate means, of the following matters early in the environmental decision making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

(a) the request for development consent;

(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) an indication of the availability of the information gathered pursuant to Article 5;

(f) an indication of the times and places at which, and the means by which, the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (1), information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the Member States. Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

6. Reasonable time-frames for the different phases shall be provided for, allowing sufficient time for:

(a) informing the authorities referred to in paragraph 1 and the public; and

(b) the authorities referred to in paragraph 1 and the public concerned to prepare and participate effectively in the environmental decision making, subject to the provisions of this Article.

7. The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

Article 6 is concerned with the need for the CA to involve other authorities and the public in the EIA process. This is an important matter and one that cannot be over-looked. Where the 'interest' on the part of the public is wide ranging and the issues are complex a public enquiry might be a preferred option?

Article 7 is concerned with situations where the impact from the development might also impact a member State. It does not appear to have relevance here.

(iii) This has been included in (i) above.

(iv) This emphasises the burden on the CA to check the situation.

(v) **Article 8a** 1. The decision to grant development consent shall incorporate at least the following information:

(a) the reasoned conclusion referred to in Article 1(2)(g)(iv); [5]

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

2. The decision to refuse development consent shall state the main reasons for the refusal.

3. In the event Member States make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfilment of the requirements of paragraph 6 of this Article.

4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment. The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

5. Member States shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.

6. The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, Member States may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.

The Article makes it clear that environmental considerations are a part of the planning process and must be considered before any planning permission may be granted.

[5] See above for this provision that requires the CA to give explanation.

With that in mind it should follow that consideration of eg planning conditions must await the full EIA process.

The process being followed in the present case appears to be wrong in law and should be subjected to an analysis of possible infringements of the 2011 Directive, Article 10a.

The order of processes in an EIA Appeal

We believe that the vast majority of planning applications and appeals do not involve EIA requirements. It is easy to see how this can impact on the approach to a case where the EIA Regs, unusually, impact.

Professionals may not like it when the public gets involved in their area of expertise as the questions raised by a member of the public might be more difficult to answer than a question from a fellow 'expert'. It is easy to see how the EIA process appears to extend the planning process rather than be a standalone issue. It is understandable how attempts are made to keep the Appeal process as *efficient* as possible, as *focused* as possible. The danger is that the public is excluded more and more so as to allow the experts to finish things.

A member of the public, if looking at a situation for the first time, may look at the root of the law/process. An expert would tend to rely on what they believe is the case. If every EIA Regs appeal is unique then failing to fall back to basics is likely to lead to error.

The people who suffer if a poor decision is made are, amongst others, the members of the public for whom the safeguards were introduced.

Unless the EIA process as defined in the EIA Regs and the Directives precedes consideration of the planning issues then the EIA process adopted will be an infringement of the EIA Regs and, importantly, Article 10a of the amended 2011 Directive.

It is, surely, obvious that unless the EIA process is completed as defined by the EIA Regs and the 2011 and 2014 Directives then the question of whether planning permission can be given does not arise.

The EIA Regs make it obvious, we say, that the analysis of the ES must be complete before the planning aspect can be dealt with. In this case, before there can be any meaningful discussion on eg conditions. Unless of course it is intended to infringe the Regulations.

Problems already identified - with some history.

It is unfortunate that these points need to be taken but we believe they exist, they are a concern, we invite consideration of the points on the part of those listed with the intention that they are considered as matters to address to ensure the public understands why they are not relevant for others or perhaps amendments are made to the processes to ensure compliance.

It cannot be too late to correct errors, however any erros might have crept in.

When errors creep in to the Appeal process, the impact tends to be adverse for the public, who have limited ability to correct errors, and be helpful to the developer.

We understand that the process to date involves experts in this field but what is often overlooked is that experts can be blinkered by their training. They become used to various processes, the convenience of what can sometimes be a tick-box exercise, of seeing the end result and heading towards it, of being in denial that mere members of the public could possibly add something important to the process.

All understandable, but this is a danger to be identified and addressed. The sometimes naïve questions from the public can help the professionals to see the bigger picture and ensure additional accuracy.

If they cannot answer the public in terms that the public can understand then we question their role as experts.

Experts are usually in business to service clients in order to make their living. This can also give rise to confirmatory bias as there is often an understandable imperative to have happy clients. This is what creates value for the business, the value of goodwill.

This is a reason why the obligations of an expert in court, tribunal, planning matters need the reminder of an appropriate declaration to keep them focused upon their real obligations. Obligations that must be complied with. A failure could give rise to the investigation of an infringement of the EIA Regs. A serious matter for any expert in the field and worse than mere reputational damage. This applies to everybody involved in a process such as the present.

We are concerned that the impact of infringements might be lost on some.

It is the ES that is the primary consideration as that has to be completed first. So far there seems to be an intention to avoid that simple requirement and as a result inviting consideration of possible offences, ahead of the purely planning issues.

Our reference to possible infringing/offending is not to attack the professionals, although it would be interesting to know their reaction to our claim that the CJS is meant to look at possible infringements of the EIA Regs. It is not an attack on the way the professionals presently deal with these matters but it is, we say, a demonstration of the need for clarity on so many issues.

Members of the public don't have the same restrictions of thought/blinkers applied to them. They often see a bigger picture. They understand when something doesn't seem to be fair or in accordance with what they understood the system should achieve. There is a reason why the public is encouraged to take part in discussions that affect their area, health, future generations. Their involvement appears to have been supported at a high level in the Court system.

PEDW

An ambition for local residents is to have a lawful/thorough EIA process. A PEDW that genuinely relieves the public from the angst of not knowing if their interests are the interests of others. Local residents are being denied this by PEDW.

The EIA Regs process should, in this appeal, primarily be for the benefit of our town, the surrounding area of the Vale of Glamorgan, our health, for future generations.

The process should also be necessary for a project leader on the assumption that the investor should want to ensure the development will not cause unnecessary harm. We welcome any development that genuinely helps but, when something looks to be very damaging to so much, we realise we need to have it looked at carefully, thoroughly, properly, lawfully.

PEDW is well aware of the need for PEDW to not only perform in accordance with the EIA Regs etc but, more than that, PEDW needs to ensure that it is patently doing so. It is important that the public has confidence in the process, and with PEDW. There are reasons why PEDW needs to look at itself, why it needs to work to obtain the trust of the people it is meant to be serving.

The Chief Planning Inspector is conflicted not only because she was previous employed by the LPA but also because she might have been involved in the denial of the lack of ES on unrelated applications previously lost by the LPA. In the current matter, on an earlier hearing in a LPA Planning Meeting, she gave such firm advice to the Committee that the LPA was subjected to a Judicial Review. The LPA apparently conceded the Judicial Review on the basis that the officer(s) had acted unlawfully to the detriment of the Public. There is the possibility that it would be an advantage for officers and ex-officers of the LPA, in terms of reputation, for the present Appeal to succeed.

On an earlier unrelated appeal PEDW blocked a request by DIAG to take a statement from the CPI to assist in explaining the background to an Appeal that was connected to the CPI's time in the Planning Department at the LPA. The CPI was conflicted from being involved in that Appeal at PEDW but her knowledge of proceedings in the LPA was likely to be critical. There was no reason for PEDW to block our approach.

That action might give rise to arguments why the current case officer, the person who blocked our approach to the CPI, is also conflicted but remains directing this appeal.

The Deputy Chief Planning Inspector was the Inspector who dealt with an Appeal from a decision of the LPA where the officers had denied a project was EIA Regs Schedule 1 and in effect joined with the Appellant to assert this. As a consequence the Inspector was persuaded to come to an unlawful decision. Notwithstanding that the CCM has conclusively screened that matter dealt with by the DPCI as EIA Regs Schedule 1 the DPCI has refused to acknowledge the falsity of his decision and would not give DIAG a witness statement to explain how the error came about notwithstanding the importance in a related Appeal.

The DPCI refused a request for a witness statement when requested by DIAG with no acceptable reason given. The actions of the LPA officers in denying that a project was Schedule 1 EIA was relevant to the background in that case but the DPCI seemed to prefer to avoid explaining the actions that led him into error.

Although the above request related to a different appeal the arguments are still relevant to demonstrate the behaviour of the LPA is consistently bad.

The way the LPA joined with the Appellant in that previous case to argue for a clear infringement of the EIA Regulations (as they stood at that time) might be very useful to explain certain behaviours in this Appeal.

If the DPCI is involved in the current appeal then we believe he is conflicted by his apparent denial of a previous poor decision where the current LPA was involved, possibly with his PCI (we do not know when she joined the planning officers at the LPA) and the issue that needed to be avoided for the Appellant to succeed was mainly about the screening of the project.

How should the DPCI deal with his knowledge of the LPA's history of fighting for the breach of EIA Regulations?

There are issues that PEDW has gone out of its way to create.

PEDW's treatment of the Public

Its interaction with the public is extremely unsatisfactory and appears to be an intentional decision by PEDW to marginalise the public due to the consistent way PEDW acts. Failure to respond to correspondence is just one aspect. Failure to add all relevant information to the Register in a timely manner or at all is hardly indicative of a professional, independent outfit.

In the present case PEDW insists upon having a two tier system of involvement. They have reinvented the term 'main party' notwithstanding that Welsh Law appears to have disposed of that inequality and terminology for planning matters. This is used by PEDW to excuse a favoured approach to Appellants/LPAs and a somewhat dismissive approach to the general public. It is clear evidence of their attitude towards the public.

A simple illustration or two that demonstrates this include:-

- The insistence right up until the Inspector gave them independent advice about the length of time permitted for members of the public to respond to a detailed ES. The absolute minimum period they could consider was 30 days. However, in our case PEDW effectively insisted on less than the minimum as they included a bank holiday. They would not even add back that single day. They had no answer to that simple point so they ignored the correspondence. They also timed matters so as to include a week when children were on holiday and many residents would take the opportunity to spend time with their children and many would be abroad on holiday. PEDW even denied that the advice of the Welsh Government on such matters was relevant to them even though they were engaged in arranging an Inspector's advice to assist the Welsh Ministers with the final decision-making on this Appeal. Elsewhere we have linked in the Equality Act to explain/question more.
- They continue to refer to the Appellant, the LPA, the VCU (represented by Counsel) as main parties in order to enforce in the minds of the majority of residents that they are less important to the EIA process. The Welsh Government rejected such nomenclature years ago. This has been raised with PEDW previously and must therefore be a deliberate action on their part to keep the public at arms length. Possibly to keep their task easier at the expense of the pubic.
- They ensure that material is kept from the public whilst ensuring that the 'main parties' are instantly provided with material. This is illustrated by the fact that PEDW immediately shared our letter of 27 March 2025 with the 'main parties' but withheld it (still) from their register so that it remained invisible to local residents. It was either relevant for all parties or not relevant at all, it was either appropriate for it to be shared widely or not at all. PEDW's behaviour leaves the public wondering what else has been kept from them.
- PEDW kept away from residents the Inspector's assessments of the completeness of the ES for a considerable time. They obviously shared this material at the relevant time with the Appellant, perhaps other preferred parties? PEDW demonstrates a bias in favour of the Appellant and an antipathy towards the public.
- PEDW keeps from the public much of the documentation that they (no doubt) hold. There is no correspondence added even though there must be some. There is no copy of the instructions they gave to the Inspector. Disclosure will allow the public to understand the extent to which the Inspector's involvement in possible breaches of the EIA Regs is yet another example of PEDW's bias. It is unknown if other parties were kept out of the loop.
- PEDW may have been instrumental in limiting the testing of the ES material so as to obtain decisions that are not reflective of the real state of the ES, but PEDW hides instructions it gave to the Inspectors from the public.
- PEDW does not seem to have the expertise as required by Regulation 4(4) of the EIA Regs. If they have sought outside assistance they should share this. If they

have not sought outside assistance they should share the assessment they have made of the expertise within PEDW to allow the public to understand PEDW's position. Any assessment by people who are without the necessary expertise is worthless. Just because they do not understand the material submitted does not mean it is reliable.

- PEDW, by not setting out the instructions to the Inspectors, may want to ensure that any obvious mistakes appear to be made by the Inspector rather than due to the instructions from PEDW.
- PEDW breached the EIA Regs by instructing the Inspector to carry out an examination of the ES at a time when that was inappropriate and to arrive at a decision that completely undermined the public's role in the EIA process. PEDW had acted in that way previously and had been advised (by members of the public) as to its unlawfulness. The case officer continues to ensure the same infringements occur.
- In any event the insistence by PEDW that the Inspector should produce a completeness report in the terms set out by the Inspector was clearly designed to cut the public out of the process either completely or significantly.
- PEDW failed to draw to the Inspector's attention the defects in the purported ES. Presumably in anticipation of slipping the defects past the inspector?
- PEDW either failed to check the Inspector's decision on completeness or decided not to raise the matters over-looked.
- On the other hand, PEDW's inability to cope with the requirements of the EIA Regs must have been apparent to them by now but they decided not to comply with the EIA Regs and decided to avoid public input by listing for an Inquiry with no public consultation. Perhaps the biggest indicator of the imperative held by PEDW to keep the Public away from the process as far as possible. A serious decision make by PEDW that should be attributed to relevant officers to make sure those officers are not involved further, sent for training, considered for their infringements.
- As the apparent errors by PEDW remain unexplained they leave as a possibility that PEDW is breaching the EIA Regs in a way caught by Article 10a. We welcome any other interpretation that PEDW would like to give. It might help with the need to earn the trust of the public if PEDW can explain the various decisions taken. After all, if PEDW had any faith in the decisions being lawful and proper, they would have no problem in some sort of transparency.

PEDW and the SoCG

The Chief Planning Inspector of PEDW is the same person, or was part of the team, that decided, on poor paperwork, that the original planning application should be allowed when it was first before the LPA. The grant of planning permission on appeal would objectively be seen as confirming the advice previously given by the CPI etc.

The point was made by the CPI in very strong terms when she presented her report to the Planning Committee when she told the Committee to "do what I tell you or you will be sued and will have to pay costs". The Committee did as it was told. It was then sued and had to pay costs. The LPA had to concede that its officer(s) had acted unlawfully by withholding information from the Public.

The same information seems not be produced by the Appellant nor PEDW or at the least is seriously out of date.

In any event is would be a strange coincidence that PEDW is keeping so much material from the Public in what should be a transparent process involving the Public fully. The public needs to understand, if it is the case, that any avoidance of publication of material is not an extension of what went on previously and unlawfully.

What is clear to PEDW is that the LPA is represented by officers who should have been part of a department conflicted out of this appeal.

But PEDW then appears to have instructed the Appellant and the LPA to confer to arrive at a SoCG. This was done in the full knowledge of the conflict and that in an earlier EIA appeal the LPA managed to enter into a SoCG that not only caused the Inspector to decide against the LPA but resulted in a very large order for costs against the LPA.

If is therefore possible that PEDW, knowing the lack of expertise at this LPA, recognises that forcing through a SoCG is one way of determining an Appeal in favour of the Appellant.

Having established a need for a SoCG, PEDW instructed the Appellant and LPA to agree the document but then hid the instructions from the public. It seems that the instructions from PEDW are only available to the Appellant and LPA. That cannot be what a SoCG is meant to be. It cannot be relevant to a lawful EIA Regs process.

PEDW should never have included the LPA in any SoCG. PEDW was well aware of all the conflicts that the LPA seemed to avoid. PEDW should not have excluded the public from such a process. It is evidence of the bias that the public is expected to put up with.

If the emails and perhaps other material was made available to the public this would at least have been more transparent behaviour by PEDW. This must be released together with all other material not yet shared. If the public has nothing to be worried about why does PEDW maintain such a level of secrecy as against the public. PEDW creates distrust. PEDW causes these questions to be raised.

PEDW at conflict with the Public

It is understandable why it can be assumed that there is conflict with PEDW, whether it is a reality or not.

The public might see the reputational concern PEDW and its CPI will have, whether it is a reality or not. There has been a refusal to acknowledge whether the CPI's husband

continued as a senior officer dealing with planning and Appeals at the LPA. Whether this was a possible further conflict will have been something the public might have considered was at least inappropriate. Failure to acknowledge the possible issue was a poor decision by PEDW. It adds to public concern for what ought to have been a non-issue if safeguards were implemented to avoid suspicions. Why would PEDW create the image of conflict is there is none.

There are too many matters that need to be addressed so that the public can be satisfied there is no question of at least confirmatory bias arising within PEDW.

PEDW is fully aware of such conflicts. They are matters that might have a tendency to create distrust between PEDW and the public. This should require particularly clear and overt decision-making by PEDW and very careful, accurate and lawful preparation and presentation.

The Chief Planning Officer

It is noted that Welsh Government advice dealing specifically with the CPI includes:

> *The Chief Planning Inspector (CPI) joins PEDW from The Vale of Glamorgan Council. The CPI recuses herself from any involvement in all decisions including procedural matters and any legal proceedings relating to casework in the Vale of Glamorgan.*

This claim by the Welsh Government is blurred when we recall that in respect of another LPA planning appeal which involved the EIA Regs, it was clearly stated by the Deputy Chief Planning Inspector that:

> *Mrs Robinson has been briefed on progress but has recused herself from any involvement in line with the protocol.*

This suggests some involvement in VoG appeals which is inexplicable if the Welsh Government advice was to be taken at face value. Rhetorically we would have to ask why Mrs Robinson was briefed on a matter she was probably involved in when at the LPA when she *recuses herself from* ***any involvement*** *in all decisions* ***including procedural matters****. (*our emphasis*).* It was also noted that the DPCI was the person briefing the CPI when the DCPI was also conflicted on that matter but did not, it seems, recuse himself from any involvement.

Why was the CPI briefed if she was to have no involvement? It appears that the CPI's confirmation of '*no involvement*' has some unexplained provisos. Shades of interpretation that are not explained.

As an aside the quote immediately above related to an appeal process where there was a decision by the Climate Change Minister that the development was EIA Schedule 1 but the LPA's Planning Committee was advised by its officers (presumably involving Ms Robinson at some stage) that it was not Schedule 1 and did not qualify as Schedule 2 with

significant impacts. The CCM's decision appears to be conclusive evidence of a failure of knowledge on the part of the Planning Department at the LPA. That failure was compounded by the LPA's acceptance that, notwithstanding the conclusive decision by the CCM that confirmed the serious errors, the officers have never made an error. At the least this seemed to be encouragement/intention to continue to make the same wrong decisions on EIA cases.

PEDW has failed to comply with the instruction to the CPI to *recuse herself from any involvement in all decisions including procedural matters*. Although PEDW was not prepared to confirm the point, it is understood locally that the CPI is married to a senior officer in the LPA planning department. That is merely another reason why the way that PEDW is treating the public and its own obligations is viewed as more of a problem.

PEDW and Regulation 4(4)

PEDW seems to demonstrate that it does not have the necessary expertise to deal with an EIA case. In fact PEDW's apparent failure to comply with important directives from the Welsh Government should mean the Inspector needs to question all aspects of instructions from PEDW including whether instructions are lawful, full, correct. We respectfully suggest that the Inspector needs to insist upon independent experts being asked to deal with the Appeal on behalf of PEDW with a view to introducing some transparency, ensuring the Inspector is properly instructed and that the EIA Regs are respected.

PEDW would need to step back from choosing and instructing the experts as they have demonstrated their bias and their willingness to hide information from important players possibly including the Inspectors.

An issue highlighted by Reg 4 of the EIA Regs is important and on point.

Lack of expertise Reg4(4)

> *(4) The relevant planning authority or the Welsh Ministers, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.*

It seems that there is no system at PEDW that ensures a lawful process when EIA Regs have to be complied with.

There is no documentation on the Register to show that PEDW has ever checked any aspect of the ES.

PEDW is effectively acting on behalf of the Welsh Ministers in this case. Their failures may be attributed in due course to failures by the Welsh Ministers. One would imagine that PEDW would be trying hard to protect the Ministers, but it is failing, in a dramatic way.

We did try polite prompts to PEDW to get them to start the consultation for the EIA process in this Appeal but the content of the correspondence was, in the main, ignored (by

the case officer?) with the assumption that they really did not want to deal with the consultation.

PEDW must have considered the nudges by us and others to assist with a lawful process and the case officer and any line manager must have decided to ignore the nudges towards lawfulness. The officers concerned must be taken to have some knowledge of the lawful processes. Their behaviour has to be assumed to be deliberate until they prove the opposite.

The possibility is that the nudges were rejected due to the overall and early decision by PEDW to do what it could to marginalise the public. There may be material on their files to confirm all this, but transparency is not, apparently, a PEDW imperative. Perhaps we should have limited this to transparency towards the general public as the so-called main parties seem to be doing quite nicely!

The importance of these matters ought to require explanations from PEDW by way of releasing the file to the public. Why not? We assume PEDW would claim complete fairness and with an audit trail to confirm. It is clear that this cannot be (fully) the case.

Eventually PEDW went into full panic mode when, somehow, they realised the need for a consultation. This resulted in the loss of their first attempt at an inquiry due to the absence of the public consultation. Although it is not needed, this was more evidence of PEDW's inability to cope and/or its determination to treat the public unfairly. It is as if PEDW believes that it is safer to run with an Appellant who would have the wherewithal to appeal if appropriate, rather than allow some credibility for the general public who live, in the main, in deprived areas.

Transparency might help to alleviate suspicions. PEDW seems worried that transparency will demonstrate how far from competence the department is.

The leadership at PEDW have both had 'unfortunate' experiences with EIA cases and give every indication of not understanding the task. It is no wonder that those lower down the chain cannot cope. The Inspector should step up to insist Reg 4(4) is complied with; objectively consider whether there is any likelihood of competence to the level expected by Regulation 4(4).

PEDW and Completeness Reports

A clear indicator of PEDW's aversion to dealing lawfully with the EIA comes about with their insistence upon instructing the inspector to carry out Completeness Reports.

We have previously been advised by PEDW's then Head of Operations in a similar situation in an earlier EIA appeal "*The period of representations has closed and the Inspector has found the ES complete."* This does at least suggest that PEDW acts on the basis that the Inspector's decision of completeness is a final decision. This is an adulteration, or more accurately a denial, of the public's right to take part in the ES

processes and also demonstrates the poor attitude held by PEDW as to the level of involvement the public should be allowed.

The officer also referred us to:-

> *Taking account of environmental issues in the planning process is a long established practice. The 1999 UK EIA Regulations require the planning process to consider whether a proposed project is likely to have a significant effect on the environment, they do not require the planning process and the EIA process to be undertaken in isolation from each other; the EIA process is part of the planning process.*

We believe this is an indication that PEDW does not consider the EIA Regs to be as important as they are.

It could read as if PEDW takes the view there is no real change in the law and process arising from the EIA Regs and the 2011 Directive.

The previous consideration in planning applications will have restricted the public's involvement to an extent not recognised by the EIA Regs. Obviously due to the fact that those planning matters did not involve significant impacts.

The view held by PEDW shows a need to require control of the public rather than the wide-ranging involvement that should be allowed and encouraged. This seems to inform the various decisions made by PEDW to the detriment of the public's involvement. The continued link with "the planning process" demonstrates a fundamental failure on the part of PEDW that encourages the poor decision making but helps PEDW with a simpler (albeit unlawful) process.

We take the view that in the present case the case officer has acted contrary to the law and to the Advice given in Part 10 of the Planning Inspectorate Advice papers. The infringements appear to be deliberate but given the opportunity perhaps there is a different explanation that the public has not yet recognised.

Part 10 of advice material maintained on behalf of PEDW (albeit not yet updated from Planning Inspectorate to PEDW) is set out below as we believe it is yet another prime example of the failures by PEDW:-

> ***Environmental Impact Assessment (EIA)***
>
> *10.1. Once an appeal has been submitted, a screening exercise is undertaken to assess whether the appeal should be accompanied by an EIA. This is carried out by the Planning & Environment team of the Planning Inspectorate Wales, under the delegated powers of the Welsh Ministers, who will issue a Direction. This exercise must be completed before the timetable for the submission of evidence can begin.*

> *10.2. If the appeal is already accompanied by an Environmental Statement (ES),* ***an Inspector must assess the ES to check whether it meets the minimum requirements of the EIA Regulations****. This process can take 8 weeks, depending on Inspector availability. The ES must contain the necessary level of information specified in the Regulations in order for the application to proceed to determination.*
>
> *10.3. The Inspector's conclusions on the ES merely relate to whether it contains sufficient detail to determine the application;* ***an overall judgement on the adequacy of the ES can only be made by the appointed Inspector after all evidence relating to the application has been considered.*** *As such, any initial conclusions on the completeness of the ES do not preclude the appointed Inspector from requesting further information at a later stage.* (our emphasis)

PEDW, the case officer, appears to want to comply with Advice when it suits their purposes but will ignore or rewrite the Advice when it conflicts with their imperative to keep the public at arms length.

In the present case PEDW sought to obtain a final advice from the Inspector rather than follow their own guidance that will have helped to keep their actions lawful. Ignoring the obvious/simple advice is additional evidence of deliberate actions.

The burying of the Inspector's completeness reports for a considerable time is an indication that they know there are members of the public who have some understanding of this area – hence the reason why PEDW would not give the public the opportunity of pointing out defects in the process unlawfully invented by PEDW.

It is not as if the officer dealing had not had the advantage of decisions and discussions in an earlier case about this particular step invented by PEDW to make their life easier by obtaining decisions from others when there should have been no such final step being taken. The obvious attraction was the way PEDW could short circuit the consultation process and blame the Inspector. A question that might need to be asked is whether PEDW deliberately set up the Inspector with a hospital pass. It would seem to be so.

This was a series of steps either outside any required steps within the EIA Regs process or was dealt with by PEDW in a way that was obviously designed to unlawfully infringe the EIA Regs. The fact that at least one party was unfairly helped by the decisions is important.

This may be a solid indicator of the lack of expertise at PEDW for dealing with an EIA process although the constant offending of the EIA Regs by PEDW could be too great to assume mere incompetence.

What PEDW was seeking to achieve was a premature decision on matters relating to the EIA Regs without following the process set down by the EIA Regs, the Directives, Welsh Government advice. PEDW was seeking decisions that in effect reduced very

significantly the extent of the public's involvement such that on the face of it the consequences we see trailed by Article 10a of the 2011 Directive, and the Minister's comments upon the Article, would seem to be engaged.

We like to imagine that PEDW will have considered the Inspector's reports on completeness. The final part of the completeness report dated 30 October 2024 is:

> *Provision of a Non-Technical Summary*
>
> *35. A non-technical summary (NTS) has been provided and the information contained therein is deemed sufficient for the ES as produced.*
>
> *Overall Conclusions*
>
> *36. The Environmental Statement submitted Legal & General (Strategic Land) Ltd in September 2024 should be confirmed as containing the level of information identified in regulation 17 and schedule 4 of the 2017 EIA regulations and being complete for the purposes of those Regulations. The Appellant's attention is drawn to the contents of Annex 1*

This is likely to reflect the instructions given to the Inspector by PEDW as it reads similar to an earlier unrelated case. To that extent the Inspector seems to be following instructions. We do not know if that is the Inspector's role instead of being permitted to be totally independent. Perhaps there is a form of contract/terms of engagement that should be on the register along with the instructions to the Inspector?

We wonder whether PEDW bothered to consider the report. There is nothing to suggest they did on the Register. No doubt there will be a note setting out such consideration if carried out. Or perhaps, we may never be told, PEDW merely checked the Inspector followed the lead they had set out?

Looking first at paragraph 35 there seems to be a fundamental failure by PEDW to understand what a NTS is meant to achieve.

The Inspector's endorsement looks to be a repeat of the instructions given to the Inspector. However, the Inspector did include a proviso namely the wording "*for the ES as produced".* It is not obvious to us what that proviso was meant to achieve but it might have been an indication that it was not suitable on its own, merely in relation to the Appellant's purported ES. It is not clear but perhaps that was a warning bell.

An important aspect of a NTS is the need for it to be non-technical and to help members of the public to join in the debate via a document that is easy to read. It should not require the reader to look eg at parts of the ES for information or clarification.

PEDW seems to have given no thought to whether it is a NTS in terms of being comprehensible for the general public in areas of deprivation and is drafted in a way to encourage involvement in the process. We mention the Equality Act elsewhere.

There is no claim that the document was prepared by an appropriate expert – because it clearly was not. There appears to be no attempt on the part of the Appellant or PEDW to have the document assessed by experts to confirm what level of educational attainment this is directed to. There is no claim that the document is eg in compliance with the IEMA guidelines for a NTS. If this document is not readily available and if the Appellant would now like to claim it is in compliance with that advice then they could include the advice in their paperwork. At present the Appellant does not specifically claim compliance.

The document does not encourage people to come to their own conclusions as it is written to convince people things are fine. It is probably mere advocacy on behalf of the Appellant rather than a document to explain issues and encourage discussion.

When an expert reads the document they might find it simple to understand. It would be wrong to expect eg the Inspector to put themselves in the position of a typical local resident. PEDW was seeking to rely upon the Inspector to excuse their obligation to check this issue. It was PEDW's responsibility.

With no attempt by any party to involve an expert in plain English, the NTS should be rejected either because it is not an NTS or because the failure on the part of the Appellant to demonstrate its compliance is patent. If the Appellant wanted to produce a NTS they should know what is needed and be able to demonstrate compliance. They seem to have chosen to avoid that obligation. The IEMA advice was enough to allow the Appellant to get this right and should have been enough for PEDW to check it.

As far as we can tell, PEDW did nothing to check the NTS and the refusal to publicise the instructions to the Inspectors prevents any understanding of their checks.

Paragraph 36 of the Inspector's report is a blatant attempt by PEDW, by way of the instructions to the Inspector, to sabotage the EIA Regs process. It is a clear infringement as referred to in Article 10a of the 2011 Directive as amended. What has happened is that the Inspector has been led into this serious error by PEDW by:

- Being asked to carry out this task when it was inappropriate/wrong to do so;
- Being badly instructed with little or no assistance;
- Being kept away from the ES representations that were made previously on an inadequate version of the ES;
- Being unhelpful with regard to the law;
- Setting up the Inspector to infringe the EIA Regs notwithstanding the potential for repercussions as explained by the Minister who relies on the CJS to investigate and punish infringements of the EIA Regs.

Perhaps it has sent out a clear signal that PEDW handed out a hospital pass to Inspectors who are led into error. Inspectors might accept instructions in the belief PEDW knows what it is doing. As nobody else knows what PEDW has said to the Inspectors it would

follow that it is the Inspectors who will be subjected to questions on the possible infringement of the EIA Regs.

This is the opportunity to sort things out so that we proceed in accordance with the regulations and avoid the sort of infringements that are caught by the enforcement provisions of the 2011 Directive.

PEDW and the Register

PEDW manages to avoid updating the register with material and other information.

This cannot be an accident as it is persistent. PEDW presumably has systems in place to keep all parties fully informed, as required. Failure to do so would prejudice some, usually the public. If there are systems in place it might follow that the failures are deliberate. If there are no systems in place it emphasises the lack of knowledge at PEDW and the unlawful systems engaged by PEDW.

Updating the Register sounds like a simple, mechanical process that does not require much, if any, decision-making. For the reasons we have set out there seems to be significant oversight of this process from above which is intended to or has the effect of prejudicing the pubic.

Somebody at PEDW must have wondered about the habit they have of updating so-called main parties but leaving the general public in the dark.

The Register is a vital source of information for the Public. PEDW knows this, PEDW knows the obligation upon it to keep the public updated to comply with the EIA Regs, Aarhus Convention and, no doubt, other obligations.

We are concerned that there is material that PEDW has kept secret from the public that would have been a part of our representations if we had the opportunity to consider and report upon it. We trust that in the circumstances the Inspector is minded to agree that the time for making representations is extended if, when, PEDW acts properly in connection with this problem.

It is a deliberate policy by PEDW. This can be inferred by the type of material held back and also that they must know they are meant to release the information.

Some examples of PEDW refusing to add material to the Register or adding it late (apart from the important matters already referred to above) are listed below. However, we could not be expected to list everything as we can have no informed idea what is hidden.

- Failing to add the notice of the Inquiry to the website.
- Not dealing with the public's correspondence that should be added to the Register.
- Even when the officer has decided to ignore correspondence there is no obvious reason for refusing to add to the Register especially when PEDW supplies it to other paties.

- No correspondence with the Appellant and LPA including material that might help to understand why EIA processes were invented to avoid public involvement
- How PEDW came to the decision for 30 days allowed on the consultation.
- How PEDW decided that even the one bank holiday in the 30 days was rejected as a reason to extend the period by just one day.
- How did PEDW come to decide not to have a consultation before the Inquiry.
- How PEDW may have decided it had sufficient expertise to deal with the process for EIA Regs.
- No email threads for contact with the Appellant.
- Ditto for the LPA.
- Ditto for the VCU.
- No notes of meetings or telephone calls with any other parties.
- When a person searches for the official register for this Appeal the resulting search includes the information “Representation Period ended on 20/01/2025”. This can only be a means of discouraging the general public from bothering to look further. The PEDW website is already telling you not to bother as you missed the deadline.
- PEDW maintained the lie on its official register that comments had to be lodged by all parties by 20/01/2025. Their website appears to deny the more recent Notice and its contents as in June this is still their demand on their Register. Do we need to explain the message they want the public to take away from this? Other so-called Key Dates maintained on their register are inexplicable. We last checked on 03 July 2025 and can confirm the following remains on the Register:
    - Key Dates
    - Start Date 11/11/2024
    - Questionnaire due 18/11/2024
    - Statement and Interested Party Representations due 09/12/2024
    - Final comments from all parties 20/01/2025
    - Event Date 24/03/2026
    - Start time of event 10:00
- Any member of the general public looking at the Register will have known that they were too late to make representations. This cannot be an accident or oversight by PEDW. It fits as deliberate behaviour when compared to its more general attitudes. We remain intrigued by the reference to “Event Date 24/03/2026”. Is this an indication of more important material kept from the general public but know to others?
- The register claims it was last updated on the 16 June 2025 but the last date for a document to be published is in March 2025. It is as if PEDW wants to avoid acknowledging everything that has happened since March as well as much before then. This impacts on the public’s inability to ensure effective participation. It cannot be accidental?

- PEDW wrongly asserted that copies of the ES could be obtained from the Vale of Glamorgan Council, Dock Offices at the start of their consultation. They had not been supplied to that address until some time later.
- PEDW offered copy papers to be collected from the Dock Offices that were not supplied until 9 days into the consultation period they fixed.
- Failed to leave copies at Barry library which is central and open 6 days a week to help to accommodate those who need to see hard copy but are in work on weekdays. The library was also more likely to be a quiet area for reading the material as well as a convenient hub for people in deprived areas who would need to rely on a bus service.
- If PEDW read the ES version they failed to include their conclusions on the Register. If they did not check the ES they failed to carry out their important work.
- PEDW had no oversight of the case officer's work or the oversight is/was inadequate.
- PEDW failed to include on its Register the earlier representations on the environmental statements as previously submitted to the LPA. Material that amongst other things might have allowed the Inspector to see where the ES might have been/was deficient. Was the existence of that material not brought to the attention of the Inspector?
- PEDW has not added to the Register its Equality Act compliance checks.
- PEDW did not add to the Register the considered reasons for deciding to ignore Welsh Government advice for the length of a consultation.
- PEDW accepted an ES in about October last year. That ES, the one to consider going forward, superseded any previous ones. PEDW has failed to have a Register that will help the public to understand which documents form the final version of the ES.
- PEDW has not made clear the consideration they gave to Reg 19; the Reg that sets out a process where an ES is submitted post the application for planning permission. It is not clear if that was ever thought about.
- PEDW confuses the public by asserting the latest version of the ES is a mere Reg 24 addition rather than the complete document. It is important that PEDW makes it clear what documents should be commented.
- PEDW continues to refuse to add Notices to the Register and in particular the notices about the consultation especially the current notice. They rely on the inadequate notice in the local newspaper that has the least reach to the public. Another indicator if needed that PEDW continues to do what it can to keep public interest to a minimum. PEDW will do the minimum it believes will allow them to tick a box.
- PEDW has kept secret minutes of the meeting of the 1st April 2025 and the other material that was created and/or amended on that date. In the circumstances this appears to further evidence of unlawful control of the public participation.

The extent of the problems thrown at the public for effective participation in the EIA process is not just inexcusable, it demands an investigation with the Minister's thoughts on Article 10a ringing very clear.

Equality Act 2010

For the purposes of this section we have assumed that the Equality Act applies to the actions taken by PEDW, the Inspectors (acting obo the Minister) and the LPA.

To date we have seen no paperwork to explain what arrangements have been put in place to take account of those members of the general public in the area with protected characteristics.

We are a town with significant areas of deprivation, with all that infers.

We note that PEDW and the LPA were keen to avoid overmuch involvement on the part of the Public in the consultation process that is such an important part of the EIA Regs. Quite clearly the decision by PEDW to restrict the period for the public to review and comment upon the ES demonstrates a failure to take account of the Equality Act. Perhaps a desire to deliberately avoid the imperatives of that Act. The LPA's determination to try to keep the period down to 30/29 days was an inexcusable refusal to acknowledge their duty under the Act.

[In passing we ought to point out that the behaviour of PEDW towards the general public seems to be a failure to acknowledge the Wellbeing of Future Generations (Wales) Act due to the clear wish to prevent a lawful EIA Regs process that puts the area at risk.]

Both PEDW and the LPA aimed for the absolute minimum period that could be argued by law. A period that could only be relevant to a very limited consultation aimed at those with either a professional qualification or, at the least, university education.

There could have been no consideration given to the requirements of the Equality Act. It is almost as if those two organisations used the fact of the protected characteristics to keep objections to a minimum. A step that could only be to assist the Appellant?

It seems likely that PEDW and the LPA have never looked at the Equality Act requirements when considering the proper steps that need to be taken in this appeal or perhaps any similar appeal. The perceived conflicts both have might be seen as the reason for the avoidance of or failure to appreciate the importance of and compliance with the Equality Act.

No account has, apparently, been taken of the lack of resources that will be available to an area of deprivation. PEDW has shown another lack of concern over equality as the public seems to be excluded from taking an effective part in the Inquiry. All the indications are that PEDW will encourage the Inspector to decide or will decide for itself that members of the public can only submit written representations, might be allowed to read them to the Inquiry but will not be allowed to make other representations or even more importantly ask questions of witnesses because they cannot afford to instruct solicitors and/or Counsel.

There is positive discrimination by PEDW, and possibly the Inspector, against those without the necessary means to instruct lawyers.

PEDW's decision to call the VCU a main party is not an indication of fairness to the pubic. It is a way of appearing to be fair but in fact it is a controlling decision. It has ensured the involvement of a planning expert which is expected to keep the issues as those an expert might raise rather than the public. It is a filtering of the public's views which is not necessarily in accordance with the EIA Regs. In any event we have set out a number of areas that are considered important but which seem to have been filtered out by the VCU counsel without explanation.

LPA

The VoG officers have demonstrated how determined they are to avoid EIA processes for a number of reasons. This is not the only example of the officers ignoring or failing to appreciate the meaning of the EIA Regs, the Directives and the possible CJS implications.

Compliance with Reg 4(4) and admitting they need the help of experts may be something that the officers find too difficult. The LPA officers have twice failed to recognise that a project meets the definition of Schedule 1 EIA Regs notwithstanding the simple test involved. This might have been in relation to another project that but was proceeding contemporaneously with the present matter. It has been said to us by senior planning counsel that the test for Schedule 1 is so simple that nobody gets it wrong. The LPA officers proved senior counsel wrong on two occasions we know about.

The failure of the officers to deal properly with the ES in the present case can be explained by comparison with the way they dealt with the other matter. If this case was dealt with properly, in accordance with the law, it would have called into question advice given by the same officers on other matters continuing at the same time.

Officers found themselves in the difficult position of having to cover two EIA cases where proper advice on the current one would throw the advice in the other into greater confusion. This leads to neither being dealt with adequately. It is a reason why the Inspector should look at how this appeal could be conducted when the LPA demonstrates significant bias and/or incompetence.

On the first such example they apparently argued on appeal to support the Appellant that the project was not schedule 1 EIA Regs. The Inspector was persuaded, wrongly, that the project was not Schedule 1. The LPA ended up paying costs of approximately £75k as a result. The officers simply followed their own poor screening decision and their apparent determination to stand their ground appears to have cost the Council and rate payers dearly. Others pointed out the error but were ignored, it seems, by the LPA and the Inspector at Appeal.

When that other project was resurrected in 2015 the officers made the same wrong determination notwithstanding the simplicity of the test and that sufficient material had been passed to them by the Welsh Government to help them get it right.

It might be that this demonstrates an imperative for consistency over accuracy.

Later the CCM confirmed to the world that those projects were Schedule 1 EIA Regs development; the officers continued to refuse to acknowledge their poor decisions, in fact they arranged to obtain advice from Counsel that they never got anything wrong. This extreme attitude should be taken as good reason for the LPA's position to be subject to serious questioning.

The case of *The Queen on the Application of Silke Roskilly*[6] para 38 et seq is authority that the subsequent screening by the Minister that a project was EIA Regs Schedule 1 is conclusive of its EIA status. It therefore follows that an ES was required before any grant of planning permission or, put another way, the grant of planning permission was contrary to the Regs and therefore unlawful. In the case of Silke Roskilly that led to the planning permission being quashed. In the matter dealt with by our LPA officers, there was no attempt to set aside the relevant permission and the officers continued to maintain the grant was lawful.

The Minister advised the unlawful nature of the earlier grant should be a part of enforcement proceedings but even that clear advice was ignored.

It is possible that consistency over accuracy was employed to protect the officers' credibility, that the officers continued to deny the need for an ES. At the very least it was a serious case of confirmatory bias. Behaviour that might be subject to the consequences foreseen by the Minister with the CJS.

As indicated above, the LPA officers went so far as instructing Counsel who completely exonerated the officers by concluding that they never made mistakes. This conclusion by Counsel was arrived at notwithstanding that the CCM had made it clear that the project was in fact Schedule 1 EIA Regs and therefore the officers were in error. Presumably Counsel realised that meant the error was conclusively stated by the CCM. It was a denial of the CCM's screening decision notwithstanding the way in which the EIA Regs confirmed such a screening decision was conclusive.

It does not help the public to trust the LPA that the same barrister is instructed on this occasion to support the officers and appeared to be the only person on the 1st April 2025 to argue for maintaining the 30 day period previously set by PEDW for the public consultation.

In that previous matter referred to, the Officers entered into a SoCG that resulted in the LPA losing the Appeal and being ordered to pay a sum of costs believed to be in the order of £800k. The officers were apparently so keen not to acknowledge the Schedule 1 Status of that project that it was never raised by them as an issue notwithstanding the very clear advice from the CCM.

This is relevant in the present case as the earlier failures that caused the Vale/rate payers to lose, unnecessarily, approximately £800,000.00 is the refusal to comply with the EIA

[6] https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2015/3711.html&query=(%22SILKE+ROSKILLY%22)

Regs and to act accordingly. To acknowledge that EIA Regs did apply to those other projects would perhaps be seen as a reputational problem for some. If, in this case, the ES is found to be inadequate the officers may see the reputational damage as serious and/or the confirmatory bias might be a significant feature. This might apply to the current LPA officers, Counsel instructed, the CPI, the DCPI.

The inadequacy of the original ES never seems to have been considered by the officers who might now see the reputational damage if the current ES does no pass muster.

The actions of the LPA's planning and legal departments is all the more inexplicable when taking into account the advice of the Ministers on occasions that, in effect, if the lack of EIA on the grant of planning permission is later appreciated, then the need for the EIA compliance should be part of any enforcement action. It was a silver bullet in that case. But reliance on this particular silver bullet would have required an acceptance of earlier errors. There seems to be no cure for confirmatory bias when reputational damage is foreseen.

In the present case the officers screened the project as Schedule 2 EIA Regs but their ability to understand and analyse an ES is questionable and they must know that they have failed to ensure the necessary expertise required by the EIA Regs exists at the LPA. They remain conflicted by the obvious observation that if the Inspector concludes (as we say he should) that the ES is unsatisfactory/noncompliant then their approach to the present application will be shown to be, at best, negligent. Whether as a result of confirmatory bias or otherwise the involvement of the LPA remains suspect.

Yet again, in the present case, the officers are entering into an SoCG that fails to acknowledge the need to complete the EIA process and that outline permission is probably anathema to the EIA process in some, perhaps most, circumstances. It might possibly be interpreted as a deliberate infringement of the EIA Regs and the Directives. There seems to be no ability to learn on the job.

In the present case at least the officers apparently know they are conflicted due to their persistent advice to grant permission to the Appellant in denial of issues over the EIA and on one occasion having to admit they (the CPI?) acted unlawfully in favour of this Appellant. We understand they have accepted that their conflict means they will not be appearing at or arguing at the Inquiry.

We do not follow why the LPA is not independently represented, relying upon nonconflicted advice.

However, the officers clearly do not understand the meaning of a conflict as they appeared at the single Inquiry day, they made submissions to the Inquiry, they took part in suggesting draft conditions for any planning permission, they have agreed a section 106 agreement, they have pursued an SoCG without any thought that the public should be involved and worse still that it was inappropriate for them to discuss such matters with

the Appellant, at the Inquiry or at all. If they are conflicted they should have advised the LPA some long time ago that outside lawyers and planners needed to deal with this matter.

The rhetorical question is raised, were the officers afraid that independent experts would see through the (transparent) veneer of claimed expertise and make public what we all believe.

The officers of the LPA may have usurped their conflicted position by taking steps to come to inappropriate arrangements with the Appellant, designed to help the Appellant to succeed on appeal, but their actions seem to be in conflict with the EIA Regs and probably introduce the need to consider the Welsh Government's concerns about how Article 10a is implemented.

The Appellant must be well aware of the behaviour and appears to welcome the assistance being given by the LPA in full knowledge of the breach of the EIA Regs. The Appellant is not naïve and should not be taking advantage of the LPA failures to the prejudice of the general public.

The possible inference to be drawn from the behaviour of the officers is that they are worried about outside lawyers and environmental experts getting too involved in case the lawyers and experts begin to criticise (as they should) the behaviour and lack of expertise of the planning and legal department at the LPA. There may be nothing that the LPA has done or said that can be relied upon by this Inquiry. We ask the Inspector to ensure that all of the representations and agreements coming from the LPA are ignored for the purposes of this appeal and the imminent Inquiry.

At the very least we might need to have a preliminary hearing to test the LPA's behaviour.

If anything said or done by or on behalf of the LPA is allowed to proceed then a senior officer of the planning and possibly the legal departments should be available to explain their behaviour and confirm the legality of what has happened.

We suspect that no officer of any seniority will put themselves forward for questioning and the LPA will not open up its files for scrutiny.

The LPA has shown its colours and its bias by entering into a Statement of Common Ground as if the only two parties of any importance are the LPA and the Appellant. In fact it is clear that the LPA is conflicted and the Appellant's focus is upon obtaining planning permission. There was a deliberate decision by the LPA and the Appellant to cut the public out of the document thereby giving a false image that the document satisfies the test of a statement of common ground.

It is also relevant to point out that the EIA Regs do not foresee such a document being produced and, in any event, such a document entered into by those two would seem to be yet another way in which the EIA Regs are infringed.

The LPA has also purported to enter into a section 106 agreement.

This document is clearly intended to impress the Inspector but is badly flawed. In many ways it is designed to move the process away from the EIA Regs. The ES has not yet been subjected to the tests envisaged by the EIA Regs and the Directives and most of us are aware that no consideration of the planning permission should precede the completion of the EIA.

Without the analysis of the impacts and what can be achieved, if anything, to ameliorate the impacts how could the LPA have believed it was entering into a section 106 agreement that had any real meaning. The LPA is well aware that the admitted unlawful behaviour of the LPA previously included the secrecy it attached to the viability evidence relating to this project. There is no update to the viability evidence notwithstanding the significant increase in costs since the last look at this.

The LPA has apparently acted upon material that is well out of date even though the LPA was well aware that the project showed a lack of viability when the costs of construction were much lower. Just what does the LPA think about its own behaviour? Nothing we have seen tends to show a desire to do what is right for the public rather than doing everything it can to destroy a productive farm in favour of an industrial site where all the evidence supports the view it is not needed in the area.

More evidence if needed of the breaches of the EIA Regs and more evidence that the LPA cannot be trusted. What we do not know is whether PEDW has encouraged or accepted this sort of behaviour.

In passing it is our view that if the VCU took part in discussing these documents then we object to the VCU's behaviour. They cannot bind the general public. They may have infringed the EIA Regs as well.

Inspectors

An Inspector must ensure their instructions are legal, full, reasonable. If asked to carry out a task that so clearly undermines the EIA Regs process then the Inspector must refuse the instruction or find a way to deal with the instruction in a lawful manner.

However, that has not happened in this case on a number of occasions. This may be as a result of the poor or controlling nature of instructions from PEDW. All the time those instructions are kept secret we cannot assume that PEDW has misled the Inspector.

For transparency we urge the Inspector to direct PEDW to add to the Register all material that explains what instructions were passed to the Inspectors. There is too much secrecy within this process, it needs to be more transparent. Transparency might help to show the Inspectors have acted properly, in accordance with the requirements of the EIA Regs and the 2011 Directive as amended.

The Inspector seems to have been instructed to check for completeness of the ES. The Inspector concluded that:

The Environmental Statement submitted Legal & General (Strategic Land) Ltd in September 2024 should be confirmed as containing the level of information identified in regulation 17 and schedule 4 of the 2017 EIA regulations and being complete for the purposes of those Regulations. The Appellant's attention is drawn to the contents of Annex 1

As the Inspector's decision goes well outside the scope of the advice maintained by PEDW for this stage and gives every indication that the public has no continuing input it is surprising to see this asserted.

On the face of it the Inspector appears to have prevented much of the involvement that the public is allowed. The only obvious reason for this decision is to push forward the application on behalf of the Appellant and avoid taking up time with the public. It appears to be an unlawful infringement with due process for an EIA. On the face of the quote it seems likely that the Inspector has been misinformed/badly instructed by PEDW. For obvious reasons this should be clarified.

The Inspector is taken as understanding the law, the process, the advice from Ministers we have added above, when considering this same process in the context of the instructions from the case officer at PEDW.

We accept that the Inspector has probably carried out the instructions as explained by PEDW but, if so, the Inspector should have identified the unlawful nature of the instructions and refused to do any more than confirm, for example, the ES meets the minimum requirements of the EIA Regulations to permit some progress. No more. The ES did not meet those minimum requirements, we believe.

Depending on what the officer at PEDW said to the Inspector, it ought to have been clear that PEDW had not held the necessary consultation. At this time and going forward it was clear that PEDW had decided to avoid any consultation. This was apparent to the public and should have been apparent to the Inspector – depending on what the Inspector was told.

The decision by the Inspector stands at present. It needs to go. It remains on the register and no doubt the Appellant would choose to rely upon it.

The Inspector should not have been instructed to carry out this task at that stage unless it was PEDW's intention to abuse the public's rights in the process and hand over a hospital pass to the Inspector. A clear infringement of the EIA Regs and one that the Welsh Government accepted that the CJS is responsible for investigating.

In any event it is also interesting that PEDW has instructed the Inspector to ignore the requirements of Regulation 4. A significant omission in this case. The only reason for such a course is, yet again, to help to defeat the proper EIA process. Another omission by the Inspector that we do not understand.

A fire at the development will require fire water. Is there enough on site? Where is this contaminated firewater expected to go? In our experience the water would follow the flow of the land and head south! The attenuation tanks that might already be full from recent rainfall will need to accommodate it but that is likely to be impossible.

There seems to be no regard to the requirements of Reg 4(3) to deal with:-

> *The effects referred to in paragraph (2) on the factors set out in that paragraph must include—*
> *(a) the operational effects of the proposed development, where the proposed development will have operational effects; and*
> *(b) the expected effects deriving from the vulnerability of the proposed development to risks of major accidents and disasters that are relevant to that development.*

We assume operational effects are difficult where the Appellant is determined to avoid talking about the likely industry that will occupy the site but the risks attendant upon a major fire are more easily (at least in part) identifiable. Such matters are an obligatory part of an ES on the face of Regulation 4.

There is nothing in the ES to explain the issues and how they are addressed in the plans for the site. This remains a serious defect in the ES.

On another point the Inspector will have looked for the experts' declaration in the documentation but it has not been analysed or alternatively it has been misread or misunderstood. The declaration contained in the ES demonstrates the opposite to what was needed.

We acknowledge that the ES contains a description of the expertise of the experts employed by RPS but the exclusion paragraphs we have highlighted and found in the Statement of Expertise seems to have been ignored with no explanation. The Inspector should have had this drawn to his attention together with the earlier work by the person approving the document advocating against a determination that the project should be screened as EIA Schedule 2.

Presumably PEDW fed the wrong belief to the Inspector but we have set out the reasons we consider such a conclusion is not only wrong but could not possibly have been accepted objectively.

The fact that the repeated assertions about the reports are not referenced by any inspector nor PEDW is a significant worry. Avoiding the implications of the endorsements should have been explained. We deal with this in detail later.

The same errors were made later on the second consideration of the ES. The same representations follow, as above. It is of interest that the Inspector failed to point out that PEDW had prevented the public from being involved up to this stage with PEDW

keeping documentation secret. This ought to have caused the Inspector to question what it is that PEDW is up to. It is yet again behaviour by PEDW designed to prejudice the public, to infringe the EIA process, to assist the Appellant and to assist PEDW in wrongly directing or instructing the Inspector.

At present there seems to be no acknowledgement/acceptance of the unlawful process and decisions. This needs addressing.

At the time of preparing these representations we have not had the advantage of the documentation that was prepared/agreed in preparation for and at the 1 day Inquiry on the 01 April 2025. This is yet another example of PEDW ensuring the public is prejudiced and is unable to take part to the extent permitted by law.

Failing to allow a member of the public to test by questioning the so-called experts relied upon by the Appellant is an unwarranted restriction on the investigation of the purported ES. It should be very clear that the public has questions that cannot be left to others who might at least be tainted by confirmatory bias.

We have set out the various defects that we are currently aware of. It is very clear that for the public to have any trust in this process the public must be allowed to question witnesses direct during this Inquiry and to summarise the position at the conclusion of the evidence. If the Appellant is given leave to question, to make representations, or to participate in any other way then the process is unfair but it is even more so in this case where the process has been undermined by those who ought to know better.

The Inspector is invited to discuss any limitations put on the public so as to arrive at a workable and fair system.

The Appellant

The burden is upon the Appellant to prove everything necessary for the EIA process and they cannot be allowed to put the onus upon a member of the public or their lawyer, if represented, to decide how they need to approach their case.

If there is an outstanding issue then they deal with it or lose it.

We noted at the 1 day Inquiry that Leading Counsel for the Appellant appeared to claim that Counsel for VCU needed to let them know who needed to be called. That must be a misstatement of the burden. It was also a clear indication that the Appellant was of the view that the involvement of the public (not the VCU) was not relevant as the focus was on the VCU and the Appellant took part in discussions that were also designed to undermine the public's involvement in the EIA process.

By demanding that counsel for VCU confirmed which witnesses the Appellant should call the Appellant was maintaining the dialogue that was designed to marginalise the

(rest of) the public. At that time the Appellant did not have the advantage of representations from the public which simply emphasises the contempt exhibited.

In due course the public will have lodged representations, the Appellant is then obliged to respond. Once that response is served time can be allowed for the situation to be reviewed by the public and others (including PEDW, the Inspector and the Appellant). It gives time to allow PEDW to get the disclosure up to date as leaving it to later would merely cause delay as the public is invited to consider the paperwork when other steps might have been expected.

When all these steps are concluded, a directions hearing can be arranged to determine what issues still remain. All relevant parties should be invited to take part in the directions hearing. Hopefully PEDW will have sorted itself out by then and the Inspector should be allocated enough reading time ahead of the meeting, and the time allowed for the meeting is commensurate with the work to be addressed.

Bear in mind that as the public is involved it might be useful to have an agenda that explains what is being dealt with so that the public will know what is relevant and, just as importantly, what is not relevant and why it is not relevant.

Directions might be necessary to determine who asks what questions obo the public. For the various reasons identified we cannot be lumped in with the VCU.

We accept (others may have a different view) that if the same point is made by a number of people there may be no point in multiple occasions when the same question is put. The people with the same or similar question may be required to pick who deals with the issue. It is at this time the Appellant can decide for themselves whom they decide to call. If they decide to ignore a point by not calling an expert to deal with it then they accept the likely consequences. Relevant assumptions can be made.

The process is simple. It is manageable. It is lawful.

We will deal with the ES later in our representations to keep things in order. The Appellant can respond and on the next occasion it would assist if Leading Counsel for the Appellant avoided the threat of costs against members of the public whether explicitly or implicitly.

Advocacy by the Appellant's experts

We include at this section some of the evidence that the experts instructed on behalf of the Appellant are content to act as advocates for the Appellant (subject to their repeated exclusionary declaration that they should not be responsible for their submissions!).

The 'experts' RPS rely upon were, in part, the people who submitted to the LPA an application for screening the project.

What is known about the project and impacts will demonstrate that RPS was economic with the relevant information which could only have been to obtain a decision that there were no significant impacts requiring a formal ES. If there was any doubt about that then look at the fact that there were 3 separate attempts to avoid the process. At least 3. We can only see 3 on the LPA website. The documents on the LPA register are too few as there must have been other correspondence and/or discussions. [The LPA is at fault with its disclosure.]

The screening process that took place seems to have all the necessary hallmarks of advocacy on behalf of the Applicant. It surely cannot be argued otherwise although it is doubtful the Appellant will agree. What must be very clear is that the disclosure on behalf of the applicant was selective.

We also need to point out that the initial application for screening was made by Darren Parker, Operational Director at RPS. The second item of correspondence was signed off by another member of RPS but was adopted by Darren Parker in the third correspondence.

The submissions do not deal with the issues that we know about and for which there is understandable concern. Mr Parker deals with his missing information on the basis that the application includes the proviso:-

> *"**to the extent the information is available**, a description of any likely significant effect of the proposed development on the environment resulting from.."* (our emphasis)

It is possible, at least, that Mr Parker was aware of other issues and made sure they were unable so as to include the provision we have emphasised. Another possibility is that RPS simply made sure that important impacts were not reported on at the screening stage so that they could be avoided when submitting relevant material for screening. Why else, we ask would that proviso be added. It would not be at all relevant to a screening application properly made.

Mr Parker fails to deal with certain matters that we believe should have been apparent to experts. He opens up an enquiry that should be made to test his credibility, namely what information was available, should have been available, but was left out of the screening material.

Another serious point against Mr Parker is the suggestion that on behalf of RPS and the Appellant:-

> *"We maintain our position that the 2017 EIA regulations seek to reduce the number of EIA developments by focusing on mitigation at the screening stage to ensure EIA is only undertaken for projects that are likely to have significant*

effects on the environment - including measures to avoid or prevent what might otherwise be significant environmental effects."

Mr Parker has set out a view of the importance of the EIA Regulations that we question as to its accuracy and suggest that the paragraph is at best designed to confuse. In any event, the clear indication is that the control over the reports lodged is with a person who has a low opinion of the impact of the EIA Regulations notwithstanding the (likely) unusual of potential punishment for infringements. The paragraph is an attempt at advocacy, poor advocacy.

Mr Parker goes on to assert that:-

To reiterate the conclusion of our Screening Opinion, the impact of the proposal is considered to be limited in its extent, magnitude and complexity and it is not likely to have any significant effects on the environment by virtue of its nature or location. The submission of relevant environmental information as referenced above will allow all relevant matters to be adequately considered through the planning application process.

Note that Mr Parker raises the importance or nature of the correspondence to an opinion rather than an application. The assertions he makes are very strong, they are clearly not correct but the problem is that he has a position to protect. Whether deliberate or otherwise his input into the purported ES is a poor decision on the basis of at least confirmatory bias but also a tendency to advocacy. We have not noticed anything from him to indicate that he accepts and explains the differing opinion he maintained as opposed to the appropriate Schedule 2 decision that was given.

Before leaving this paragraph we point out that the so-called screening opinion was not just his opinion. He has drawn in others to support the opinion. Presumably his stance is that all relevant experts at RPS were of the view that the project did not qualify as EIA development. If anybody was of the opposite opinion presumably he would have been bound to put the paragraph in different terms.

Mr Parker and others at RPS have a wish to move everything out of EIA consideration into planning application process. An obvious denial of the relevance of the EIA Regs that should have consequences as at least an attempt to infringe the EIA Regs. Access to the reports he references might make things clearer and demonstrate mere lack of expertise. But if mere lack of expertise is argued obo the experts at RPS we ask, rhetorically, how their opinions can carry any weight now.

The ES lately filed on behalf of the Appellant was approved by Darren Parker.

Does he have a history of advocating in this case on behalf of the Appellant? We say he obviously does.

Is there at least the prospect of confirmatory bias? This seems to be the man who felt it was necessary to include the sentence “This report shall be used for general information only.”

He makes use of the term “fraud” in the declaration which suggests he is aware of the way in which the CJS is important for dealing with infringements of the EIA Regs and the 2011 Directive, as amended. Hence the importance of that limiting declaration. It is of course of no effect if there was a criminal investigation. He does not seem to appreciate that simple fact. Notwithstanding he clearly saw the need to deny everything that could make the papers an ES. It is of no effect for any investigation into infringing intent as he has supported the use in these proceedings.

On the one hand Mr Parker seeks to deny responsibility, while on the other claiming the documentation amounts to an ES.

We are, to say the least, disappointed that all the experts involved in this Appeal seem to be content to ignore Mr Parker’s clear denial of responsibility and the level of dependence that ought to be placed on the purported ES.

Introduction by RPS

We object to much of what RPS says. As usual we will refer to the paragraph numbers when commenting.

1.1.2	The reliance they have on the Completeness Report is merely an indication of their wish to rely upon/take advantage of infringements of the EIA Regs and the 2011 Directive. If they are experts they will know the process followed by PEDW is made up by the officer and is adverse to any attempt to follow the lawful requirements of the EIA Regs. This is behaviour that may also give rise to such infringements.
1.1.3	This is a claim that is without substance. See next comment.
1.2.1	It is a common trick to set out an accurate assessment of what is required. In this case what is required of an ES. Unfortunately for the Appellant we agree and make the point that this ES fails to reach that level and the same comment applies to the ES at LPA stage. It also highlights that they ought to have corrected the Inspector when steps were being taken to move important impacts from the ES to some later indeterminate process and date. Note that there is no acceptance here that the general public should be provided with the material to ensure effective involvement. The author refers to "**likely**" effects whereas Regulation 4 of the EIA Regs uses terms that seem to require a higher degree of responsibility. The Regulation includes "The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of proposed development…". We ask whether this use of the word 'likely' was merely another attempt to control the narrative and mislead the Inspector and the general public? (our emphasis)
1.2.3	It might have been helpful for the author to deal with the impact of Article 10a to remind people of the importance of compliance.
1.2.5	The author omitted inconvenient requirements such as Regulation 4.
1.3.1	The author's use of the expression 'focussed EIA' is not something we have found. We noted the use of the expression 'formal EIA' in the decision. The difference is of course very important so we assume we have overlooked the relevant document? If the document is brought to our attention we will consider it. In the meantime note that a focussed EIA would be inappropriate where the screening opinion was deficient and, so far as we are aware, there was never an attempt to seek a scoping opinion. There are special processes for scoping.
1.3.3	The Screening Report is produced that shows the use of the expression '**formal** Environmental Impact Assessment'. (our emphasis). The author's claim is important to the Appellant, the author must be aware of the lack of a scoping request, if there is nothing to support the author then this might support the view that it is an attempt at an intentional infringement of the EIA Regs.

1.3.4	This is a made up claim without any basis in law. It is helpful to alert everybody to a possible intention to usurp the EIA process.
1.3.5	The author is relying upon the possible incompetence of the LPA and PEDW to take advantage of their flawed processes, decisions, representations. There is an obligation on experts who are meant to be independent of the Appellant to bring errors to the attention of the Inspector, not take advantage of them. The ES is already an example of advocacy for the Appellant rather than a report under the Regs.
1.3.6	If the Appellant had submitted an accurate screening request then the LPA should have added to the list of matters, at the very least, the need for a detailed report on how the sewage would be dealt with as well as possible flooding down field from the industrial buildings. It is not appropriate for experts to be in error on screening and then rely on their error to support their poor decision making later. Their claim does not accord with the description at paragraphs 1.2.1 and 1.2.2. No matter how much the author chooses to pick out of the screening report, it is based on the inadequate disclosure by the Appellant and probably this author. However, we do note that the final bullet point appears to be an aceptance of the additional important impacts we find in Regulation 4.
1.4.1	We just wanted to flag up the ridiculous claim that the NTS is in layman's terms. In any event we believe the expression should have been crafted around 'the general public' and in our case this includes a number of areas of high deprivation. As expected the NTS only deals with those matters the Appellant wants to deal with rather than follow the words it uses in paragraph 1.2.1 namely "the process of compiling, evaluating and presenting all likely significant environmental effects of a proposed development and ensures such effects are fully understood".

Site Description etc

The plans included within this chapter show how the property of some interest, Egerton Grey, is almost completely surround by the Appellant's land (just a driveway connects this address to the public road) and each of the plans seem to demonstrate the potential impacts on the address. Yet, there is nothing in the ES to deal with this and surprisingly nothing from the owners of Egerton Grey. It would be a failure of investigation to assume this means that the owners of Egerton Grey support the Appeal. Even if they did there should still be an obligation to deal with the likely impacts of this properly. The plans are a bit on the small side but there seems to be nothing to stress the two brooks that might only be hinted at as existing hedgerows and woodland.

Planning Policy Context

This reads as advocacy in that a lot of the relevant law is dealt with but in a way to convince the reader that it is supportive of the development. There is nothing included as one might expect from an expert involved in an ES who will be able to balance the competing needs of the area. This is left to the Inspector as neither the Appellant nor the LPA will want to deal with counter issues.

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.

Discussion around Article 10a of the 2011 Directive

Basics

We include an issue that raises a number of questions for those who have been dealing with this Appeal with what may be considered to be insufficient regard for the EIA Regs, the relevant Directives, the Aarhus Convention and other matters to protect the environment and the health of residents and future generations.

The background European law that we set out is meant to demonstrate the depth of research for a member of the public that might be needed to properly consider these issues that will be bread and butter to the experts although not necessarily discussed by them. As we have not seen a flaw in our thoughts we continued to develop the points. Then we discovered our research was correct and already set out in a few lines that experts will have been able to draw to our attention.

This is important as it explains the responsibilities the Welsh Government had when transposing the 2011 Directive (as amended). After we finished our research on this subject we found, by sheer happenstance, that we had the support of the Welsh Government on these issues. See what we have added at the end of this chapter.

Rather than leave it at that we have left in our research as it is important to demonstrate that the Welsh Government explanation needs expanding for others, like us, who had no idea of the criminal responsibility.

We will be mainly concerned with the obligation of Sincere Cooperation and the Principle of Effectiveness.

The Consolidated Versions of the Treaty on European Union explains at Article 4(3)[12] the obligation of “sincere cooperation" is:

> *Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*
> *The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.*
> *The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.*

This gives background to the way in which the UK Government and Wales were required to transpose Directives. Member States were required to facilitate the achievement of the

[12] https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Member States would achieve this, in part, by accurately transposing Directives into local law.

However, if the transposition was at odds with the Directive then the Directive takes precedence, the transposition needs to be read to achieve the Union's objective.

There are various cases reported for England and Wales dealing with the issue where pronouncements are made on the subject of transposition of Directives. We are not in a position to give quotes from all relevant cases.

One example is the case of Oyarce v Cheshire County Council where at paragraph 13 we see the helpful expression used of *effective transposition*:

> *13. It is convenient to mention as part of this general exposition that an issue of some importance when the court considers whether a member state has performed its obligation of transposition is the need for the state to provide effective remedies for its citizens in asserting the rights envisaged by the Directive in question. To identify that obligation, which differs from other issues as to effectiveness in Community law that I will have to address later in this judgment, I call the obligation one of effective transposition.*[13] ...

A directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but it is left to the national authorities the choice of form and methods.

The Principle of Effectiveness in European Law (the Principle)[14] will be of considerable help in understanding what sincere cooperation requires. What the Member State accepts into its law.

The Principle of Effectiveness seems to address the point significantly, as it has been clarified[15]:

> *As far as directives are concerned, the principle of effectiveness translates into the Member States' obligation, under Art 4(3) TEU/10 EC, 'to take all measures to guarantee the application and effectiveness of Community law', in particular to ensure 'that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in*

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[13] Oyarce v Cheshire County Council [2008] EWCA Civ 434 (02 May 2008)

[14] https://eur-lex.europa.eu/resource.html?uri=cellar:c382f65d-618a-4c72-9135-1e68087499fa.0006.02/DOC_2&format=PDF

[15] https://max-eup2012.mpipriv.de/index.php/Principle_of_Effectiveness#:~:text=As%20far%20as%20directives%20are%20concerned%2C%20the%20principle,Commission%20v%20Greece%20ECR%202965%20paras%2023%20ff%29

any event, make the penalty effective, proportionate and dissuasive' (See the ECJ Case 68/88 – Commission v Greece [1989] ECR 2965 paras 23 ff[16]*).*

This case of 68/88 at paragraph 4 advises:

(4) By failing to institute criminal or disciplinary proceedings against the persons who took part in and helped conceal the transactions which made it possible to evade the abovementioned agricultural levies the Hellenic Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty

The Principle, as described in the case of 68/88, explains how enforcement of Directives is to be dealt with in member States. It also gives assistance to show what may be needed by way of sincere cooperation amongst the Member States.

In relation to Environmental Impact Assessments and with regard to the Welsh implementation of the 2011 Directive, we can find no specific provisions in the EIA Regs or elsewhere explaining the way in which Wales has transposed Article 10a of the 2011 Directive so as to make clear the effective, proportionate and dissuasive penalties that will apply to infringements of the national provisions.

The implication, we say, is that the Welsh Government concluded that there are sufficient criminal sanctions that will cover such transgressions thereby making it otiose to include specific regulations in the EIA Regs. In that way the Welsh Government complied with its obligation of sincere cooperation and has included effective, proportionate and dissuasive penalties. The point is addressed later.

Background Planning points from Welsh Law/Government

Senedd Research Issued advice known as the planning series. Module 7 deals with enforcement in relation to planning matters. At no point in Module 7 is there a reference to EIA issues. This is consistent with our understanding that no specific provision has been made for breaches of the EIA Regs and the 2011 Directive within the transposing exercise.

Module 7 advises:-

Although in most cases it is not a criminal offence to carry out an unauthorised development or make a change in land use, powers are available to LPAs to bring unauthorised development under planning control. Failure to comply with a court order, or enforcement action taken under it, may be an offence.

The Module goes on to explain what types of enforcement action can be taken by the LPA. These include enforcement notice, stop notice, temporary stop notice, breach of condition notice, injunction, section 215 notices and other types of actions in relation to advertisements, failure to comply with regulations about listed buildings and conservation areas.

[16] https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=68/88&td=ALL

There is no provision asserted for enforcement of breaches of the EIA Regs and the 2011 Directive which seems to support the view that the Welsh Government intended such matters to be dealt with under the CJS. This seems to acknowledge the Welsh Government's view of the level of seriousness of any infringements of the EIA Regs.

Module10 of the same series dealing with Environmental Impact Assessment cases is the Welsh Government planning advice in relation to EIA developments. However, the Module makes clear it is not concerned with enforcement matters, it deals solely with process.

However, Module 10 does make reference to and therefore guides the reader towards relevant material either directly or by incorporation of the links into the module ensuring the reader will be aware of the likelihood of penalties and seriousness of infringements. These matters include the 2011 Directive and the 2014 Directive, the UN Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus) with what we call an imperative that public participation in decision-making is a key aspect of both of the Directives. In brief, Module 10 ensures that all the professionals will be well aware of the issues we are raising here and elsewhere in our response.

Another note of importance in Module 10 is:-

> **Objectives**
> *The EIA procedure* ***guarantees environmental protection and transparency*** *with regard to the decision-making process for several public and private projects. With its wide scope and broad purpose, the EIA ensures that environmental concerns are considered from the very beginning of new building or development projects, or their changes or extensions.* ***It allows the public to actively engage in the EIA procedure.*** [our emphasis]

We note the need for transparency and active engagement for the public. Any over-enthusiastic moves to restrict the engagement of the public should also be met with sanctions. PEDW, we say, has clearly decided that transparency is no essential and the public's involvement should be restricted.

We ask, rhetorically, whether the attitude of PEDW on these matters might be an infringement of the EIA Regs and the 2011 Directive.

Links provided also take the reader to the 'check list' for implementation. The Checklist repeated the requirement of Article 10a for the 2011 Directive.

The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009[17], although not specifically on point for this discussion, does show a willingness and perhaps an imperative to criminalise environmental crime with penalties set out as:-

[17] https://www.legislation.gov.uk/wsi/2009/995/contents

Penalties

34.—(1) A person guilty of an offence under these Regulations is liable—

(a)on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both; or

(b)on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a)any director, manager, secretary or other similar person of the body corporate, or

(b)any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(3) …

Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law is another indicator of the importance of environmental crime and the imperative to punish via the criminal law in appropriate cases. This is an example of another important Directive in support of the view that the Welsh Government intended to rely upon the CJS to ensure Article 10a was part of the transposition of the 2011 Directive and complied with by applicants and those tasked with the decision making and/or processing.

The 2008 Directive makes specific reference to various other Directives. At Article 2 it makes clear:-

*a) **'unlawful' means infringing**:* [our emphasis]

(i) the legislation adopted pursuant to the EC Treaty and listed in Annex A; or

(ii) [Euratom Treaty matters]

(iii) a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the Community legislation referred to in (i) or (ii);

The Annex A list includes a number of Directives that would impact on EIA matters although not listing either the 2011 Directive nor the 2014 Directive (for obvious reasons).

Article 5 of the 2008 Directive repeats the expression "punishable by effective and dissuasive criminal penalties".

The Welsh Government did see the need to include details of punishment that might follow if a person failed to comply with or infringed the EIA Regs when it came to the Regs dealing with agriculture[18].

The Agriculture EIA Regs shows that the Welsh Government was aware of the need to include penalties by way of the CJS to ensure the dissuasive nature of penalties for breaches of the EIA Regs. In this case, to avoid the more severe consequences under the CJS relied upon for the EIA Regs the Welsh Government introduced a specific offence with reduced penalties.

There is a clear inference, we say, that the breaches of the EIA Regs would carry *effective, proportionate and dissuasive*, punishment. Steps were taken in the Agriculture EIA Regs to mitigate what would otherwise be draconian when the impact was obviously considered to be not so serious. This is something that individual States were empowered to do when transposing Directives.

The Provision in the Agriculture EIA Regs is:

> ***Offence of procuring a decision by supplying false information***
> ***23.****—(1) It is an offence for a person who, for the purpose of procuring a particular decision on an application made under these Regulations—*
> *(a)knowingly or recklessly makes a statement which is false or misleading in a material particular,*
> *(b)with intent to deceive, uses a document that is false or misleading in a material particular, or*
> *(c)with intent to deceive, withholds material information.*
> *(2) A person guilty of an offence under paragraph (1) is liable—*
> *(a)on summary conviction, to a fine not exceeding the statutory maximum; or*
> *(b)on conviction on indictment, to a fine.*

What would make absolutely no sense would be an assumption that the Government only intended to use the CJS to punish farmers for breaches of Environmental Regulations.

The provision in the Agriculture EIA Regs might be limited to the applicant and their advisers. That left any misconduct by officials to be dealt with by the CJS as any such conduct would be seen as an even greater transgression in view of the greater impact on the planning system. This would normally be covered by such things as misconduct in a public office or in more serious instances the Bribery Act. The CJS is well placed to ensure punishment is effective, proportionate and dissuasive.

The need to take dissuasive action is essential to encourage better conduct going forward. *Dissuasive* action implies the sort of punishment available in the Fraud Act, common law/statute conspiracy, Proceeds of Crime Act, Bribery Act, misconduct in a public office, regulatory consequences, and possibly other options.

[18] The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017

It is very unlikely that the Welsh Government overlooked the requirement for strong penalties.

Article 10a

The Article was introduced by way of the amending Directive 2014/52/EU dated 16 April 2014.

Article 1(13) of the 2014 Directive inserted into Article 10 of the 2011 Directive a new Article 10a namely:

> *'Article 10a*
> *Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.';*

When transposing the 2011 Directive (as amended) the Welsh Government did not include penalties. However, the Welsh Government was bound to do so and it must be implied that the Welsh Government did, in effect, transpose fully the 2011 Directive by relying upon the CJS to punish wrongdoing, infringements of the EIA Regs. That was a clear obligation on the Welsh Government in order to comply with Treaty obligations.

It is accepted that EIA is not a procedure for preventing projects with significant environmental impacts from being implemented, although in certain circumstances this could be the appropriate outcome of the process. Rather the intention is that actions are authorised in the full knowledge of their environmental consequences.

We link the reference to full knowledge to the following.

Public participation is integral to the process of assessment. This was emphasised in the case of *Berkeley*, where Lord Hoffmann stated at p 615:

> *"The directly enforceable right of the citizen which is accorded by the Directive is not merely a right to a fully informed decision on the substantive issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive in which the public, however misguided or wrongheaded its views may be, is given an opportunity to express its opinion on the environmental issues."*

This is considered to be a strong pronouncement of the need for effective public participation.

The need to interpret the Regulations by reference to the Directives was recognised by the Welsh Government as long ago as 1999 when issuing Circular 11/99[19].

[19] https://www.gov.wales/sites/default/files/publications/2018-11/circular-1199-environmental-impact-assessment.pdf

This circular dealt with the question of Environmental Impact Assessment. Paragraph 12 of the Circular begins:

> *12. The Regulations must be interpreted in the context of the Directive itself.*

The view then expressed by the Welsh Office which has been adopted by the Welsh Government subsequently is correct and would equally apply to the interpretation of the 2011 Directive (as amended).

It is possible that our views of the ways in which infringement of the EIA Regs should be punished will be rejected by the professionals but that would demonstrate they fear for what they have done. Those acting in accordance with the EIA Regs and the 2011 Directive have no reason to deny the involvement of the CJS. Failure to acknowledge the involvement of the CJS might be an important pointer towards reasons why there needs to be clearer advice upon the availability of penalties that are effective, proportionate and dissuasive.

Welsh Government view of Criminal Activity

To underline the detailed representations on the possible consequences of breaches of the EIA Regs we have very recently come across the following explanatory memorandum that supports much of our thinking.

The Minister, perhaps understandably, did not foresee the ways in which the EIA Regs could be undermined by Government Departments, LPAs, others but in all probability the Minister's conclusions about the adequacy of the CJS would remain the same. Breaches can be addressed by the CJS so as to ensure the EIA Regs are complied with across the piste.

To find the relevant part of the **Explanatory Memorandum to the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017**[20] follow the link and check the bottom of page 23 and the top of page 24. The importance is such that we are copying the relevant explanation from the Minister below.

First we repeat the opening words from page 1 of the explanatory memorandum. This stresses that PEDW will be well aware of the documentation as the Planning Directorate was heavily involved in the preparation:

> *This Explanatory Memorandum has been prepared by Planning Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.*
> *Minister's Declaration*
> *In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Country Planning (Environmental Impact*

[20] EM/RIA GUIDANCE

Assessment) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.
Lesley Griffiths AM
Cabinet Secretary for Environment and Rural Affairs
24 April 2017

Page 23 includes this introduction:

Art 10a - Penalties for infringements of national provisions.

Page 24 then goes on to explain why there are no offences/penalties included in the EIA Regs:-

Environmental reports (and other information) that are misleading
At present, is (sic) someone were to intentionally make a false certificate, intending by doing so to make a gain for themself or another, it would constitute the offence of fraud by false representation. As such, legislation is already in place to provide a system of penalties for false or misleading information in EIA applications. As the legislation is already in existence, there is no additional burden on any parties.

In full support for our earlier representations the Minister points us to the CJS and makes the more basic point that all those involved in the process will understand what is required of them, they will also understand what the CJS demands of people and organisations. When dealing with the EIA Regs nothing more nor less is needed other than compliance with the Law as it already exists. We all know the Law, we all must comply with the Law.

It is understandable that the Minister may have assumed that any criminality would be from those who would be seeking a profit from such behaviour. The integrity of Government Departments, Quasi Government Departments, LPAs, and other professionals would have been assumed.

It also follows that the implications of the CJS do not only apply to the EIA Regs but by necessary implication the CJS also applied to earlier iterations of Environmental Impact Regulations.

Due, possibly, to a lack of enforcement over the years the 'industry' as a whole seems to have introduced convenience factors and occasional very questionable decision-making that may be caught by the CJS. For infringements to be met with effective, proportionate and dissuasive penalties there must be enforcement when infringements may have occurred.

After all, those involved who state (by implication if not directly) that they are qualified to deal with these matters either must know about the CJS implications. Although we, as simple members of the public, did not understand the CJS implications the reality is that everybody is assumed to know the law and ignorance of the law does not accord a

defence. The obligations on those involved are very high, it is not an easy source of wealth with no repercussions for bad behaviour.

It is easier and safer for everybody to get it right by following all the guidance given than to get it wrong.

Appendix A

Appendix B

Appendix C