

IN MATTER OF A PLANNING APPEAL

BEFORE PLANNING AND ENVIRONMENT DECISIONS WALES

Re Land at Model Farm, Port Road, Rhose CF62 3BT

INTERIM LEGAL SUBMISSIONS ON BEHALF OF
VALE COMMUNITIES UNITE

A. INTRODUCTION AND OVERVIEW

1. Vale Communities Unite (“VCU”) make these submissions as an interested party to Legal & General (Strategic Land) Ltd’s (“**the Appellant**”) appeal against Vale of Glamorgan Council’s (“**the Council**”) non-determination of their application for planning permission of 22 April 2021 (pursuant to section 78(2) of the Town and Country Planning Act 1990 (“**the 1990 Act**”)) at Land at Model Farm, Port Road, Rhose CF62 3BT (“**Model Farm**”).
2. The procedural background to this appeal is unusually convoluted. In brief:
 - a. On 1 March 2023, VOG’s planning committee voted to refuse the Appellant’s application. As the planning committee’s decision was contrary to the planning officer’s recommendation, it is understood that (somewhat exceptionally), the planning officer declined to assist the committee in articulating and formalizing their reasons for refusal. As such, the application was deferred to allow further consideration of the reasons for refusal.
 - b. On 29 March 2023, the Appellant issued an appeal on the basis of non-determination.
 - c. On 18 May 2023, a special planning committee meeting was held to provide members with an update on the planning application. At that meeting, with the assistance of external planning consultants appointed by the committee, a

motion was passed resolving to defend the proposed refusal of the Appellant's application, on the basis of two putative reasons concerning biodiversity and historic assets respectively.

- d. On 12 June 2023, PEDW formally requested further information from the Appellant, in respect of its Environmental Statement, pursuant to regulation 24 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 ("the 2017 Regulations"). The Council had previously determined that an Environmental Impact Assessment ("EIA") was required, following a screening opinion undertaken in 2019.
 - e. In September 2024, the Appellant submitted its 'Environmental Statement Update', providing clean and tracked versions of its Environmental Statement, alongside an overview 'update guide'. As set out further below, the Environmental Statement has effectively been significantly rewritten, and a very large volume of new text introduced. It is, essentially, an entirely new and significantly larger document.
 - f. On 17 January 2024, following a closed session, the Council's planning committee resolved to withdraw the putative reasons for refusal. It is understood that the Council therefore no longer intends to oppose the appeal. As at the time of drafting (20 January 2024), VCU has not had sight of any written record of the planning committee meeting, nor, therefore, any formal reasons for the Council's *volte-face* as to its stance on the application. VCU fully reserves its position as to the lawfulness of the Council's decision, and to make further consequential representations following the publication of the Council's reasoned decision.
3. VCU opposes the appeal. VCU relies upon the representations it has already made: (a) to the Council's planning committee in advance of their meeting on 1 March 2023, and (b) its representations to PEDW dated 9 December 2024.
4. In these brief submissions, VCU addresses two issues arising in respect of the environmental impact assessment undertaken by the Appellant:

- a. First, VCU is concerned that the statutorily prescribed procedure set out in the 2017 Regulations has not been followed, in respect of the introduction of the new Environmental Statement.
 - b. Secondly, and in any event, the development proposal fails to maintain and enhance biodiversity (contrary to the section 6 duty imposed by Environment (Wales) Act 2016 (“the 2016 Act”)).
5. For the avoidance of doubt, in addition, VCU maintains its objection to the proposed development on the following primary bases: (1) financial viability; (2) heritage, (3) drainage; (4) transport. VCU intends to challenge the Appellant’s case accordingly during the course of the inquiry.

B. ISSUE (1): COMPLIANCE WITH THE 2017 REGULATIONS

Legal framework

Definition of environmental statements

6. Regulation 17(1) of the 2017 Regulations provides:
- (1) An EIA application must be accompanied by an environmental statement for the purposes of these Regulations but this is subject to paragraph (2).*
7. Regulation 17(3) prescribes, in detail, the contents of an environmental statement. It must include:
- (a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;*
- (b) a description of the likely significant effects of the proposed development on the environment;*
- (c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;*
- (d) a description of the reasonable alternatives studied by the applicant or appellant, which are relevant to the proposed development and its specific*

characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the development on the environment;

(e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

Regulation 19: Publicity requirements for environmental statements

8. Regulation 19 imposes specific publicity requirements. These include, in particular, that a notice (“**regulation 19 notice**”) is published in a local newspaper, providing certain details of the application (regulation 19(2)), and the posting of a notice physically on the relevant land (regulation 19(4)).
9. The applicant or appellant who submits an environmental statement in connection with an application or appeal, must ensure that a reasonable number of copies of the statement are available at the address specified within the regulation 19 notice (pursuant to regulation 22).

Regulation 21: Procedure before the Welsh Ministers

10. Regulation 21 provides a specific procedure to be followed where an applicant or appellant submits an environmental statement to the Welsh Ministers for determination (either in a called-in application, or on appeal).
11. Regulation 21(4) obliges the Welsh Ministers to comply with the notification and consultation requirements imposed by regulations 18(3), (4) and (6) as follows:
 - (3) *When [the Welsh Ministers] receive an environmental statement, [the Welsh Ministers] must—*

...
 - (b) *inform the applicant of the number of copies required to enable the authority to comply with sub-paragraph (c);*

(c) forward to any consultee which has not received a copy direct from the applicant, a copy of the statement and inform any such consultee that they may make representations;

(d) where the [Welsh Ministers] are aware of any particular person who is or is likely to be affected by, or has an interest in, the application and who is unlikely to become aware of it by means of electronic publication or site notice or by local advertisement, send a notice to such person containing the details set out in regulation 19(2)(b) to (k) and the name and address of the [Welsh Ministers].

(4) The applicant must send the copies required for the purposes of paragraph (3)(c) to the relevant planning authority.

...

(6) The [Welsh Ministers] must not determine the application until the expiry of 30 days from the last date on which a copy of the statement was served in accordance with this regulation.

Regulation 24: Further information and evidence in respect of environmental statements

12. Regulation 24(1) provides as follows:

(1) If a relevant planning authority, the Welsh Ministers or inspector dealing with an application or appeal in relation to which the applicant or appellant has submitted an environmental statement, are of the opinion that, in order to satisfy the requirements of regulation 17(3) it is necessary for the statement to be supplemented with additional information which is directly relevant to reaching a reasoned conclusion on the likely significant effects of the development described in the application, the relevant planning authority, the Welsh Ministers or inspector must notify the applicant or appellant accordingly and the applicant or appellant must provide that additional information in paper and electronic format, unless otherwise agreed in writing; and such additional information is referred to in these Regulations as “further information” (“gwybodaeth bellach”).

(2) Paragraphs (3) to (9) apply in relation to further information and any other information except in so far as—

(a) the further information and any other information is provided for the purposes of an inquiry or hearing held under the 1990 Act; and

(b) the request for the further information made pursuant to paragraph (1) stated that it was to be provided for such purposes.

VCU's submissions

13. VCU is concerned that the 'further information' provided by the Appellant is, in reality, a substantially new environmental statement. It does not merely supplement the previous environmental statement, it supersedes it. Amongst other things:
 - a. The new, green text encompasses over some 150 pages of a 295 environmental statement.
 - b. The new environmental statement and addresses (for the first time) biodiversity net benefit (within an entirely new chapter headed 'ecology'), and climate change.
 - c. The environmental statement also includes new data, including (for example) from activity surveys carried out in 2024.
14. The Appellant has thereby effectively circumvented the publicity and consultation requirements prescribed by the 2017 Regulations.
15. The opportunity for applicants and appellants to provide 'further information' on request is plainly not designed for essentially a new environmental statement to be submitted. VCU avers that it is intended to perfect an inadequate environmental statement, not to introduce an entirely new, replacement version.
16. The immediate result of this approach has been the highly irregular *volte-face* by the Council in respect of its stance on the planning application. On the basis of a new environmental statement, which was not adequately publicised, and has thereby been (as at the date of the Council's decision of 17 January 2025) effectively insulated from scrutiny, the Council decided not to oppose the appeal. In other words, the Council has decided its stance on the planning application on the basis of a procedurally irregular environmental statement. This is (at the very least) plainly unsatisfactory, and as set out above, VCU reserves its position as to the lawfulness of the Council's decision.

17. In any event, VCU is concerned that there has not been adequate public notification of the new environmental statement, so as to enable and facilitate adequate public participation in the decision-making process, in accordance with the overarching purposes of the 2017 Regulations.

C. ISSUE (2): BIODIVERSITY

Biodiversity net benefit: Legal and policy framework

18. The Environment (Wales) Act 2016 makes the following relevant provision in respect of biodiversity. Section 6 provides (insofar as material):

6 Biodiversity and resilience of ecosystems duty

(1) A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.

(2) In complying with subsection (1), a public authority must take account of the resilience of ecosystems, in particular the following aspects—

- (a) diversity between and within ecosystems;*
- (b) the connections between and within ecosystems;*
- (c) the scale of ecosystems;*
- (d) the condition of ecosystems (including their structure and functioning);*
- (e) the adaptability of ecosystems.*

...

(4) In complying with subsection (1)—

(a) the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government, a Minister of the Crown and a government department must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, and

(b) any other public authority must have regard to any guidance given to it by the Welsh Ministers.

...

19. Planning Policy Wales (“PPW”) (12th edition, updated on 18 October 2023) introduces the following relevant policy:

6.4.3... Development plan strategies, policies and development proposals must consider the need to:

- support the maintenance and enhancement of biodiversity and the resilience of ecosystems;*
- ensure action in Wales contributes to meeting international responsibilities and obligations for biodiversity and habitats, including the most recent targets set out in the 2022 UN Global Biodiversity Framework;*
- ensure statutorily and non-statutorily designated sites and habitats are properly protected and managed and their role at the heart of resilient ecological networks is safeguarded;*
- safeguard protected species and species of principal importance and existing biodiversity assets from direct, indirect or cumulative adverse impacts that affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water, air and soil, including peat; and*
- secure the maintenance and enhancement of ecosystem resilience and resilient ecological networks by improving diversity, extent, condition, and connectivity.*

6.4.4... All reasonable steps must be taken to maintain and enhance biodiversity and promote the resilience of ecosystems and these should be balanced with the wider economic and social needs of business and local communities. Where adverse effects on biodiversity and ecosystem resilience cannot be avoided, minimised or mitigated/restored, and as a last resort compensated for, it will be necessary to refuse planning permission.

Biodiversity and Resilience of Ecosystems Duty (Section 6 Duty)

6.4.5 Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species (not including non native

invasive species), locally or nationally and must work alongside nature and it must provide a net benefit for biodiversity and improve, or enable the improvement, of the resilience of ecosystems. A net benefit for biodiversity is the concept that development should leave biodiversity and the resilience of ecosystems in a significantly better state than before, through securing immediate and long-term, measurable and demonstrable benefit, primarily on or immediately adjacent to the site. The step-wise approach outlined below is the means of demonstrating the steps which have been taken towards securing a net benefit for biodiversity. In doing so, planning authorities must also take account of and promote the resilience of ecosystems, in particular the following attributes, known as the DECCA Framework:

- diversity between and within ecosystems;*
- the extent or scale of ecosystems;*
- the condition of ecosystems including their structure and functioning;*
- the connections between and within ecosystems; and*
- adaptability of ecosystems including their ability to adapt to, resist and recover from a range of pressures likely to be placed on them through climate change for example.*

...

6.4.11 Planning authorities must follow a step- wise approach to maintain and enhance biodiversity, build resilient ecological networks and deliver net benefits for biodiversity by ensuring that any adverse environmental effects are firstly avoided, then minimized, mitigated, and as a last resort compensated for. Enhancement must be secured by delivering a biodiversity benefit primarily on site or immediately adjacent to the site, over and above that required to mitigate or compensate for any negative impact.

6.4.12... Where biodiversity enhancement proportionate to the scale and nature of the development is not proposed as part of an application, significant weight will be given to its absence, and unless other significant material considerations indicate otherwise, it will be necessary to refuse permission. Enhancement measures could include on-site, locally relevant, habitat creation and/or could be part of the development itself favouring the use of native species using biodiverse nature-based solutions such as SuDS, green roofs, grassland

management for wildflowers or reptile refugia, woodland expansion, and wetland creation.

6.4.13 Improving ecosystem resilience, particularly improving connectivity to the immediate surroundings, would be a key contribution to on-site avoidance, minimisation, and mitigation strategies and enhancement. How a development would improve the attributes of resilience should be demonstrated as far as this is reasonably practical.

6.4.14 Planning authorities can ensure biodiversity enhancement is undertaken at each stage of the step-wise approach below through attaching planning conditions and/or other obligations to a planning permission. Planning authorities should take care to ensure that any conditions necessary to implement this policy are relevant to planning and the development to be permitted, and are enforceable, precise, and reasonable in all other respects.

20. The ‘step-wise approach’ prescribed by PPW is set out at para 6.4.15. In broad terms, it sets out a hierarchy requiring: (a) avoidance of harm, (b) minimization of impact, (c) mitigation and, as a last resort (d) compensation.

21. In addition, local planning policies also make provision for the protection of biodiversity. These include (amongst others) local development plan policy MD9, ‘Promoting Biodiversity’, which provides:

‘New development proposals will be required to conserve and where appropriate enhance biodiversity interests unless it can be demonstrated that:
1. The need for the development clearly outweighs the biodiversity value of the site; and 2. The impacts of the development can be satisfactorily mitigated and acceptably managed through appropriate future management regimes.’

22. MD9’s effect, alongside other local development plan policies (MG19, MG20, and MG20) is summarized in the Biodiversity and Development Supplementary Planning Guidance issued by the Council in 2018:

development must avoid any adverse impact on wildlife or biodiversity features on (or in close proximity to) a development site. When this is not possible,

developers must be able to justify any adverse impacts and illustrate how the development has been designed to minimise the impact on biodiversity.

VCU's Submissions

23. As is set out in VCU's earlier representations (both the Council and to PEDW), Model Farm has a unique and rich in biodiversity. For example, there are three priority habitats on the site, as well as several protected species.
24. First, PPW12 requires, in accordance with the long established mitigation hierarchy, that loss of biodiversity should be avoided. If it is unavoidable, then impact should be minimized, and only then, mitigated, and in turn compensated, as a last resort.
25. The Appellant's approach appears to simply be to ignore the hierarchy, and immediately jump to mitigation. There is no consideration, on the face of the updated environmental statement, of how biodiversity loss at Model Farm could be avoided.
26. Secondly, the Appellant has failed to demonstrate compliance with (amongst others) local development plan policy MD9. The Appellant has not demonstrated justified the adverse impacts arising from the scheme, nor sought to illustrate how the development has been designed to minimise the impact on biodiversity.

D. CONCLUSION

27. For the reasons set out above, VCU has serious concerns about both the process and substance of the Appellant's approach to environmental impacts of the proposed development.
28. VCU reserves its position to make further submissions and representations in respect of all matters.

Gethin Thomas
39 Essex Chambers
20 January 2025

