

LAND AT MODEL FARM, PORT ROAD, RHOOSE

Closing Submissions of the Appellant

1. INTRODUCTION

1.1 In his Pre-Inquiry Note,¹ the Inspector set out the matters which it was intended that the Inquiry would consider, as follows:

- (i) The adequacy of the Environmental Statement (“ES”)
- (ii) The effect of the proposed development on the character and appearance of the area
- (iii) The effect of the proposed development on traffic movement
- (iv) The effect of the proposed development on nature conservation interests
- (v) The effect of the proposed development on heritage assets
- (vi) Whether the proposed development would be consistent with the Development Plan and other relevant policies
- (vii) The effect of other considerations on the overall planning balance
- (viii) Whether planning obligations are necessary for the development to proceed
- (ix) Whether any planning permission should be the subject of conditions.

1.2 These submissions will address each of these matters, though not in the same order and, in some instances (e.g. adequacy of the ES, appropriateness and role of conditions and S.106 obligations), discussion will straddle topics.

1.3 The submissions will not respond specifically to each and every written representation. Many of the concerns and objections of members of the public have, in effect, been voiced by VCU, Mr Clarke/Barry Town Council and Mr Wallis of Friends of the Earth Cymru, although they do not formally represent them. In

¹ 21.2.2025.

responding to these three objectors, these submissions seek to deal also with objections and representations by others².

1.4 The exception to this is Mrs Wilkins. To the extent that Mrs Wilkins raises a formal objection based on land ownership, the Appellant relies on its written response³ and the Inspector's Note of the Case Management Conference of 13.1.2026. There has been full consideration of Mrs Wilkins' position vis a vis the planning application and appeal at the Inquiry. She has not been prejudiced as a result of the Inquiry going ahead; she has attended every day and participated fully. For the avoidance of doubt, the Appellant does not accept that Mrs Wilkins' claim to ownership of the Appeal Site is correct but, if it is necessary to determine the issue, that will happen outside the planning process. To the extent that Mrs Wilkins' objections arise out of a suggestion that the Appeal Site is "a model farm" in the technical sense, she has produced no evidence in support of the proposition.

2. ISSUE (i): ENVIRONMENTAL STATEMENT

2.1 Detailed submissions on the procedural / legal points raised are appended. Substantive points will be addressed under the relevant topic headings.

3. ALL ISSUES: OVERVIEW - THE STATUTORY CONTEXT AND THE NATURE OF OBJECTIONS TO THE APPEAL SCHEME

3.1 VCU's Opening Statement by GT summarised his client's position in 2 main propositions:

- (i) The proposal does not 'fully accord with the VoG LDP 2011-2026'.
- (ii) Material considerations 'compel the conclusion (individually and cumulatively) that pp should be refused'. In particular, he said:
 - Environmental / biodiversity impacts
 - Heritage impacts
 - Transport impacts

'overwhelmingly weigh against the grant of permission'.

3.2 Other objectors make similar points although not necessarily expressed in such formal legal terms.

² See also written response to Mr Clarke and Mr Parker's Proof, Appx 1.

³ CD 6.42, Submission on Land Ownership on the part of the Appellant, 23.1.26.

3.3 GT's proposition (i) fails to take account of a number of important matters of law, policy and fact. As a result, it is misconceived. Therefore proposition (ii) reflects an approach to the planning balance which is wrong in principle.

4. Law:

4.1 S.38(6) PACPA 2004 provides that the determination shall be made 'in accordance with the development plan unless other material considerations indicate otherwise.'

4.2 In *R v Rochdale MBC ex p Milne (no.2)* [2000] EWHC 650 (Admin), Sullivan J (as he then was) considered that statutory phrase and formulated an approach which has stood the test of time:

'48. It is not at all unusual for development plan policies to pull in different directions. **A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside.** In such cases there may be no clear cut answer to the question: "is this proposal in accordance with the plan?" The local planning authority has to make a judgment bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. In *City of Edinburgh Council v. the Secretary of State for Scotland* [1997] 1 WLR page 1447, Lord Clyde (with whom the remainder of their Lordships agreed) said "... it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them... He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide **whether in the light of the whole plan the proposal does or does not accord with it.**"

49. In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be 'in accordance with the plan'. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational

facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes et cetera, it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan...

50. For the purposes of section 54A⁴ it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.’ (emphasis added)

4.3 It now appears that this approach to the law is uncontentious, since cross examination of Mr Parker on accordance focussed on the interpretation of Policies MG9 and MG10, rather than general development management policies, but the extract is included here for completeness.

4.4 S.38(4) PACPA 2004 provides that, in Wales, the d.plan is:

(a) the National Development Framework for Wales (“NDF”)

(b) the SDP

(c) the LDP for the area.

In this case, (a) and (c) are relevant. The NDF is known as ‘Future Wales’ (“FW”).

5. Policy

5.1 Nowhere in GT’s opening submissions (or in the evidence submitted on behalf of VCU or other 3rd parties) was there any consideration of FW. This was a serious omission and was of a piece with GT’s approach to the LDP. His Opening Statement merely considers policies MG9 and MG10 together with general development management policies. MG9 and MG10 are important site specific policies (‘MG’ stands for ‘Managing Growth’) but, having regard to the legal duty to consider compliance with the d plan ‘as a whole’ (see *Milne* above), they, and topic-specific policies relating to the environment generally, must be considered together with the strategic policies of the LDP and FW, i.e. LDP policies SP2 and SP5, Strategic Sites, and FW policies, especially 1 and 10. The spatial elements of these strategic policies, through which the Appeal Site was identified and allocated for major economic development and major public open space / green infrastructure provision, sit alongside LDP Policy SP10 and FW Policy 9, dealing

⁴ Now s.38(6) PACPA 2004.

with environmental conservation; the d plan therefore recognises that the choice is not binary – *either* major development *or* environmental conservation.

5.2 These strategic policies provide the context for the site allocation policies MG9 and MG10 which, together with their supporting text, set the allocation of the Appeal Site, as well as two other strategic employment allocations, in their regional context. Underlying these policies is WG’s designation of the St Athan – Cardiff Airport Enterprise Zone (“EZ”), explicitly recognised in FW under the Welsh name ‘Cardiff Airport and Bro Tathan EZ’. Hence, one of the LDP’s 4 ‘key elements’ is:

‘To promote development opportunities in Barry and the South East Zone. The St Athan Area is to be a key development opportunity and Cardiff Airport a focus for transport and employment investment...’

This LDP ambition aligns with PPW, which states:

‘The Welsh Government’s Enterprise Zones are an example of where co-ordinated action can take place to encourage investment in a particular sector in a particular place. Planning authorities should seek to support the development of business networks and clusters particularly in relation to innovative and technology based enterprise.’⁵

As the Officer’s Report (“OR”) observes, commenting on the reference in FW to the EZ,

‘The ... site is primarily located within the aforementioned EZ, providing for just over half of the land allocation in the ‘Gateway Development Zone’ adjacent to Cardiff Airport... the strategic nature of the location is notable, as is the national policy framework, recently put in place by WG and post-dating the LDP, which overtly supports the future development of Cardiff Airport and the EZ.’⁶

5.3 Policy MG10 provided an important vehicle for reconciling the strategic policy objectives with local and site-specific considerations in the shape of the Masterplan. Although not part of the d plan, the Masterplan is an important material consideration for the decision maker going about the exercise prescribed in *City of Edinburgh and Milne*. The Masterplan was adopted by the LPA as SPG after a period of public consultation. Mr Parker demonstrates that the Appeal Scheme and the Masterplan are consistent. There is no consideration of the Masterplan in GT’s Opening Submissions (or in VCU’s evidence / representations). This is another important omission.

⁵ PPW [5.4.17].

⁶ OR p.77.

5.4 By contrast, the OR⁷ and Mr Parker [2.2 – 2.11] set out the strategic policy framework before examining the specific topics enumerated by the Inspector for particular consideration at the Inquiry. In turning to consider those matters, and the topic-specific policies attendant on them, it is important to apply the approach set out in caselaw.

5.5 VCU and many of the other objectors to the scheme object to it root and branch – they suggest that it is unacceptable to develop Area A, for a number of reasons – loss of the existing land use, loss of the existing vegetation, effect on the character of the area and heritage assets of major built development. Such fundamental objections are not in accordance with the strategic or site allocation policies of the d plan, nor with the Masterplan made under the LDP’s allocation policy and adopted as SPG. S.38(6) makes clear that the starting point is that the determination shall be made ‘in accordance with the d plan’. As the judges cited above recognised, it would be impossible, in practical terms, for strategic development of the sort allocated here by the d plan not to have some environmental impacts; but, as they made clear, such impacts do not mean that such a proposal is contrary to the d plan, even where the d plan also contains general development management policies protective of the environment, in its different aspects.

5.6 In policy terms, the balance has been struck here through the proper processes of plan making – at local and national levels. As the OR states:

‘This ... site is an important component of the Gateway Development Zone and thus the wider employment allocation. As such, it is considered to be a significant material consideration that the site has been designated for employment use and the principle of the development proposed...is clearly established through the adoption of the LDP.’⁸

5.7 Underlying that local plan-making is a national policy for economic growth at this particular location, expressed in the EZ and FW Policies 1 and 10, as well as, more recently, WG economic investment in the Airport.⁹ This policy makes evident

⁷ Pp.40, 67-70, 73 – 4, 77 – 81.

⁸ P 79

⁹ <https://www.valeofglamorgan.gov.uk/Documents/Living/Planning/Model-Farm-Appeal/Miscellaneous/Written-Statement-Cardiff-Wales-Airport-%E2%80%93-long-term-strategy-22-July-2024-GOV.WALES.pdf>

sense by capitalising upon existing infrastructure in the shape of the Airport,¹⁰ as also recognised in Llwybr Newydd: The Wales Transport Strategy 2021, and PPW.¹¹ This is not the occasion to revisit the principle of the national policy nor of the LDP allocation; nevertheless, it is clear that the direction of travel in relation to the allocation remains unchanged in the review of the LDP.¹² None of the post – LDP changes which VCU claim in support of their objections in fact invalidates either established plan policy or the rationale for the Appeal Scheme. FW expressly acknowledges the climate and ecological emergencies;¹³ it was framed to be an outworking of the statutory Sustainable Development Principle;¹⁴ the LDP and its Review continue the direction of travel;¹⁵ the OR expressly states that its recommendation to approve took into account the statutory duties under the Future Generations Act;¹⁶ granting permission for the College and commencing construction strengthen synergies with the Appeal Scheme;¹⁷ and the recognition by WG of the national importance of Cardiff Wales Airport, expressed both in the form of direct financial support post-Covid and indirect support as landowner within the wider EZ through engagement in the LDP Review,¹⁸ simply strengthen the case for the Appeal Scheme. The Appeal should only be refused if material considerations arising as a result of the design and future functioning of the scheme in its specifics are sufficiently weighty, considered against the strategic and site specific policy backdrop, to displace the presumption in favour of the plan.

¹⁰ Cf. FW, p.60: ‘Our strategy is to build on existing strengths and advantages...’; LDP [1.9] Strategy: ‘...South East Zone... The strategy also includes ... the ‘St Athan – Cardiff Airport Enterprise Zone’, with a focus on the aerospace sector and investment in and around the land holdings of the Welsh Government and the Ministry of Defence. The Strategy also identifies Cardiff Airport as a focus for transport and employment investment.’ [8.3]: ‘The LDP Strategy locates new development within areas which maximise the use of existing infrastructure within the South East Zone...’

¹¹ PPW 5.3.17 – 18 and see OR pp.70 – 2.

¹² See VoG’s Planning Policy Update, February 2026, including links to Deposit Replacement LDP and Employment Supplementary Paper (Background Paper – BP12A); Parker pp.3 – 5.

¹³ FW, p.6: <https://www.gov.wales/sites/default/files/publications/2021-02/future-wales-the-national-plan-2040.pdf>

¹⁴ Ditto

¹⁵ LPA Planning Policy Update, [2.8] – [2.11]: <https://www.valeofglamorgan.gov.uk/Documents/Living/Planning/Model-Farm-Appeal/Appeal-Documents/Supporting-Documents/LPA-Planning-Policy-Update-February-2026-002.pdf>

¹⁶ OR, p.75.

¹⁷ Cf. Officer’s Report for College, pp.13 – 17: <https://www.valeofglamorgan.gov.uk/Documents/Living/Planning/Model-Farm-Appeal/CaVC-Planning-Application-Documents/Final-Report-202400329FUL.pdf>

¹⁸ See Employment Supplementary Paper, Executive Summary [2.4], [3.2], [3.6 -9], [3.13], [3.20]: <https://valeofglamorgan.gov.uk/docfiles/63/BP12A%20Employment%20Supplementary%20Paper.pdf>, linked in LPA’s Planning Policy Update, [2.11]: <https://www.valeofglamorgan.gov.uk/Documents/Living/Planning/Model-Farm-Appeal/Appeal-Documents/Supporting-Documents/LPA-Planning-Policy-Update-February-2026-002.pdf>

5.8 None of the other statutory provisions relied on in GT's submissions prescribes that harm to whichever aspect of the environment is being addressed requires refusal. S.66 Planning (Listed Building and Conservation Areas) Act 1990 ("LBA 1990") and PPW and LDP heritage policies, when engaged, are material considerations and any impacts on designated heritage assets or their settings must be given 'considerable importance and weight'¹⁹ in the planning balance, but they do not require refusal in the event of any adverse impact.

5.9 Similarly, at the heart of the suite of Future Generations Welsh legislation is the 'sustainable development' principle which:

'means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle (see section 5), aimed at achieving the well-being goals (see section 4).'²⁰

5.10 This principle recognises that all the stated relevant matters need to be considered; the goals are: A Prosperous Wales, A Resilient Wales, A Healthier Wales, A More Equal Wales, A Wales of Cohesive Communities, A Wales of Vibrant Culture and Thriving Welsh Language and A Globally Responsible Wales.²¹ Environment (Wales) Act 2016, s.6, relied on by GT, imposes a qualified duty on public authorities (including the Welsh Ministers and PEDW) carrying out functions :

'to **seek to** maintain and enhance biodiversity 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.**'

5.11 S.7(3) of the 2016 Act requires the Welsh Ministers:

'(a) to take **all reasonable steps** to maintain and enhance the living organisms and types of habitat included in any list published under this section, and

(b) encourage others to take **such steps.**' (emphasis added).

¹⁹ *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC* [2014] EWCA Civ 137 [22].

²⁰ Future Generations (Wales) Act 2015, s.2. The well-being goals See OR p.75, recording that the officers' recommendation to approve 'has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.'

²¹ See ES [3.2.1].

5.12 This duty is not absolute either – it is defined by reasonableness; moreover, the sustainable development principle is bound in, by cross reference, via s.7(5).

5.13 These provisions do not amend s.38(6)PACPA 2004, nor do they disapply or invalidate national and local d plan policy. In particular, it is notable that FW expressly takes account of the climate and ecological emergencies, which VCU and objectors stress as factors post-dating the LDP. It goes on to comment expressly on the statutory sustainable development principle, saying:

‘Choosing where to invest or considering whether a development is suitable in a certain place are difficult decisions where a balance often has to be found between competing priorities. We must strive to find solutions which maximise our contribution to the goals and well-being objectives. **Future Wales provides leadership and strategic direction for taking these decisions.**²² (emphasis added)

5.14 A lawful assessment of the Appeal Scheme must start from the correct place of recognising its strategic and local policy status, rather than start, as the objectors do, from the wrong place of root and branch opposition to development at this site.

Fact - the Terms of the Appeal Proposal

5.15 It is clearly important to assess the scheme before the Inquiry, rather than attack it for not being something else or assume that it will turn into something unacceptable. For reasons set out in the written response to Mr Clarke²³, there is no requirement for the Appeal Scheme to be in detailed form. The LPA could have sought the submission of details if they had considered it necessary.²⁴ This did not happen. The approach to conditions complies with EIA law. The scheme before the Inquiry is, quite properly, in hybrid form: Area A (operational development) in outline, save for points of access; and Area B (change of use) in full form. Mr Parker, who is a very experienced planning consultant, disagreed with GT’s suggestions that the parameter plans are “unusually limited” and that the Appeal Scheme is marred by “a significant degree of uncertainty as to how it will end up.”

²² Future Wales, What is this Document, p.4/180.

²³ CD6.29

²⁴ See Town and Country Planning (Development Management Procedure) (Wales) Order 2012, art. 3(2).

Mr Parker stated that the parameters and other controls “set a framework”. He did not accept that mitigation measures are insufficiently certain: the built design starts with avoidance – large parts of the area are avoided, comprising the woodland, watercourses and the whole of Area B. Moreover, some 10ha of Area A is devoted to green infrastructure (“GI”). The approach is in line with the step-wise DECCA sequence set out in PPW, as the GI Statement enunciates.²⁵

5.16 As Mr Parker said, there is sufficient information and control to conclude that the Scheme complies with the plan policy – “putting in the means to achieve what is required.” VCU’s approach is misconceived as they are seeking to run the case which was rejected by Sullivan J in *Milne (No2)*. The proposed conditions and s.106 obligations are significant material considerations and provided that the conditions ensure that the development remains within the parameters assessed in the ES, there is no difficulty with an outline application with matters reserved.²⁶

5.17 Conditions 1 and 5 tie reserved matters for the development to the parameters set out within the ES, as well as other supporting documents. There is to be a maximum aggregate floorspace of 132,598 sq m gross external area. Development is to take place in accordance with the scale parameters for buildings illustrated on the Parameter Plan - Land use and Storey Heights, which specifies building envelopes and storey heights, together with the position and dimensions of safeguarded land for rapid transit and potentially displaced hotel car parking (as sought by TfW on behalf of WG).²⁷

5.18 The development must be carried out in accordance with the Movement and Access Parameter Plan, tied in via Condition 5. The vehicular and pedestrian access points are fixed and provision is made by conditions 13 – 15 for their detailed design to the satisfaction of the LPA, which will, clearly, be guided by its own Highways Department as VoG is a Unitary Authority. The spine road corridor is fixed, subject to proper flexibility for final alignment, together with secondary access roads, shown indicatively, to serve the buildings. The 10m pedestrian / cycle footway on the inside of the northern boundary is fixed and provision is made by the s.106 Agreement for its transfer to the Council;²⁸ floorspace is capped at

²⁵ Mr Parker XX Wallis and RX. See CD5.20 GI Statement, 4.2.

²⁶ see *Milne (No 2)* at [93].

²⁷ OR, pp.59 – 60; s.106 Agreement, definition “Rapid Transit Safeguarded Land” and Plan 2, Sched.1, para 6.

²⁸ Definition “Footway/Cycleway Land Transfer” and Plan 2, Sched 1, para 5.

20,000 sq m until such time as that route has been completed. This element of the proposal would assist in the delivery of identified transport priority schemes of the adopted and emerging LDP.²⁹ The development is also to accord with the Framework Travel Plan and DAS.

5.19 Condition 5 also requires the development to be carried out in accordance with the:

- Indicative Concept Masterplan;
- Green Infrastructure Parameter plan;
- Hedgerow, Scrub and Woodland plan; and
- Proposed Additional Mitigation and Wildlife Enhancement plans.

These drawings considerably refine the Land Use and Movement Parameter Plans and embody mitigation proposals set out in the ES. The disposition of the 3 x B Class uses is set out and the existing (retained) and proposed green infrastructure is mapped, including proposed planting options and drainage corridors and SUDS areas. These requirements are supplemented by draft condition 7. Conditions 5 and 7 will interact with the aggregate floorspace cap in condition 1 and the Land Use and Storey Heights Parameter Plan; the latter, in its specification of minima and maxima for building envelopes, confers considerable scope for manoeuvre at detailed design stage to give effect to the environmental objectives and mitigations set out in the ES chapters and Green Infrastructure Statement, informed by the further work required under draft condition 7. This is a demanding and sophisticated suite of environmental checks and balances, backed up by financial resourcing of the Council pursuant to the S.106 Agreement.

5.20 The total suite of parameters, conditions and S.106 obligations, as well as ensuring that permission can lawfully be granted in accordance with EIA law, also provides the mechanism for addressing the development management policies of the LDP concerning design (MD2), environmental protection (MD7), Green Wedges (MG 18), built heritage (MD8), European Protected Species (MG19), other statutorily protected species (MG20) and biodiversity / ecology /priority habitats and species (MD 9, MG21). Considering them collectively, alongside the strategic and site allocation policies of the d plan, the scheme's performance against the general policies does not cause it to be out of accord with the d plan as a whole.

²⁹ See Policies SP7(7) and MG16(2).

5.21 Conditions 39 and 40, as explained in the OR,³⁰ and in their stated reasons, are ‘specifically to create a business destination that caters for the needs of the aerospace industry and high tech manufacturing.’ It should be noted that the first part of Policy MG10 simply refers to ‘strategic employment land (class B1, B2 and B8)’. The second part of the Policy provides for development the EZ to be guided by a masterplan to include specified elements. The 5th bullet point does not solely refer to the Appeal Site, but a wider area:

‘New aerospace, education, research and development, manufacturing, office and other ancillary development at the Cardiff Airport and gateway development zone (77 ha)’

5.22 Contrary to GT’s submissions, this list is not to be construed as subsidiary to ‘aerospace’. The list includes various potential uses, all bar ‘education’, falling within B1, B2 and B8 and none of them is said to govern the others. They are then supplemented by other ancillary development **at** the Airport and gateway development zone – not ‘ancillary.. **to** the Airport’.

5.23 Lower case text (which, as GT accepts, cannot change the meaning of the Policy itself) refers to the encouragement of (unspecified) inward investment (6.55). The land is not allocated to meet ‘local demand for general industrial or office uses, but rather to accommodate business and employment uses catering specifically for the needs of the aerospace industry and high tech manufacturing.’ (6.56) This is the high point of GT’s case on interpretation but even this paragraph does not refer solely to aerospace industry; the potentially wide category of ‘high tech manufacturing’ is also highlighted. This is the language which is included in Condition 40.

5.24 Pausing there, Condition 40 reflects the policy rationale as set out in lower case text, but, strictly speaking, goes further than policy itself. It is accepted that the condition would be satisfied merely by making the required statement when seeking reserved matters approval, but, as Mr Parker explained, if the details at that stage sought to depart from compliance with the strategic objectives of the EZ, then there would need to be “something more” than a mere reference to marketing. Officers, he said, would expect the reserved matters to be “strongly related” to the EZ strategy. Moreover, Condition 40 does not stand alone; the Land Use and Storey Heights parameter plan sets minimum, as well as maximum building envelopes for each plot; they dictate substantial buildings, not the kind of local employment site described by Mr Sutton as “scruffy”. Similarly, the GI parameters, the Indicative Concept Masterplan, and the Energy Masterplan all of

³⁰ P.82.

which are to be tied into the permission by condition³¹, are inconsistent with anything other than a high quality business park and country park extension consistent with the rationale underlying the allocation policies. Lastly, in practical terms, to the extent that public sector money may be required to implement the development, there would be grant criteria to be satisfied, which would be related to the quality, impact and strategic function of the development.³²

5.25 Sutton explained that it is in the nature of creating the kind of strategic economic development envisaged here by national and local d plan policy that sites must be ready, in attractive locations and with good access to relevant skills.³³ In this case, the d plan has allocated this site to come forward so as to be available to meet particular types of economic requirement within an area designated by Government for enterprise. The fact that the Cardiff and Vale College International Centre for Aerospace Training is now under construction enhances the attractiveness of the proposal because of the obvious potential for synergy between those two elements of the VoG Masterplan.³⁴ There is no policy requirement for the Appellant to identify particular occupiers or to demonstrate viability at this point of the market cycle. Nor is there any legal requirement to particularise further, provided the planning permission properly incorporates the parameters which ensure that it does not exceed that which has been subject of EIA, in accordance with the approach set out in *Milne (No 2)*. The proposed permission, taking account of its conditions and the S.106 Agreement, satisfies the *Milne(No2)* test. Conditions 39 and 40, complemented by the design parameters, give effect to the specialised land use objectives of the LDP.

5.26 It is clear that both parts of the proposals – A and B - accord with both parts of the d plan – national and local- as Mr Mr Parker rightly concludes. Therefore, VCU’s case starts from the fundamentally false premise of asserting non-accordance with the d plan.

5.27 The true starting point is that the proposal accords with and implements the d plan and the planning balance question is therefore whether other material considerations indicate that permission should not be granted. As noted above,

³¹ Conditions 1, 5 and 34

³² Parker XX, RX.

³³ Statement of Evidence [4.1] - [5.2]. See also Updated Delivery Report (November 2024), Sections 2.10 – 3. Sutton’s evidence echoes the position set out and accepted by the developer in *Milne (No 2)* at §85.

³⁴ Cf. Employment Supplementary Paper (Background Paper – BP12A), [3.4].

however, the exercise of considering environmental impacts should not be undertaken in a site-specific policy vacuum, as many of the objectors have, effectively, urged. The d plan proposes major employment development on Area A and a Country Park on Area B (not, therefore, a ‘bribe’, as one of the objectors puts it,³⁵ rather, compliance with the d plan³⁶). Area B is designated as a Green Wedge in the LDP; a small part of Area A falls within that designation, but, since all that is proposed in the relevant part is retention of existing green infrastructure and new SUDS features with associated planting, the policy objective of not prejudicing the open nature of the land is met.³⁷ Area A enjoys no environmental designation. Instead, the vast majority of it has been designated by Government as an EZ and by the LPA as an employment allocation – a place where major development of the sort proposed is meant to happen. This proposal is the opposite of what some objectors³⁸ have termed – clearly with pejorative intention – ‘speculative’ development. Instead, it represents the assumption of risk by the private sector required in order to deliver the policy aspirations of central and local government.

6 ISSUE (i) Adequacy of the ES

6.1 See separate legal submission on the ES.

6. ISSUE (ii) The effect of the proposed development on the character and appearance of the area

6.2 A Landscape and Visual Appraisal (“LVIA”) was undertaken as part of preparing the ES. As Mr Wilson summarised in his oral evidence, the findings of the LVIA demonstrate that the effects of the development would be localised. This is because of the lie of the land and existing vegetation to be retained which have been taken into account, along with ecological and heritage considerations, in framing the proposed mitigation and green infrastructure. There are few public viewpoints which would be significantly changed by the development. Contrary to suggestions by some objectors, the development would not impinge visually on the existing Country Park, owing to topography and intervening treecover; the absence of a viewpoint from the Park car park is therefore not a limitation of the LVIA, as Mr Wilson explained in XX. Layout and scale of buildings, roads, SUDS features and retained and new vegetation are tied in via the Indicative Concept Masterplan, parameter plans, Hedgerow, Scrub and Woodland Plan and Proposed Additional Mitigation and Wildlife Enhancement plan. The upper floorspace limit

³⁵ S Thorne, IP Rep, 30.6.2025.

³⁶ Policies MG28, MG9(2), MG10 and Masterplan: OR p.111.

³⁷ See OR p.96.

³⁸ J and P Davies, IP Rep, 27.5.2025.

is specified in Condition 1, which, together with the Land Use and Storey Heights parameter plan, sets the scale of the development. This means that the ES has been able properly to assess effects, even though details of precise layout, architecture and materials are not known at this outline stage.

6.3 Inevitably, significant local effects have been identified in relation to topography, farmland land use and land form, reducing over time. It must be recognised, however, that the Appeal Site itself (both Areas A and B) and the surrounding area are intended to change: this is the d plan strategy. The LDP states that:

‘There are plans to create an ‘airport city’, taking the form of a business destination for local and international businesses including quality office accommodation, specialist education, training facilities and leisure developments. General B1, B2 and B8 industrial development will therefore not be acceptable on this site.’³⁹

Some of the most prominent existing buildings at the Airport are higher than those proposed in the parameters and there is the extensive area of runway, with its lights and the perimeter fence; all of these features contribute to the existing character of the area. The Masterplan, prepared pursuant to Policy MG10, gives expression to the aspirations of the LDP and FW for this Gateway to Wales. Comparing the Illustrative Masterplan from the SPG, reproduced in Mr Parker’s Statement of Evidence, with the Indicative Concept Masterplan, demonstrates the strong alignment between the two, as well as illustrating the extent of further change planned alongside that at the Appeal Site. Mr Parker also illustrates the ‘ATC Site’, now visibly under construction, which further demonstrates that this is an area of changing character.⁴⁰

6.4 No part of the Appeal Site is subject to a landscape designation. The effects upon the SLA to the north of Port Road have been carefully considered and are not judged to be significant, for the reasons set out above as to the localised nature of landscape and visual effects. LDP Policy SP10 Built and Natural Environment (3) is therefore met.

6.5 The majority (98.3%) of the Appeal Site is Grade 3b agricultural land (Figure 2.2 Vol 2 ES), well short of the threshold for notification to the WG Agricultural Land Division.⁴¹ Unsurprisingly, the OR concludes that Policy MD1 Location of Development (9) is met, in that there will be ‘no unacceptable impact’ on BMV

³⁹ Para 6.56.

⁴⁰ Parker pp. 7 -8.

⁴¹ Parker, XX, RX.

land. Policy MD7 Environmental Protection contains similar wording and includes loss of BMV at (7); there is no FW policy protecting BMV land, let alone agricultural land in general.⁴² Objectors point to the current management of the farm which includes some wildflower production, low intensity management of woodland and arable and livestock production. The mitigation proposals for Area B include management of woodland (all of which is to be retained) for biodiversity and offers the opportunity for grassland and inclusion of wildflowers, again, for biodiversity. Creation of the extension to Porthkerry Park – roughly a doubling in size of public open space / areas managed for biodiversity – would implement an essential part of the d plan strategy and the Masterplan SPG and enhance public access to and enjoyment of the area for the longterm.

6.6 Area B and a small part of Area A lie within the Green Wedge between Barry and Rhoose. LDP Policy MG 18 Green Wedges states that these areas ‘have been identified to prevent the coalescence of settlements and to retain the openness of land’ and that

‘Within these areas development which prejudices the open nature of the land will not be permitted.’

6.7 Again, the OR concludes that there is no conflict with this policy. The only part of Area A within the GW is the southern fringe where swales and SUDS basins are proposed. These would not prejudice the open nature of the land and clearly would not cause settlements to coalesce.

7. ISSUE (iii): The effect of the proposed development on traffic movement

7.1 The application was supported by a detailed Transport Appraisal and a Transport chapter in the ES. The points of access onto the existing highway network and the principle of the spine road through Area A are fixed by means of the parameter plans, including the Movement and Access parameter plan. The TA contains preliminary drawings of the two accesses, but these are not sufficiently advanced for detailed approval at this stage. The Inspector sought the minds of the parties as to how he should report this aspect of the Appeal Scheme, which is a hybrid one, with all matters reserved aside from access. All parties are agreed that he should report on the basis that the access points are fixed, but that the precise details of access are to be considered under draft condition 14. This is the basis

⁴² Parker, XX, RX.

on which consultation with the Highways Department and others has taken place. There is no objection from relevant statutory authorities. This is a perfectly adequate level of detail upon which to proceed and there was never any suggestion from the Highways Authority or the LPA that more was required. There has been no substantive objection from third parties⁴³ either in relation to the level of detail relating to access nor to the proposed points of access.

7.2 The assessment undertaken via the TA and ES were supplemented by the Transport Implementation Strategy (“TIS”) of November 2022. As confirmed in Mr Archibald’s Rebuttal, all assessment has taken conservative and robust cumulative approaches to trip generation. This is because:

- (i) the underlying modelling (WG’s SEWTM) includes all allocations from development plans, not only for the VoG, but also for relevant neighbouring Authority areas⁴⁴; there is no need for manual counts, Mr Archibald explained,⁴⁵ because of the availability of the SEWTM model;
- (ii) nevertheless, the TIS and Statement of Evidence considered whether there were newer counts, but did not identify any more up to date relevant data;
- (iii) the assumptions as to the nature of the proposed development are based on 189,725 m² which is significantly in excess of the aggregate gross external area included in condition 1⁴⁶;
- (iv) the TA used a model which did not assume any modal shift. The measures which will be used to promote active travel, car sharing and public transport are thus likely to produce lower traffic volumes than those which have been modelled;
- (iv) comparison of the modelling undertaken for the scheme with the more recent modelling undertaken for the RLDP shows that the model used in the TA has higher flows for 2026 than the RLDP modelling has for 2036.⁴⁷

7.3 Insofar as active travel is concerned, the development delivers the land for phase 2 of the route between Waycock Cross and Porthkerry Road. Mr Archibald confirmed that the detailed design for phase 1 had been undertaken, detailed design for phase 2 was awaiting the outcome of this appeal, and that the route is

⁴³ Mrs Wilkins expressed disapproval of the Appellant’s approach to access when the matter was aired for procedural discussion by the Inspector, but gave no reasons.

⁴⁴ Archibald Proof, 2.3.

⁴⁵ XX GT.

⁴⁶ Archibald Proof 2.38.

⁴⁷ Archibald Rebuttal Tables 6, 7.

a very high priority for the VoG.⁴⁸ The provision of the active travel route will bring benefits beyond the site, most obviously in respect of the College which is being built. Condition 38 ensures that no more than 20,000 m² can be occupied at the site unless the active travel route has been completed. This is an important material contribution to the delivery of LDP Policy MG16(2) which, in turn, contributes to the sustainable achievement of FW's and the LDP's strategic objectives for the EZ.

7.4 A major concern expressed by objectors relates to existing congestion between Rhoose and Barry. As Mr Archibald confirmed, the STA which forms part of the RLDP evidence base identifies the need to progress an improvement scheme at the Waycock Cross roundabout which is the existing pinch point on the network. Mr Archibald explained the nature of improvement in oral evidence. It involves adding additional entry lanes on three of the approaches to the roundabout⁴⁹ and widening the 2 lanes on the approach on the eastern arm. This will increase the capacity of the roundabout and thus reduce delay compared to the current situation. A majority of the cost will be funded by section 106 contributions from housing development, with the balance funded by VoG. Whilst this proposed improvement will benefit the area, Waycock Cross does not impose any constraint on the scheme in view of the reduced GEA under condition 1, as Mr Archibald explained, by reference to the TIS, which identified a tipping point of 170,000msq at which capacity of the roundabout would be exceeded.⁵⁰ Condition 1, however, limits the aggregate floor space of the development to 132,598 m sq, GEA, well below this point. No further condition is necessary, nor would a S.106 contribution in relation to this development satisfy the CIL Regs tests.

7.5 The OR confirms that the County's Highway Engineer has reviewed the TA and TIS, agrees with its conclusions and raises no objection in relation to traffic generation and congestion, OR page 89. In short, the traffic evidence is robust and does not provide any reason for refusing the application.

7.6 Mr Archibald confirmed that neither the introduction of 20 mph speed limits in parts of Barry nor the projected implementation of new speed limits on Port Road have had or would have any effect on junction or link capacity.⁵¹

⁴⁸ Rebuttal 1.53, Fig.1 and Appx 1.

⁴⁹ pdf 399 of the STA Stage 2.

⁵⁰ TIS 11.3.2021, 1.57; TIS 28.11.2022, 1.39.

⁵¹ Rebuttal, 1.13 – 1.21 and oral evidence in x.

7.7 As noted above, the transport modelling for the Appeal Scheme does not assume modal shift; nor does the STA prepared for the LPA on the RLDP. VCU criticise the location for its lack of public transport. Mr Archibald agreed that it was “not great” but pointed out that there is train and bus access and that there are plans for both modes to be improved by TfW/WG.⁵² Additionally, Condition 13⁵³ provides for upgrades to bus stop facilities on Port Road and Condition 41 requires details of the primary internal spine road within Area A both to include bus stop facilities to allow for services to penetrate the site and active travel provision. The application was also supported by a Framework Travel Plan (“FTP”) which proposes co-ordination of effort to encourage home working and commuting by active and public transport modes; Condition 37 requires approval of a TP prior to occupation. While no bus funding is provided for in the S.106 Agreement, the Rebuttal refers to proposed investment by WG in improving bus and train frequency. Moreover, the FTP proposes to focus initially on targeting reduction in single occupancy vehicle trips, which does not, of course, rely on increased public transport, but is an effective way of reducing car trips. Amongst other methods, car parking management would be utilised; Condition 43 also provides for a minimum of 10% EV charging spaces.

8. ISSUE (iv): The effect of the proposed development on nature conservation interests

8.1 VCU advances a case that the ES has downplayed the existing nature conservation value of the development site and understated the adverse impacts of the development on biodiversity. It relies on the expert evidence of Ms Williams. She is a mycologist and has provided evidence as to fungi, and other ecological features, within Areas A and B. Her criticism of the scheme and of the ES is scathing.

8.2 The Appellant relies on Mr Oliver who has provided evidence as to the ES process and has provided his opinion as to the impact of the project in terms of biodiversity. He states that there would be a net benefit for biodiversity, statement of evidence 2.3.25-34.

8.3 Mr Oliver’s case is that the biodiversity within area B would be retained and enhanced as a result of its transfer to the VoG and the implementation of the Biodiversity Management Strategy under condition 7. It is through the retention

⁵² Archibald XX and Rebuttal 1.71 – 1.78.

⁵³ Rebuttal 1.81 says Condition 10, but numbers have changed in subsequent drafting.

and enhancement of the biodiversity in Area B that the proposal provides a net gain for biodiversity together with the significant mitigation which will take place on Area A. Furthermore, as Oliver states in his statement of evidence at 2.3.16 the BMS would accord with the objectives and measures presented in the GI statement which has been informed by the DECCA Framework which is now enshrined in PPW as the stepwise approach, see PPW 6.4.15

8.4 Ms Williams's approach has been to assess the ecology across Areas A and B. On the basis of that assessment, she states that the value of the land as a whole has been under-reported in the ES. Her statement of evidence draws no distinction between Areas A and B nor did she identify the location of any of her findings despite the availability of the Habitat Map forming part of the PEA. It was only in XX that information as to the location of the receptors described in Ms Williams's statement was provided. That made it clear that most of the receptors described were within Area B and would not, subject to a point advanced by Williams about the advantage of being located within a private farm, be impacted at all by the development. The grassland fungi, or CHEGD, are located outside of the woodland areas but as Mr Oliver explains the CHEGD are also widespread within Area B and the Country Park with eDNA work already having been commissioned to identify hotspots for grassland fungi in the CP to better inform efforts to further facilitate the grassland fungi.

8.5 A weakness with Ms Williams's evidence is that she has not focussed properly upon the impacts of the scheme. Her witness statement does not address the conditions or the section 106 agreement or take them into account in reaching her conclusions as to the ecological merits of the scheme. Her failure to distinguish between Areas A and B in setting out her findings as to the ecology is only one symptom of this more fundamental failure to focus on the impacts of the proposed development. She spent an equal amount of time in surveying Areas A and B. By contrast, Mr Oliver states that the survey effort of RPS was focussed on Area A and upon the boundary between Areas A and B as that is where the adverse impact is likely to occur. The fact that the ES does not manifest a high degree of survey effort in Area B and in particular within the areas of ancient woodland ("AW") is not, says Mr Oliver, significant. The ES acknowledges the importance of the AW. A high degree of diversity and biodiversity value is assumed in relation to AW. As Mr Oliver stated in XC there is a vast ecosystem in AW and a survey will only capture a snapshot.

8.6 There are other reasons for preferring the evidence of Mr Oliver over Ms Williams where they differ. First, early in her XX Ms Williams mentioned that she had been passing on her findings to Maxine Levitt in order to assist with the campaign against the development. Though she was at pains to say that she was not part of the campaign Ms Williams often fell into the habit of arguing VCU's case during the course of her evidence. For instance, when providing an update as to the twice yearly use of herbicide by Mr Jenkins of Model Farm, Ms Williams was keen to talk of the use of glyphosate by the VoG at the Country Park and by WG more generally. Secondly, Ms Williams seem to think that the BMS was less secure than otherwise might be the case because Area B would or may be transferred back to the Appellant after 20 years. That misconception is likely to have influenced her conclusions. Thirdly, she did not grapple properly with the fact that the recent changes in farming practices at Model Farm i.e. away from high input dairy and towards wildflower cultivation could be reversed at any time; indeed, she suggested that there were restrictions on any changes in farming practice should some of the pasture fields be listed as pasture. That is another example of a belief which was founded on a misunderstanding. Fourthly, she seemed to consider that the transfer of Area B into the CP would confer an unfettered right of access to the public with the result that all and any ecologically valuable deadwood would be felled within the AW.⁵⁴

8.7 Mr Oliver gave a convincing response to VCU's challenge to the Appellant's ecological case. Cross examined in detail by VCU and others we summarise the principal features of Mr Oliver's evidence.

8.8 **Stand-off/buffer zones.** Ms Williams in XC said that veteran and near veteran trees at the periphery of the woodlands would be felled on the basis that health and safety considerations always trump ecology. She argued for a minimum stand-off of 50 metres based on Woodland Trust advice (though the Trust's letter of 26 May 2022 Gibbs Appendices [132] suggests 30 metres). Her evidence is inconsistent with the Woodland Trust letter of 10 December 2024 and the NRW Guidance both of which refer to a buffer of 15 metres based on BS5837 with the Woodland Trust's letter referring to the desirability of a 50m stand-off and a fixed minimum of 15 metres. The Woodland Trust's observations re the desirability of a greater buffer than the fixed minimum are based on dust and nitrogen pollution and not Ms Williams's expressed concern about felling. Buffer zones are addressed in the ES in relation to trees, woodland and hedgerows, see 9.10.3 &

⁵⁴ Williams XC.

9.11.11. Importantly these buffer zones are minima to be applied and will be extended where appropriate, see wording of condition 8 and Mr Oliver's oral evidence in XX that the appropriate buffer is specific to each section of the development to be subject to specific assessment at detailed design stage. Mr Oliver explained that the BMS would be informed by a full inventory of veteran trees which would then inform the management plan including in respect of AW boundaries. Of the AW only W1 falls partly within Area A. Mr Oliver explained in XX that longevity would be designed into the development on Area A: development would be constructed so as ensure that near veteran trees would not face pressure for felling in 20 years' time with the size of the buffer being informed by that principle.

8.9 **Access to AW.** W2 and W3 fall comfortably within Area B. Accordingly, the proximity of built development and the need for careful detailed design is not an issue re W2 and W3. But there remains Ms Williams's critique that deadwood would not survive in W2 and W3 because they would be felled in order to protect recreational users from injury. Mr Oliver's response is that the BMS will contain a presumption of no or limited access to areas of AW. He explained how this can be achieved in practice. For example, footpaths in area B will be established in the centre of the meadows thus steering recreational users away from the AW. As for the periphery of the AW, habitat creation would further prevent any access e.g. through the development of bramble thickets. Design and management, therefore, can prevent or manage recreational use of the AW so as to avoid the need to fell deadwood in the interests of health and safety. Ms Williams did not grapple with this ability to preclude or limit access. Mr Oliver explained that in the extant Country Park trees are allowed to stand and fall when they are away from footpaths. Area B, of course, will be subject to condition 7 and the BMS and thus the ability to control access is greater and will not simply be a matter for the discretion of VoG's Countryside Services. Mr Oliver stated that many country parks have areas of high ecological value which can be and are preserved and enhanced. He also made the point that all Nature Reserves in Wales have a degree of public access and that the same is not incompatible with the preservation and enhancement of nature conservation. Public access in such areas is designed and managed to allow access without compromising nature conservation. Mr Oliver gave compelling evidence as to the types of measures which would be incorporated in the BMS to ensure that the concerns expressed by Ms Williams would not come to pass with regard to veteran and near veteran trees within the AW.

8.10 **Grassland fungi/CHEGD.** Mr Oliver acknowledges that the grassland fungi is a significant ecological feature which is why the BMS will make provision for fungi on Area B and why the CP has already undertaken eDNA research within the extant Park. The grassland fungi is prevalent throughout Areas A, B and the extant CP and that provides confidence that any loss of habitat on Area A can be mitigated within Area B. Ms Williams made much of the absence of a grassland fungi survey but this leads nowhere. The Appellant accepts the presence of fungi and will make provision for the same in the BMS. Surveys may be necessary to better inform the mitigation but as Mr Oliver said it is at the mitigation stage that up to date surveys will prove to be most useful. As for the threat of dogs, evidence was provided that Cardiff Council has prohibited dogs from using a site important for grassland fungi and Mr Oliver stated that he anticipated that there would be some control of dogs in certain parts of Area B.

8.11 **Black Poplars.** Ms Williams explained that she believed that black poplars were prevalent within W2. The further work anticipated by Ms Williams at 5.9 of her witness statement involving the assessment of leaf samples or DNA analysis by Dr McGin has not been undertaken. But that makes little difference to the assessment of this application having regard to black poplars. As Mr Oliver explained in XX it would be fantastic if Ms Williams's view as to the existence of black poplar were confirmed. He explained in RX that that would provide an opportunity of establishing rare black poplars elsewhere in Area B and in the extant CP. We observe that that provides just one illustration of the fact that this proposal will allow the ecology in Area B to be enhanced and not just preserved; an opportunity which would not be available under the status quo.

8.12 **Barn Owl.** Mr Oliver was cross examined about Barn Owl based upon the Williams allegation that the survey effort was inadequate. Mr Oliver gave his view, on the available information and Barn Owl Trust advice, that the roost within the Model Farm outbuildings was probably a foraging roost and not a nest. But the more important point is that further surveys would proceed on the basis that Barn Owl was present. Mitigation would be achieved by the creation of habitat which would provide Barn Owl with greater foraging habitat as well as alternative nest sites for the purpose of obtaining an NRW licence. Due to the ability to provide more suitable habitat, and to secure the same under condition 7, this is another example of biodiversity benefit arising from the development.

8.13 Conditioning further surveys The general argument of VCU that the outline aspect of this scheme is not appropriate, and which we address above by reference to *Milne (No 2)* etc, was pursued with Mr Oliver by reference to the CIEEM Guidance 2017, page 11 Box 4. In particular, it was suggested that it is only in exceptional circumstances that further surveys should be conditioned in a permission. Mr Oliver was asked about the examples provided in Box 4 as to when further surveys might be appropriate and he confirmed with an explanation that all five of the reasons provided in Box 4 applied in this case. In short, there is nothing objectionable or odd about the fact that the application conditions post consent surveys. Indeed, such conditions are commonplace with large strategic schemes which may be implemented over a prolonged period.

8.14 NRW/County ecologist Ms Williams was taken to Appendix 16 of the Gibbs appendices [123-129] which is the consultation response of the County Ecologist. As to the rare species discussed in the response the County Ecologist concluded: “All of these species are principally woodland species and the existing woodlands are not affected by the development close to Port Road but within the area to be managed for nature conservation by Porthkerry County Park.”

8.15 As for the conclusion:

“The PEA and supporting documents are to the standards set out by CIEEM.

Rare Species – none have statutory protection, and most are confined to the woodlands which are unaffected by the development.

The applicant has met the requirements in the Biodiversity and Development SPG for the compensation by length of lost hedgerows”

8.16 As for NRW it was put to Ms Williams that they did not object to the proposal. Curiously she did not agree remarking, instead, that they had withdrawn from process. The reality, however, is set out in their consultation responses. In NRW’s letter of 2 March 2022 they state:

“We continue to have concerns with the application as submitted. However, we are satisfied that these concerns can be overcome by attaching the following conditions to any planning permission granted”

8.17 The Appellant relies principally upon the evidence and analysis of Mr Oliver which is to be preferred to the contrary evidence of Williams for the reasons set out above. But his views are corroborated by the reasons and conclusions of the County Ecologist and the statutory regulator.

8.18 The proposal satisfies LDP policy on biodiversity. The conclusion in the OR that there is no conflict with LDP policies is correct. Re MG19 and MG20 in relation to protected species, NRW have confirmed that they are content subject to suitable conditions. The AW are sites of importance for nature conservation, SINCS, falling within MG21 but as set out above and in Mr Oliver's evidence the development protects and enhances the AW and they will not be adversely affected by the development having regard to the commitment to buffer zones etc. As for priority species and habitats measures to avoid, mitigate and compensate are secured and, again, NRW's position and that of the County Ecologist is telling. Similarly, there are no breaches of PPW policies on biodiversity based upon Mr Oliver's evidence.

8.19 European Protected Species ("EPS") are protected by Condition 32. Potential effects have been considered in the ES and the statement of evidence. In particular, consideration has been given to dormice, bats and otters. Mitigation is to be secured by planning condition and NRW licensing would also be required should any specimens of EPS or their roosts / resting places be found on the development area. At the planning stage, there is no need for a licence to be in place, but consideration should be given to the derogation tests. This matter is fully considered in the OR at p,103 and the approach taken there is commended. NRW have been consulted on the application and not objected, subject to conditions. The public interest and lack of alternative tests are met, in summary, because of the national and local strategic d plan allocations and their economic rationale. With regard to the third test, NRW have advised that, subject to the mitigation measures recommended in the ecology reports, the development would not be detrimental to the maintenance of the population of the EPS and the planning decision maker is entitled to rely upon NRW's opinion in that regard.⁵⁵

9. ISSUE (v): The effect of the proposed development on heritage assets

⁵⁵ see *R(oao Morge) v Hampshire County Council* [2011] UKSC 2.

9.1 There are no designated or undesignated heritage assets on the Appeal Site. There are such assets present in 3 main groupings to the south, ranging between 120m and c.700m distance from the proposed built development area. There is, additionally, a non-designated heritage asset just under 250m to the north east.⁵⁶ Accordingly, there would be no direct impacts on these assets resulting from the Appeal Scheme. Nor would there be any direct impacts upon the Viaduct. Mr Price had not assessed this as it had not featured in the ES work; nobody, apart from Mrs Wilkins, suggested that there was even any relevant visual connection, let alone other heritage significance, in the relationship between the viaduct and the Appeal Site. Having said that, Mr Price noted the opportunities for increasing public views of this structure from the north west, as a result of the development of Area B as an extension to the country park.

9.2 The closest statutorily listed buildings are all Grade 2 or non-designated. They comprise the Porthkerry Farmhouse grouping of two listed houses and the 'County Treasure' stables. Although close to the Appeal Site, Mr Price explained (and, importantly, was not challenged on this part of his evidence) that there was no functional land ownership connection between any of these heritage assets and Area A. This conclusion was evidenced by reference to tithe mapping. The impact, which he assessed as minor negative in the case of the farmhouses and neutral in the case of the stables, was therefore wholly comprised in the loss of a small part of their immediate rural, agricultural context and a general urbanising effect. Their existing setting is, however, considerably influenced by the Airport, Holiday Inn hotel and Porthkerry Road. The significance deriving from their built form, group value and immediate setting to the east and south would be preserved. The opening up of Area B as country park extension would also increase public opportunities for appreciation of these buildings, which would be a heritage benefit.

9.3 Turning to the Church Farmhouse grouping of the G2* listed farmhouse and outbuilding, Mr Price's assessment was similar to that in relation to the nearby Church of St Curig, also listed at 2*. The Church is the furthest of the assets from Area A. In the case of all 3, owing to their distance from the site, absence of evidence of functional historic relationship, slight intervisibility and opportunities for mitigation through planting proposed in Area B, the impact of the Scheme is assessed as negligible harm. To the extent that the effects upon the wider setting

⁵⁶ See Price Statement, Fig.1.

of these buildings would derive from increased urbanisation on the approach to Porthkerry, this must be considered in the context of the existing Airport development. The same must, of course, apply to all the other assets under consideration.

9.4 In the case of the Church, the Conservation Officer reached the same opinion, while his view was that effects upon the farmhouse group were minor.

9.5 Welford Farm, a non-designated County Treasure, had been discounted by Mr Smith owing to the degree of modern intervention subsequent to its inclusion in the Council's local list. The Conservation Officer had assessed it and concluded that there would be minor harm, a view with which Mr Price did not disagree. Again, there is no evidence of any historically significant functional connection between this building and the Appeal Site. Egerton Grey, a former vicarage and hotel, sits some 390m south of Area A. It is well screened from the development by topography and vegetation. It is a non-designated heritage asset. Again, there is no evidence of historical connection between this building and the Appeal Site.

9.6 The Porthkerry Conservation Area is focussed on the Church grouping. To the extent that the effects on that group are indirect and below the EIA significance threshold, effects on the CA are similar. It is important to note that there would be no changes within the CA.

9.7 As Mr Price explained, Jonathan Smith, who conducted the original appraisal for the planning application / ES, applied slightly different attributions of harm, though he also assessed all effects as being below the threshold of significance in EIA terms. The Conservation Officer's assessments were slightly different again, though, in the case of the Church, as we have seen, he concurred with Mr Price's opinion. Mr Price, in answer to the Inspector, did not claim that his attribution was definitive, to the exclusion of other professional judgments. Clearly it will be for the Inspector and the Minister to make their own judgments. In no case, however, was there evidence of any particular contribution to historical or architectural significance from the preservation of the setting unaltered. There is no evidence of a functional land ownership connection between any of the heritage assets and Area A. Despite attempts to impugn Mr Price's professional credibility, he was very clear about the judgments which he had independently reached, while not seeking to argue that others' judgments were wrong. His evidence was measured

and justified by reference to factors objectively relating to significance. No other party called expert heritage evidence; nor was there any non-expert evidence produced to contradict the information to which Mr Price referred in reaching his judgments.

9.8 LDP Policy SP10 requires development proposals to preserve ‘and where appropriate enhance’ the architectural and/or historic qualities of buildings or conservation areas, including locally listed buildings.’

9.9 The architectural qualities of all of the heritage assets in question would be preserved. There is minimal evidence of harm to the historic qualities of those buildings; the identified issues all relate to setting in the purely visual, rather than functional sense. Some degree of harm has been identified, but not of significance for EIA purposes. Some of those harms must be considered in the light of the special statutory weighting relating to listed buildings, but this does not apply to the non-designated buildings, nor to the CA, since no development is proposed in the designated Area.

10. ISSUE (vi): Whether the proposed development would be consistent with the Development Plan and other relevant policies

10.1 The submissions at paragraphs 5.1 – 5.25 above, together with consideration of the Inspector’s specific topics, support the conclusion that the proposed development, Areas A and B, would be consistent with the d plan.

10.2 The proposed active travel cycleway / footway, to which the Appeal Scheme would contribute a 10m strip of land along its northern boundary, is, as well as being an allocated scheme under LDP Policy MG16(2), a Local Transport Plan scheme. In line with the strategic aims for the area and PPW transport policy to favour and promote active travel, the delivery of this piece of infrastructure is ‘a very high priority’ for the Council, especially as the new College is now under construction.⁵⁷ Similarly, by bringing potential customers for improved bus and train services, the development, served by a Travel Plan, strengthens the case for planned public sector investment.⁵⁸

10.3 In terms of national transport policy, the Appeal Scheme supports WG’s aviation ‘mini-plan’ which sits within Llwybr Newydd: The Wales Transport Strategy 2021,

⁵⁷ Archibald Rebuttal, Appx A, Record of Discussion with VoG’s Sustainable Transport Officer.

⁵⁸ Archibald Rebuttal [1.89] – [1.99].

specifically, the ambition for Wales to be a centre for skills in aircraft maintenance and engineering etc.⁵⁹ Likewise, reservation of the strip of land on the west of the Appeal Site responds to the concern raised by Transport for Wales relating to lack of accommodation for a future rail link, in the light of their brief from WG to identify safeguarded land for this purpose. The application was amended specifically to facilitate this strategic policy objective and suitable provision is made in the S.106 obligation.

10.4 There are a number of challenges to the scheme which are addressed by Mr Chris Sutton. They include the notion that the development is not viable and that there are alternative sites which would enable growth to take place in South East Wales National Growth Zone.

10.5 Whilst Mr Sutton gives evidence as to the market it is important to note that these challenges are not supported by policy and, as an overarching point, the Appellant argues that the challenges are thus misconceived.

10.6 **Alternative Sites.** Policies MG9 and MG10 refer to both Bro Tathan and Model Farm – they are both identified and allocated. Contrary to the suggestion made by Mr Clarke and VCU, the policy does not demand a choice between Bro Tathan and Model Farm and the land now developed by the College. Rather, all parcels are allocated in the LDP. Both locations are included within the National Growth Area in Future Wales Policy 1 and referenced in Policy 10 of FW.

10.7 Putting aside the fact that policy encourages the development of all sites, Mr Sutton analysed the sites which have been suggested as alternatives to MF. He explained that Wales needs a balanced portfolio of employment land if the aspirations for economic growth and attracting high value added sectors are to be met.

10.8 **Bro Tathan.** The land available is limited and not comparable. 17 acres are directly linked to the runway whilst the other 17 acre⁶⁰ area known as Y Porth may suit office space associated with the enterprises already on site. In short, Bro

⁵⁹ OR pp. 70 -71, Condition 40 and Sutton's evidence generally.

⁶⁰ 17 acres is approximately 6.9 hectares

Tathan is mostly fully developed and what land is left is not directly comparable to the offer at Model Farm.

10.9 Aberthaw. This is a heavy industrial site. Whilst there is plenty of space available it would not be for a greenfield Business/Science park type of development which is what is envisaged for Model Farm.

10.10 Brocastle. This is most similar in character to Model Farm. Mr Sutton explained that this WG owned site had been a little unlucky in securing long term occupiers and the fact that it remains empty is not because it has not attracted interest. There are currently bidders for plots 3 and 5 and another party looking at plots 6 or 9. Mr Sutton gave short shrift to any suggestion that WG would not support a private development given its ownership of employment land. Government acquires and holds land in order to promote economic development and it is economic development aspirations which govern the provision of public funding, not narrow considerations re ownership. This accorded with Mr Parker's experience of the Enterprise Zone Working Group, of which he is a member.

10.11 MF is within an Enterprise Zone. Mr Sutton explained the immediate benefits of EZ status – training grants, marketing budget and one support staff member per EZ at WG. In addition to these benefits, land within an EZ is eligible to apply for the public support available from UK government namely the accelerator fund looking to fund 2 or 3 developments within each region, WG and its property development grant and CCR's own regional grant. As Mr Sutton explained in RX the fact that land is within an Enterprise Zone enhances the chances of obtaining one of these broader forms of public sector support.

10.12 Viability. As with the objection based on alternative sites this challenge to the application starts with a fundamental flaw. Neither local nor national policy requires viability to be established. It is not, therefore, a requirement which has to be met. The viability appraisals which have been prepared show a viability gap i.e. the development will not break even if the developer is to gain a 15% return on investment. That was the case when the OR was prepared and it was not an impediment to recommending approval.

10.13 Faced with a viability gap there are a number of ways in which a development could proceed, notwithstanding.

10.14 First, as Mr Sutton explained, viability appraisals always capture the position at a moment in time and will thus usually be out of date. As he accepted in XX costs have increased since the appraisals were undertaken. But equally, there has been a marked increase in rents as illustrated by Indurent Park, detailed on page 12 of Mr Sutton's Rebuttal. In short, viability changes over time.

10.15 Secondly, the developer can accept a lower return. Mr Sutton mentioned L&G accepting a 5% return at Central Square rather than the usual 15%.

10.16 Thirdly, if the right scheme comes along then the viability gap may disappear because a prospective occupier is willing to pay more than the going rate because of that occupier's needs and the special suitability of the site

10.17 Fourthly, employment sites are eligible for financial support from the public sector. These have already been summarised above at 10.11. There are three potential funders, UK Government, Welsh Government and CCR. What is very apparent from Mr Sutton's evidence, and his great experience of strategic development in South Wales, is that public support is the norm rather than the exception. The sites considered by objectors as potential alternatives are all subject to public subsidy, in the form of grant funding or public ownership. One of the most successful sites currently in Wales, Imperial Park, started as the LG site which was heralded as a great success in the 1990s but then fell foul of a financial crisis in the Far East. The public support granted then is now bearing fruit. That corroborates Mr Sutton's contention that a balanced portfolio of sites is required and the fact that progress can be slow does not mean that full occupation with high value added employment will not be achieved. Indeed, Indurent Park and Bro Tathan illustrate that time is required in order for investment in employment land to attract occupiers providing high value added jobs.

10.18 **Marketing and timing of grant applications.** VCU argue that no occupiers have been identified and that there is no evidence of grant applications. As Mr Sutton explained, marketing does not take place until planning consent has been

obtained. Similarly, no weight should be placed on the absence of a grant application at this time: such an application would be premature at this stage.

10.19 Planning policy beyond the d. plan. The land is allocated in both strands of the development plan as set out above. PPW 12ed also contains clear policy support for the proposal. For example:

PPW 5.3.17 “Airports are important hubs”

PPW 5.3.18 “Planning authorities should recognise the strategic and local importance of airports and their potential as centres of economic activity”

PPW 5.4.17 “The Welsh Government’s Enterprise Zones are an example of where co-ordinated action can take place to encourage investment in a particular sector in a particular place. Planning authorities should seek to support development of business networks and clusters particularly in relation to innovative and technology based enterprise.”

10.20 PPW thus requires positive engagement by planning authorities in respect of allocating land and determining planning applications. The reference to EZs and co-ordinated action also hints at the financial and other support which is given to employment land development. As Mr Parker observes at 2.7 of his witness statement, where it is alleged that an allocation or application would cause harm to the environment, TAN 23 requires consideration of alternative sites. That exercise has already been undertaken during the process of adopting the LDP. But it is clear that no alternative site could provide the cluster benefits having regard to the required proximity to the airport and, now, the College. Nor would any alternative site deliver the extension to the Country Park required by MG28.

10.21 Whilst most of this section has been concerned with addressing specific objections made by VCU and others it is important to bear in mind the very substantial socio-economic benefits of the development.

10.22 **Jobs** – The development would create capacity for up to 2,500 net additional FTE jobs.

10.23 **Special Merit** – The development contributes to the EZ and FW Policy 10. It delivers LDP Policy MG9 and the Masterplan produced (with public consultation) under MG10. There is a very clear synergy with the College - Sutton referred to the importance of the availability for inward investors of a workforce possessing relevant skills.⁶¹ It contributes to the delivery of part of the partially implemented active travel proposal of LDP (Policy MG16(2) footway / cycleway Waycock Cross to Port Rd), Masterplan and RLDP Policy and safeguards land to contribute towards TfW's potential high quality rapid transit public transport project for the area. It also delivers a major extension to the Country Park in accordance with MG28 to serve Green Infrastructure needs consistent with the aspirations of the EZ.

10.24 Whilst there is no employment policy requirement to prove need as such, Mr Sutton explained the need for this development as part of a mixed portfolio of sites, both generally for Cardiff City Region and as part of VoG's employment strategy. Moreover, the site is specifically required, as Mr Parker and OR explain, as a result of national policy in FW and co-location with the airport.⁶² As with Cardiff Parkway, this is a proposal which aligns with the emphasis in policy on promoting economic activity with a connection to transport links. The alternative sites relied upon by VCU and other objectors are not true alternatives, either as a matter of policy or adopting a wider economic development perspective. A Prosperous Wales (one of the statutory objectives of the Sustainable Development Principle) needs all of the sites canvassed in evidence to be available for development and to attract investment from high value added sectors.

10.25 Whilst the LPA is adopting a neutral stance at this inquiry it is a matter of fact that the OR did not identify a breach of any of the LDP policies most relevant in the context of this policy i.e. SP2, MG9, MG10, MG18 and MG28. Nothing has changed in the interim which would undermine the validity of that analysis and the same is supported by Mr Parker. As per section 5 of these submissions, the relevant FW policies all support the development of the site as employment land and Country Park extension. Similarly, relevant PPW policies support the proposal. Very little weight should be given to the loss of BMV land given the negligible amount of grade

⁶¹ Sutton evidence in chief.

⁶² OR p.85

3a involved, a fact which is reflected in the planning judgment made when the land was allocated in the first instance. The ES Socio-Economics Chapter calculates potential employment creation of 40-60 per annum during the construction phase and 1,300 – 2,500 during the operational phase, compared with 4 agricultural jobs, assuming continuation of the current system at the Farm, a massive economic uplift, as planned for the EZ. We invite you to conclude that this is a d plan led scheme which also contributes strongly across other important areas of national and local policy.

11. ISSUE (vii): The effect of other considerations on the overall planning balance

11.1 The correct approach to the planning balance in this case is that one starts from the position of accordance with the d plan overall. Section 10 also showed strong performance against other policy objectives. So the question is whether anything outweighs this. Matters canvassed by VCU and objectors include:

(i) Heritage harm – ‘considerable importance and weight’.

(ii) Loss of farm (as distinct from BMV)

(iii) Impacts in terms of landscape and biodiversity

11.2 As for (i) and (ii) these would have been considered as part of the initial allocation in the LDP and thereafter in FW. The proposal has mitigated the heritage impacts by design and proposed additional mitigation; residual harm is slight, especially when taking into account the benefits of greater opportunities for public appreciation of some of the assets. This slight residual harm is to be afforded ‘considerable importance and weight’ in the balance. The fact remains, however, that slight heritage harm in the form of indirect impacts to settings and the loss of the farm land and enterprise are the unavoidable results of implementing the site-specific LDP proposals, so any argument that these factors outweigh the d plan support amounts, in reality, to a repudiation of the d plan itself.

11.3 As set out above, the proposal complies with landscape and biodiversity policies. Accordingly, whilst there will be some adverse impacts, it is submitted that these do not qualify as policy harms. Furthermore, insofar as biodiversity is concerned, on Mr Oliver’s evidence, which we invite you to accept, there is a net benefit to biodiversity despite the localised losses, once ecological mitigation and

enhancement are taken into account. As noted above, the approach to design and mitigation has complied with PPW policy.⁶³

11.4 In opening VCU §39 indicated that it did not accept that the ES dealt properly with climate change. Mr Tasker was called to give evidence as to how the climate change implications of the development had been assessed in the ES. He explained how the assessment was conservative in a number of respects and that he is a co-author of the standard guide to climate change assessment. It was not put to him in XX that the assessment was flawed. Nor was it put to him that the mitigation which is assessed in chapter 8 of the ES is impracticable, implausible or could not be secured. Those mitigation measures are secured in conditions 5, 19, 34, 37, 38, 41 and 44. The submissions made in relation to *Milne (No 2)* apply equally to the climate change chapter. The Appellant has assessed the effects within the envelope and parameters set in the ES and enshrined in the draft conditions. The assessment is, in summary, robust and has not been subject to appropriate challenge.

12 ISSUE (viii): Whether planning obligations are necessary for the development to proceed

12.1 The proposed S.106 obligations are a very important part of the Appeal proposals. They comprise: Park extension / biodiversity delivery and contributions; contribution of land to active travel route; and the Rapid Transit land reservation. These are all required in order to comply with policy and make the development acceptable and therefore meet the tests of the CIL Regs.

12.2 They also secure considerable planning benefits in the public interest which should be given weight in the planning balance. They all help to implement the many-layered policy commitments to the development of this area, focussed on Wales' only international airport, for specialised, high quality economic development, balanced by securing long-term environmental gains.

13. Issue (ix): Whether any planning permission should be the subject of conditions.

⁶³ Paras 5.15, 8.3 above.

- 13.1 Like the planning obligations, the proposed conditions are a very important part of the Appeal proposals. Their legal significance in terms of EIA has been dealt with in the ES submissions and should not be underestimated. Although the proposals affecting Area A are, necessarily, in outline, the conditions and the many plans and other documents which they tie into the proposed planning permission would vitally shape it and make it acceptable and compliant with the d plan, as explained above. There is no need generally to repeat the round table discussions here, but the topic of drainage, which is proposed to be dealt with by way of conditions, has generated a great deal of concern and will now be addressed.
- 13.2 Surface water and foul drainage are appropriately dealt with by Conditions 12, 9 and 10, respectively. FOE, Mr Clarke and some individual objectors have raised concerns relating to localised flooding and surcharging of sewage outfalls. They argue that these matters should have been subject to EIA because it is suggested that there are likely significant environmental effects which have not been assessed.
- 13.3 The First PEDW Completeness Report requested that the question of whether or not flooding should be considered in the ES in the light of the forthcoming issue of the then imminent new DAM Flood Risk Zone and NRW flood maps should be addressed. This was duly done and the position under the new flood maps remained the same, i.e that the Site is in an area of very low risk of flooding. NRW had, of course, been consulted on the LDP when it was in draft, as had DCWW. The November 2024 Completeness Report was satisfied with the EIA team's response. No new facts have emerged to undermine that conclusion.
- 13.4 The planning application was preceded by consultation with DCWW and the Sustainable Drainage Approval Body (part of VoG).⁶⁴ They also responded to the planning application and their positions were explained in the OR.⁶⁵ SAB approval will be separate from the discharge of planning conditions, but their satisfaction that a suitable detailed SUDS scheme can be devised, on the basis of the preliminary material submitted, provides an independent evidential basis for condition 12. Swales and SUDS basins are identified on the parameter plans. The condition restricts surface water runoff to greenfield rates; therefore, surface water flooding will not be exacerbated by the proposed development and suggestions that erosion of watercourse banks will increase are therefore misconceived.

⁶⁴ Sustainable Drainage Assessment, App E

⁶⁵ Internal pages 108 – 9.

13.5 Foul drainage is the statutory responsibility of DCWW under separate water legislation. The undertaker is obliged to provide a connection for new development. FOE and others are dissatisfied with DCWW's performance of their statutory duties, but that is not a matter for the planning process. DCWW have indicated that it is likely that there is insufficient capacity within the sewerage system at present, but they are content that the matter be addressed at detailed stage, pursuant to Conditions 9 and 10 which will ensure that no development takes place until a scheme has been approved and the necessary connection to the public system made after implementation of any required reinforcement works. The decision maker should proceed on the basis that these safeguards will operate properly as per *Milne (No 2)*.⁶⁶

14. CONCLUSION

14.1 Section 38(6) requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. The LDP allocated this site for employment land and an extension of the Country Park. FW, which is the most recent element of the development plan, confirmed the allocation. National policy reiterates that "a plan-led approach is the most effective way to secure sustainable development through the planning system".⁶⁷ Objectors to the application rely upon material considerations which do not relate to the specific aspects of the application but are, in truth, matters underpinning an in-principle objection to the development plan allocation.⁶⁸ These matters were considered at the development plan stage and the decision taken that the benefits of the allocation outweighed any disadvantages. A planning application is not the forum for relitigating development plan debates. The objections are thus misconceived as reflected in the consistent judgments expressed by the VoG's planning officers in their reports.

14.2 Where matters of detail are raised, e.g. in respect of ecology, the evidence adduced by the Appellant establishes that the specific proposal is well considered and is supported by a robust ES.

⁶⁶ Cited in CD6.29 (the legal response to Mr Clarke) at §5.2

⁶⁷ PPW 1.18

⁶⁸ Impact on heritage assets, loss of farmland and open land, additional built development giving rise to additional traffic etc.

14.3 A second overarching argument advanced by objectors is that the application in relation to Area A is in outline only and is thus unacceptable from an EIA perspective. This, too, is misconceived. It involves running the argument which was rejected by Sullivan J in *Milne (No 2)*; that judgment making it clear that EIA of outline applications is lawful and acceptable provided that the ES sets out relevant parameters and that the said parameters are controlled by suitable conditions. Both conditions are met in this case.

14.4 In the circumstances, you are respectfully invited to conclude that the application should be granted and to make a recommendation in those terms to the Minister.

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10 April 2026