



VALE OF GLAMORGAN COUNCIL

CIL COMPLIANCE STATEMENT

APPEAL BY LEGAL & GENERAL (STRATEGIC LAND) LTD

APPEAL REFERENCE CAS-02641-G8G7M5

LAND AT MODEL FARM,

PORT ROAD

RHOOSE

CF62 3BT

INTRODUCTION:

This Statement addresses the Planning Obligations sought in connection with the Appeal at Land at Model Farm. This statement is provided without prejudice to the Council's case and is in draft form pending the final agreement of the Section 106 Legal Agreement with the Appellant.

RELEVANT LEGISLATION AND POLICIES:

The Community Infrastructure Levy Regulations 2010:

Regulation 122 limits the use of planning obligations to only where the obligation is:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

Local Development Plan

LDP Policy MD4 'Community Infrastructure and Planning Obligations' and the Council's SPG on Planning Obligations, sets out the policy framework for seeking new and improved infrastructure, facilities and services appropriate to the scale, type and location of proposed new development.

In particular, the SPG on Planning Obligations sets out thresholds and formulas for each type of obligation, based upon different development types.

During negotiations in connection with the planning application, the appellant has raised concerns that the Council's requirements for planning obligations threaten the economic viability of the development. Welsh Government advice, as well as the Council's LDP and the Planning Obligations SPG, make it clear that development viability is a material consideration in determining planning applications. LDP Policy MD4 recognises that regard should be given to development viability, and supporting paragraphs 7.29-7.30 advise as follows:

"7.29 Where a developer contends that the Section 106 requirements are too onerous...and will potentially make the scheme unviable, they will be expected to submit a breakdown of the development costs and anticipated profits based on properly sourced evidence. Developers must take account of the necessary planning obligation requirements at an early stage to ensure these are reflected in the land value assumptions. The Council may seek independent verification of these details before

considering whether to reduce the number and / or value of planning obligations sought.

7.30 The Council accepts that it may not always be possible for developers to satisfy all the planning obligation requirements. Where this is proven to be the case, the Council will need to consider what the planning obligation priorities will be for that particular development, having regard to the site location and the local needs in the vicinity. This will be considered on a site by site basis having regard to the statutory tests. The Welsh Government has advised that, in such circumstances, affordable housing should be the priority once sufficient infrastructure to enable the scheme to proceed has been made available”

It has been clearly demonstrated that no excess profit exists within the scheme to provide anything but essential infrastructure. These include, as discussed in more detail below: land to provide an extension to Porthkerry Country Park; a commuted sum for maintenance of this land (as public open space) and ecological mitigation; and land provision in lieu of and to facilitate sustainable transport infrastructure.

PLANNING OBLIGATIONS

The planning obligations sought in connection with the Appeal, to mitigate the impacts of the development, and to make it acceptable in planning terms, are set out in the table below, including their specific requirements and justification, supported by policy and other material considerations.

Planning obligation and detail	Justification
<p>Country Park Extension Land Transfer</p> <p>Subject to the Developer having secured Vacant Possession of the Country Park Extension Land (the Developer having used reasonable endeavours to secure the same) to deliver to the Council the Country Park Extension Land Transfer duly executed by the Developer on the date of the Commencement of the Development or within 12 months of the Developer having secured Vacant Possession of the Country Park Extension Land (whichever is the later).</p> <p>The transfer consideration is £1 and the transfer shall restrict the use of the Country Park Extension Land as public open space</p>	<p>The application also seeks full planning permission for the change of use of the southern part of the site from agricultural land to recreational open space, to form an approximate 48 ha extension to Porthkerry Country Park.</p> <p>Policy MG28 of the Local Development Plan (LDP) allocates 42ha of open space at Porthkerry Country Park, as part of the development of the Enterprise Zone site adjacent to Cardiff Airport and south of Port Road, Rhoose (Policy MG9 (2) refers). Policy MG28 (supporting text) advises that</p> <p><i>“the extension to Porthkerry Country Park is an essential part of such development [the Enterprise Zone], and will be required to form part of the first phase of development of the land for employment purposes.”</i></p> <p>Policy MG10 of the LDP refers to the transfer of the land as part of this development. These sentiments are also echoed within the Cardiff Airport and Gateway Development Zone SPG. The developer has proposed the transfer of approx. 48ha to the Council, which exceeds the above policy requirement.</p> <p>The supporting text of Policy MG10, further states:</p> <p><i>“Given the fine landscape qualities of the Vale of Glamorgan, and the need to promote sustainability, development to the south of Port Road is only considered acceptable as part of a comprehensive development including the transfer to the ownership of the Vale of Glamorgan Council (together with appropriate negotiated financial contributions) of land for a 42ha extension to Porthkerry Country Park (Policy MG28 refers).”</i></p> <p>The LDP, by requiring land to extend Porthkerry Country Park, seeks to mitigate the potential</p>

Planning obligation and detail	Justification
	<p>impacts associated with development of the application site, i.e. as a standalone development</p> <p>The s106 Agreement provides for the transfer of the land for the extension to Porthkerry Country Park, to the Vale of Glamorgan Council in accordance with the LPD. The Council currently run the Porthkerry Country Park as public parkland.</p> <p>The land would be transferred to the Council for the benefit of providing public access, but also to promote nature conservation including mitigation for ground nesting birds.</p>
<p>Country Park Extension Contribution</p> <p>Payment of [£982,750] to the Council to provide initial infrastructure works to create the extension to Porthkerry Park and general annual maintenance for a period of 20 years by way of the following instalments:</p> <p>(a) to pay the sum of [One Hundred and One Thousand and Twenty Five Pounds (£101,025)] for infrastructure works to the Council within 28 days of the Council completing the Country Park Extension Land Transfer;</p> <p>(b) to pay the further sum of [Two Hundred and Sixty Six Thousand and Eighty Nine Pounds (£266,089)] to the Council within 28 days of the Council completing the Country Park Extension Land Transfer;</p> <p>(c) to pay the further sum of [One Hundred and Ninety Nine Thousand Four Hundred and Thirty Four Pounds (£199,434)] on the first anniversary of the date of completion of the Country Park Extension Land Transfer;</p> <p>(d) to pay a further sum of [One Hundred and Ninety Nine Thousand Four Hundred and Thirty Four Pounds (£199,434)] on the second anniversary of the date of completion of the Country Park Extension Land Transfer; and</p> <p>(d) to pay the further sum of [One Hundred and Eight Thousand Three Hundred and Eighty Four Pounds (£108,384)] on the third anniversary of the date of completion of the Country Park Extension Land Transfer.</p> <p>(e) to pay the final sum of One Hundred and Eight Thousand Three Hundred and Eighty Four Pounds (£108,384) for conservation management on the fourth anniversary of the date of completion of the</p>	<p>The initial costs relating to implementation works will require implementation of new footpaths, trails, footbridges, together with associated signage and furniture. In addition, it is anticipated that the extension will also result in increased visitor numbers to Porthkerry Country Park, and therefore the financial obligations should also provide for upgrades and extension to the car park facilities. The total cost of these works has been estimated at [£101,025].</p> <p>An annual commuted sum toward cost of on-going hedgerow and woodland management, land maintenance and repairs is also secured, equivalent to [£61,232.50] per annum over the period of years 1-10. The annual commuted sum for years 1-10 includes provision for a staff member to be employed by the Vale of Glamorgan Council, based on 5 days a week for years 1-5, and 3 days a week for years 6-10. The management costs for this period would come to a total figure of [£612,325].</p> <p>A further annual commuted sum toward cost of the on-going conservation management, general land maintenance and repairs for is also secured for the following 10 years 11 to 20, equivalent to £26,940 per annum over this period. [Total £269,400].</p> <p>A requirement for ecological mitigation has been identified due to loss of habitat potentially suitable for ground nesting birds. It is not feasible to retain the habitat within the developable site area, however it is possible to re-create the habitat on land proposed to form the Porthkerry Country Park extension. In order to facilitate these works, a further sum of [£42,340.50] has been agreed.</p>

Planning obligation and detail	Justification
<p>Country Park Extension Land Transfer.</p> <p>Country Park Biodiversity Contribution</p>	<p>This sum would cover the cost of implementation and on-going maintenance for a period of ten years.</p>
<p>Footway/Cycleway Land Transfer</p> <p>To deliver to the Council the Footway/Cycleway Land Transfer duly executed by the Developer on the date of the Commencement of the Development or within 12 months of the grant of the Planning Permission (whichever is the later).</p> <p>The consideration for the transfer of the land is to be £1 and is for the purpose of providing a 10m wide footway/cycleway situated along the north-west boundary of the Site along southern side of Port Road.</p> <p>transfer shall in any event include a right for the Developer to construct the access roads from the Site across the Footway/Cycleway Land onto the public highway for the purpose of access into and egress from the Development in the approximate location shown on Plan 2 and for the Developer and all owners, occupiers or visitors to the Development to pass over the same with or without vehicles and shall include a restriction on the use of the Footway/Cycleway Land shall only be used for highway or highway related purposes</p>	<p>In terms of existing conditions, although the site is served by a (partly unlit) footway/ cycleway from Rhoose, there is no footway connecting the site to Barry. Infrastructure improvements are therefore considered integral to the future sustainability of the Gateway Development Zone, as well as encouraging a modal shift from the private car.</p> <p>However, (due to development viability) in lieu of a financial contribution, the appellant proposes to transfer a 10m strip of land to the Council across its frontage with Port Road. This land would be of sufficient size to accommodate either a combined, or a segregated, footway/ cycleway along the extent of the site frontage. The land runs from a point adjacent to the junction of the Holiday Express Inn roundabout with Port Road (the western access), to the eastern site edge beyond the Port Road/ A4226 roundabout – a near kilometre distance. Whilst this development would not deliver the footway/cycleway itself, it would enable and facilitate the delivery of it.</p> <p>The Council are undertaking detailed design work for an active travel route connecting Barry to Cardiff Airport. The scheme is identified within Policy MG16 (2) (Transport Proposals) as an improvements which will support the strategic objectives of the Plan and realise enhanced sustainable transport facilities. The Vale of Glamorgan Local Transport Plan 2015-2030 also identifies it as a high priority scheme. The works would comprise an approx. 1.7 mile footway/cycleway link from Weycock Cross roundabout to Cardiff Airport, which is envisaged would provide additional connectivity and raise the profile of the approach to the Airport. Whilst the subsequent funding will need to be secured for construction, the progression to date, design funding and policy support are a very positive indicator of the deliverability of this route (and its case for further funding). The facilitation of this is</p>

Planning obligation and detail	Justification
	<p>fundamentally dependent on the land first being obtained and consequently, this 'in lieu' land offer from the applicant, over a significant portion of the route, is a positive contribution towards sustainable transport to serve the site. The proposal is, therefore, considered acceptable in respect of sustainable transport/ active travel.</p>
<p>Rapid Transfer Land Safeguarding and Car Parking Land Safeguarding</p> <p>Land on the western boundary of the Site is to be safeguarded for a rapid transit corridor between the Vale of Glamorgan railway and Cardiff Airport</p> <p>For a period of 10 years the Developer is not to build any permanent structure on the Rapid Transfer Safeguarded Land or the Car Parking Safeguarded Land without the prior written consent of the Council.</p> <p>If no later than 3 months prior to the expiry of the ten year period, a completed Governance for Railway Investment Projects Stage 5 detailed design is presented to the Developer together with evidence of the inclusion of the rapid transit route in the relevant Transport Plan; the Developer for a further period of 10 years is prohibited from building any permanent structure on the Rapid Transfer Safeguarded Land or the Car Parking Safeguarded Land without the prior written consent of the Council.</p>	<p>In terms of the LDP, and The Cardiff Airport and Gateway Development Zone SPG, it is stated that consideration should also be given to a route for a potential direct rail (including light rail or tram / road tram alternatives) link to Cardiff Airport across the site. This is to ensure that new development does not compromise future proposals to enhance sustainable access to the airport and Enterprise Zone. There are no detailed proposals at this stage, but in consultation to this application Transport for Wales have provided an indicative route for a rapid transit link. This has been illustrated on the parameter plans.</p> <p>The appeal application does not seek permission for a rail link. It would be subject to detailed design and development by Tfw, as well as funding. The land in question is being shown as safeguarded land, being the most likely deliverable rail link option at this moment in time, bearing in mind site topography, and the logistics of delivering a heavy rail route direct to the terminal.</p>
<p>Administration Fee £10,000</p>	<p>To mitigate the costs incurred by the Council for monitoring the implementation of the planning obligations.</p>

SUMMARY

It is concluded the planning obligations sought meet the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and are supported by Development Plan policies, Supplementary Planning Documents to mitigate the impacts of the development and make it acceptable in planning terms.

Appendix 1 – Cost proposal (source Vale of Glamorgan Council Countryside Services)

Porthkerry Country Park.

Current position and costs.

Staffing structure – Team Leader, Countryside
Site Ranger (full time)
Assistant Ranger (full time)
Countryside Attendant (full time)
Countryside attendant (4 month contract)
Car park / grounds maintenance attendant x 2 (6 month contract)
Litter picker / cleaner (full time)

Running costs of circa £200k per annum, which include – staffing overheads, support, supplies, maintenance, vehicle, machine maintenance, litter disposal etc.

The country park covers 90Ha and has more than 160,000 visitors per annum.

The proposed land extension will increase the size of the country park by 50%, the proposed extension will be developed as public open space for visitors to the Vale of Glamorgan, with the emphasis on the re-wilding of the land.

To undertake the development and future management of the proposed land extension the attached itemised list is a minimum requirement, ideally, we would be looking at a Full time Ranger Post plus a part time Countryside attendant with additional maintenance costs etc. The new land extension will increase the footfall of the site and put additional stresses on resources.

Porthkerry Land Extension – costs.

Capital costs for the extension:

• New footpath furniture i.e gates/stiles etc.	£8k
• Woodland/hedgerow planting	£13.5k
• New interpretation and signage	£4k
• Tree management costs re – mature trees adjoining new land	£4k
• Bins	£2.7k
• Benches (recycled plastic) @ £600 each x 3	£24.25k
• 1 X Footbridge	£1.6k
• Grasscrete existing overflow car park	£59.4k
• chainsaws/trimmers etc	£2.7k
• Landscape Design fees / costs	£2.7k

Total**£101,025****Maintenance costs of the extension :**

• New hedgerow maintenance (Yr 1 - 5)	£60k
• Ancient and Broadleaved Woodland habitats - low intervention and non-intervention management	£19.5k
• Meadow management (c12ha) – cut and collect arisings x1/yr (Phased July, August and September)	£42k
• Rough Grassland field margins (c5ha), managed natural succession (c5ha)	£14.2k
• Marshy Grassland (cutting management of existing pasture)	£2.6k
• VoGCS Staff Member (Full time allocation) (Based on 5 days a week for Yrs 1-5)	£285k
• VoGCS Staff Member (Part time allocation) (Based on 3 days a week for Yrs 6-10)	£171k
• Ongoing management tasks and supervision of contractors (Yrs 11-20)	£269.4k
• Quad bike	£8k
• Contingency	£10k

Total costs for 20-year period

£881,725

Mitigation costs for the extension

External contractor to plough/harrow/sow Bird friendly crops

Total

£42,430.50

Total costs

£1,025,180.50

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Appendix 2 – Indicative rail link route:

